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A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to part II of article 9 a new section to be  
3 appropriately designated and to read as follows:

4 "§431:9- Contracts between public adjuster and insured.

5 (a) All contracts for services provided by a public adjuster  
6 shall be in writing and contain the following terms:

7 (1) Title of "Public Adjuster Contract";

8 (2) Description of services to be provided to the insured;

9 (3) Full salary, fee, commission, or other consideration  
10 the public adjuster is to receive for services;

11 (4) Initial expenses to be reimbursed to the public  
12 adjuster from the proceeds of the claim payment shall  
13 be specified by type, with dollar estimates set forth  
14 in the contract, and with any additional expenses  
15 first approved by the insured;

16 (5) Attestation language stating that the public adjuster  
17 is fully bonded pursuant to section 431:9-223;

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- 1        (6) Insured's full name, street address, insurance company  
2        name, and policy number, if known or upon  
3        notification;
- 4        (7) Description of the loss and its location, if  
5        applicable;
- 6        (8) Legible full name of the public adjuster signing the  
7        contract;
- 8        (9) The public adjuster's permanent home state, business  
9        address, and phone number;
- 10       (10) License number on record with the insurance division;
- 11       (11) Signatures of the public adjuster and the insured; and
- 12       (12) Date the contract was signed by the public adjuster  
13       and date the contract was signed by the insured.
- 14       (b) A public adjuster contract shall not contain any  
15 contract term that:
- 16       (1) Requires the insured to authorize an insurance company  
17       to issue a check only in the name of the public  
18       adjuster;
- 19       (2) Imposes collection costs or late fees; or
- 20       (3) Precludes the insured from pursuing civil remedies.
- 21       (c) No public adjuster shall charge, agree to, or accept  
22 as compensation or reimbursement any payment, fee, commission,

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1 or other thing of value that is determined to be unreasonable by  
2 the commissioner. If the compensation is based on a share of  
3 the insurance settlement or proceeds, the exact percentage shall  
4 be specified in the contract.

5 (d) If the insurer, not later than seventy-two hours after  
6 the date on which the loss is reported to the insurer, either  
7 pays or commits in writing to pay the insured the limits of any  
8 coverage that are or may be applicable to the specific claim,  
9 the public adjuster shall:

10 (1) Not receive a commission consisting of a percentage of  
11 the total amount paid by an insurer to resolve a  
12 claim;

13 (2) Inform the insured that loss recovery amount might not  
14 be increased by the insurer; and

15 (3) Be entitled only to reasonable compensation from the  
16 insured for services provided by the public adjuster  
17 on behalf of the insured, based on the time spent on a  
18 claim and expenses incurred by the public adjuster,  
19 until the claim is paid or the insured receives a  
20 written commitment to pay from the insurer.

21 (e) A public adjuster shall provide the insured a written  
22 disclosure concerning any direct or indirect financial interest

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1 that the public adjuster has with any other party who is  
2 involved in any aspect of the claim, other than the salary, fee,  
3 commission, or other consideration established in the written  
4 contract with the insured, including but not limited to any  
5 ownership of, other than as a minority stockholder, or any  
6 compensation expected to be received from, any construction  
7 firm, salvage firm, building appraisal firm, motor vehicle  
8 repair shop, or any other firm that provides estimates for work,  
9 or that performs any work, in conjunction with damages caused by  
10 the insured loss on which the public adjuster is engaged. For  
11 purposes of this subsection, "firm" shall include any  
12 corporation, partnership, association, joint-stock company, or  
13 person.

14 (f) The insured shall have the right to rescind the  
15 contract within three business days after the date the contract  
16 was signed. The rescission shall be in writing and mailed or  
17 delivered to the public adjuster at the address in the contract  
18 within the three business-day period.

19 (g) If the insured exercises the right to rescind the  
20 contract pursuant to subsection (f), anything of value given by  
21 the insured under the contract shall be returned to the insured

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1 within fifteen business days following the receipt of the  
2 cancellation notice by the public adjuster.

3 (h) Compensation provisions in a public adjusting contract  
4 shall be made available to the commissioner upon request."

5 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
6 amended by adding to part II of article 9A a new section to be  
7 appropriately designated and to read as follows:

8 "§431:9A- Standard of conduct. A person issued a  
9 limited lines motor vehicle rental company producer license  
10 shall act in good faith, abstain from deception, and practice  
11 honesty and equity in all insurance matters."

12 SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
13 amended by adding to part IV of article 9A a new section to be  
14 appropriately designated and to read as follows:

15 "§431:9A- Standard of conduct. An owner holding a  
16 self-service storage limited lines license shall act in good  
17 faith, abstain from deception, and practice honesty and equity  
18 in all insurance matters."

19 SECTION 4. Chapter 431, Hawaii Revised Statutes, is  
20 amended by adding to article 31 a new section to be  
21 appropriately designated and to read as follows:

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1       "§431:31-       Standard of conduct.   A vendor issued a  
2 limited lines license shall act in good faith, abstain from  
3 deception, and practice honesty and equity in all insurance  
4 matters."

5       SECTION 5.   Section 431:2-201, Hawaii Revised Statutes, is  
6 amended by amending subsection (c) to read as follows:

7       "(c)   The commissioner may:

- 8       (1)   Make reasonable rules for effectuating any provision  
9           of this code, except those relating to the  
10          commissioner's appointment, qualifications, or  
11          compensation.   The commissioner shall adopt rules to  
12          effectuate article 10C of chapter 431, subject to the  
13          approval of the governor's office and the requirements  
14          of chapter 91;
- 15       (2)   Conduct examinations and investigations to determine  
16          whether any person has violated any provision of this  
17          code or to secure information useful in the lawful  
18          administration of any provision;
- 19       (3)   Require applicants to provide fingerprints and pay a  
20          fee to allow the commissioner to make a determination  
21          of license eligibility after obtaining state and  
22          national criminal history record checks from the

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1 Hawaii criminal justice data center and the Federal  
2 Bureau of Investigation; ~~and~~

3 (4) Require, upon reasonable notice, that insurers report  
4 any claims information the commissioner may deem  
5 necessary to protect the public interest~~[-]~~; and

6 (5) Upon showing of good cause, waive or modify, in whole  
7 or part, any or all fees by order."

8 SECTION 6. Section 431:7-202, Hawaii Revised Statutes, is  
9 amended by amending subsection (f) to read as follows:

10 "(f) The taxes imposed by subsections (a), (b), (c), and  
11 (d) shall be paid monthly. The monthly tax shall be due and  
12 payable by electronic payment via the ~~[Automated Clearing House~~  
13 ~~debit or credit payment system]~~ National Association of  
14 Insurance Commissioners' Online Premium Tax for Insurance or an  
15 equivalent service approved by the commissioner on or before the  
16 twentieth day of the calendar month following the month in which  
17 it accrues, coinciding with the filing of the statement provided  
18 for in section 431:7-201.

19 In addition to the monthly tax and monthly tax statement,  
20 the annual tax shall be due and payable by electronic payment  
21 via the ~~[Automated Clearing House debit or credit payment~~  
22 ~~system]~~ National Association of Insurance Commissioners' Online

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1 Premium Tax for Insurance or an equivalent service approved by  
2 the commissioner on or before March 1 coinciding with the filing  
3 of the statement provided for in section 431:7-201.

4 All amounts paid under this subsection, other than fines,  
5 shall be allowed as a credit on the annual tax imposed by  
6 subsections (a), (b), (c), and (d).

7 If the total amount of installment payments for any  
8 calendar year exceeds the amount of annual tax for that year,  
9 the excess shall be treated as an overpayment of the annual tax  
10 and be allowed as a refund under section 431:7-203.

11 Any insurer failing or refusing to pay the required taxes  
12 above stated when due and payable shall be liable for a fine of  
13 \$500 or ten per cent of the tax due, whichever is greater; plus  
14 interest at a rate of twelve per cent per annum on the  
15 delinquent taxes. The taxes may be collected by distraint, or  
16 the taxes, fine, and interest may be recovered by an action to  
17 be instituted by the commissioner in the name of this State, in  
18 any court of competent jurisdiction. The commissioner may  
19 suspend the certificate of authority of the delinquent insurer  
20 until the taxes, fine, and interest, should any be imposed, are  
21 fully paid.

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1       ~~[As used in this subsection, "Automated Clearing House~~  
2 ~~debit or credit payment system" means the network for the~~  
3 ~~interbank clearing of electronic payments for participating~~  
4 ~~depository financial institutions.]"~~

5       SECTION 7. Section 431:8-313, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7       "(a) Each ~~[surplus lines broker shall file with the~~  
8 ~~commissioner on or before March 15, 2011, a verified statement~~  
9 ~~of all surplus lines insurance transacted during 2010. Each~~  
10 ~~surplus lines broker shall file with the commissioner on or~~  
11 ~~before September 15, 2011, a verified statement of all surplus~~  
12 ~~lines insurance transacted after December 31, 2010, and before~~  
13 ~~July 1, 2011. After June 30, 2011, each]~~ surplus lines broker  
14 shall file electronically with the commissioner within forty-  
15 five days of the end of each calendar quarter a verified  
16 statement of all surplus lines insurance transacted during the  
17 calendar quarter as follows:

- 18       (1) The statement for the quarter ending March 31 shall be  
19             filed on or before May 15;
- 20       (2) The statement for the quarter ending June 30 shall be  
21             filed on or before August 15;

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1 (3) The statement for the quarter ending September 30  
2 shall be filed on or before November 15; and

3 (4) The statement for the quarter ending December 31 shall  
4 be filed on or before February 15."

5 SECTION 8. Section 431:8-315, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 " (a) [~~On or before March 15, 2011, each surplus lines~~  
8 ~~broker shall pay to the director of finance, through the~~  
9 ~~commissioner, a premium tax on surplus lines insurance~~  
10 ~~transacted by the broker during 2010. On or before~~  
11 ~~September 15, 2011, each surplus lines broker shall pay to the~~  
12 ~~director of finance, through the commissioner, a premium tax on~~  
13 ~~surplus lines insurance transacted by the broker after~~  
14 ~~December 31, 2010, and before July 1, 2011. After June 30,~~  
15 ~~2011, within] Within forty-five days after the end of each  
16 calendar quarter, each surplus lines broker shall pay to the  
17 director of finance, through the commissioner[~~r~~] via  
18 the National Association of Insurance Commissioners' Online  
19 Premium Tax for Insurance or an equivalent service approved by  
20 the commissioner, a premium tax on surplus lines insurance  
21 transacted by the broker during the calendar quarter for  
22 insurance for which this State is the home state of the~~

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1 insured. The tax rate shall be in the amount of 4.68 per cent  
2 of gross premiums, less return premiums, on surplus lines  
3 insurance for which the home state is this State.

4 As used in this subsection, "gross premiums" means the  
5 amount of the policy or coverage premium charged by the insurer  
6 in consideration for the insurance contract. Any charges for  
7 policy, survey, inspection, service, or similar fees or other  
8 charges added by the broker shall not be considered part of  
9 gross premiums."

10 SECTION 9. Section 431:9-230, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§431:9-230 Reporting and accounting for ~~[premiums-]~~**

13 **funds.** (a) Every licensed adjuster shall have the  
14 responsibilities of a trustee for all ~~[premium]~~ funds and return  
15 ~~[premium]~~ funds received or collected under this article.

16 (b) The licensee, upon receipt of the funds, shall either:

17 (1) Remit the ~~[premiums (less commissions)]~~ funds and  
18 return ~~[premiums]~~ funds received or held by the  
19 licensee to the ~~[insurers or the]~~ persons entitled to  
20 ~~[such]~~ the funds; or

21 (2) Maintain the funds at all times in a federally insured  
22 account with a bank, savings and loan association, or

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1 financial services loan company situated in Hawaii,  
2 separate from the licensee's own funds or funds held  
3 by the licensee in any other capacity, [~~in an amount~~  
4 ~~at least equal to the premiums (net of commissions)]~~  
5 and return [~~premiums~~] funds received by [~~such~~] the  
6 licensee and unpaid to the insurers or persons  
7 entitled to [~~such~~] the funds. Return [~~premiums~~] funds  
8 shall be returned within thirty days, unless directed  
9 otherwise in writing by the person entitled to the  
10 funds.

11 The licensee shall not be required to maintain a separate bank  
12 account or other account for the funds of each [~~insurer or~~  
13 person entitled to [~~such~~] the funds, [~~if and~~] so long as the  
14 funds held for the [~~insurer or~~] person entitled to [~~such~~] the  
15 funds are reasonably ascertainable from the books of account and  
16 records of the licensee. Only [~~such~~] additional funds [~~as may~~  
17 ~~be~~] reasonably necessary to pay bank, savings and loan  
18 association, or financial services loan company charges may be  
19 commingled with the [~~premium~~] funds. In the event the bank,  
20 savings and loan association, or financial services loan company  
21 account is an interest earning account, [~~such~~] the licensee may  
22 not retain the interest earned on [~~such~~] the funds to the

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1 licensee's own use or benefit without the prior written consent  
2 of the [~~insurers or~~] person entitled to [~~such~~] the funds. A  
3 [~~premium~~] trustee account shall be designated on the records of  
4 the bank, savings and loan association, or financial services  
5 loan company as a "trustee account established pursuant to  
6 section 431:9-230, Hawaii Revised Statutes", or words of similar  
7 import.

8 (c) Any [~~such~~] licensee who, not being lawfully entitled  
9 to [~~such~~] the funds, diverts or appropriates [~~such~~] the funds or  
10 any portion of them [~~to~~] for the licensee's own use, shall be  
11 guilty of embezzlement[7] and shall be punished as provided in  
12 the criminal statutes of this State."

13 SECTION 10. Section 431:9-235, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§431:9-235 Denial, suspension, revocation of licenses.**

16 (a) The commissioner may suspend, revoke, or refuse to extend  
17 any license issued under this article for any cause specified in  
18 any other provision of this article, or for any of the following  
19 causes:

20 (1) For any cause for which issuance of the license could  
21 have been refused had it then existed and been known  
22 to the commissioner;

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- 1           (2) If the licensee wilfully violates or knowingly  
2           participates in the violation of any provision of this  
3           code;
- 4           (3) If the licensee has obtained or attempted to obtain  
5           any license issued under this article through wilful  
6           misrepresentation or fraud, or has failed to pass any  
7           examination required by section 431:9-206;
- 8           (4) If the licensee has misappropriated, converted to the  
9           licensee's own use, or illegally withheld moneys  
10          required to be held in a fiduciary capacity;
- 11          (5) If the licensee, with intent to deceive, has  
12          materially misrepresented the terms or effect of any  
13          insurance contract; or has engaged or is about to  
14          engage in any fraudulent transaction;
- 15          (6) If the licensee has been [~~guilty of~~] found to have  
16          committed any unfair practice or fraud as defined in  
17          article 13;
- 18          (7) If in the conduct of the licensee's affairs under the  
19          license, the licensee has shown oneself to be a source  
20          of injury and loss to the public; or
- 21          (8) If the licensee has dealt with, or attempted to deal  
22          with, insurance or to exercise powers relative to

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1 insurance outside the scope of the licensee's  
2 licenses.

3 (b) The license of any partnership or corporation may be  
4 ~~[se]~~ suspended, revoked, or refused for any of the causes that  
5 relate to any individual designated in the license to exercise  
6 its powers.

7 (c) The holder of any license, which has been revoked or  
8 suspended, shall surrender the license certificate to the  
9 commissioner at the commissioner's request.

10 (d) The commissioner may suspend, revoke, or refuse to  
11 extend any license for any cause specified in this article by an  
12 order:

13 (1) Given to the licensee at least fifteen days prior to  
14 the order's effective date, subject to the right of  
15 the licensee to have a hearing as provided in section  
16 431:2-308. The license shall be suspended pending the  
17 hearing; or

18 (2) Made after a hearing as provided in section 431:2-308.  
19 The effective date of the order shall be ten days  
20 after the date the order is given to the licensee.  
21 The order may be appealed to the circuit court of the

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1           first judicial circuit of this State as provided in  
2           chapter 91."

3           SECTION 11. Section 431:9A-107.5, Hawaii Revised Statutes,  
4 is amended to read as follows:

5           "**§431:9A-107.5 Limited license.** (a) Notwithstanding any  
6 other provision of this article, the commissioner may issue:

7           (1) A limited license to persons selling travel tickets of  
8           a common carrier of persons or property who shall act  
9           only as to travel ticket policies of accident and  
10           health or sickness insurance or baggage insurance on  
11           personal effects;

12           (2) A limited license to each individual who has charge of  
13           vending machines used in this State for the  
14           effectuation of travel insurance;

15           (3) A limited license to any individual who sells policies  
16           of accident and health or sickness insurance as a  
17           promotional device to improve the circulation of a  
18           newspaper in this State;

19           (4) A limited line credit insurance producer license to  
20           any individual who sells, solicits, or negotiates  
21           limited line credit insurance; or

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1 (5) A limited license to any owner of a self-service  
2 storage facility, as defined in section 507-61, to  
3 sell stored property insurance, as defined in section  
4 431:9A-171.

5 (b) The commissioner may prescribe and furnish forms  
6 calling for any information that the commissioner deems proper  
7 in connection with the application for or extension of these  
8 limited licenses.

9 (c) The limited license shall not be issued until the  
10 license fee has been paid.

11 (d) A person issued a limited license shall act in good  
12 faith, abstain from deception, and practice honesty and equity  
13 in all insurance matters."

14 SECTION 12. Section 431:10C-405, Hawaii Revised Statutes,  
15 is amended by amending subsection (a) to read as follows:

16 "(a) The commissioner shall establish a board of governors  
17 within the bureau [~~, a board of governors for the purpose of~~  
18 ~~providing~~] to provide expertise and consultation on all matters  
19 pertaining to the operation of the bureau and the joint  
20 underwriting plan. The commissioner shall appoint members to  
21 [The] the board, which shall be composed of:

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- 1           (1) [~~Five~~] Six persons from, and members or  
2           representatives of, nationally organized insurers or  
3           their domestic insurer affiliates; and  
4           (2) One person to represent insurance producers[~~+~~  
5           ~~(3) Two members, each a self-insurer under this article,~~  
6           ~~and nominated by all the certified self-insurers in~~  
7           ~~the State;~~  
8           ~~(4) Two members, not affiliated with the foregoing~~  
9           ~~organizations, nominated by such nonaffiliated~~  
10           ~~insurers; and~~  
11           ~~(5) Two members each, to be selected by the commissioner~~  
12           ~~or nominated by each of the classifications provided~~  
13           ~~for in section 431:10C-407(b)]."~~

14           SECTION 13. Section 431:13-103, Hawaii Revised Statutes,  
15 is amended by amending subsection (a) to read as follows:

16           "(a) The following are defined as unfair methods of  
17 competition and unfair or deceptive acts or practices in the  
18 business of insurance:

- 19           (1) Misrepresentations and false advertising of insurance  
20           policies. Making, issuing, circulating, or causing to  
21           be made, issued, or circulated, any estimate,

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1 illustration, circular, statement, sales presentation,  
2 omission, or comparison [~~which:~~] that:

3 (A) Misrepresents the benefits, advantages,  
4 conditions, or terms of any insurance policy;

5 (B) Misrepresents the dividends or share of the  
6 surplus to be received on any insurance policy;

7 (C) Makes any false or misleading statement as to the  
8 dividends or share of surplus previously paid on  
9 any insurance policy;

10 (D) Is misleading or is a misrepresentation as to the  
11 financial condition of any insurer, or as to the  
12 legal reserve system upon which any life insurer  
13 operates;

14 (E) Uses any name or title of any insurance policy or  
15 class of insurance policies misrepresenting the  
16 true nature thereof;

17 (F) Is a misrepresentation for the purpose of  
18 inducing or tending to induce the lapse,  
19 forfeiture, exchange, conversion, or surrender of  
20 any insurance policy;

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- 1 (G) Is a misrepresentation for the purpose of  
2 effecting a pledge or assignment of or effecting  
3 a loan against any insurance policy;
- 4 (H) Misrepresents any insurance policy as being  
5 shares of stock;
- 6 (I) Publishes or advertises the assets of any insurer  
7 without publishing or advertising with equal  
8 conspicuousness the liabilities of the insurer,  
9 both as shown by its last annual statement; or
- 10 (J) Publishes or advertises the capital of any  
11 insurer without stating specifically the amount  
12 of paid-in and subscribed capital;
- 13 (2) False information and advertising generally. Making,  
14 publishing, disseminating, circulating, or placing  
15 before the public, or causing, directly or indirectly,  
16 to be made, published, disseminated, circulated, or  
17 placed before the public, in a newspaper, magazine, or  
18 other publication, or in the form of a notice,  
19 circular, pamphlet, letter, or poster, or over any  
20 radio or television station, or in any other way, an  
21 advertisement, announcement, or statement containing  
22 any assertion, representation, or statement with

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1           respect to the business of insurance or with respect  
2           to any person in the conduct of the person's insurance  
3           business, which is untrue, deceptive, or misleading;

4           (3) Defamation. Making, publishing, disseminating, or  
5           circulating, directly or indirectly, or aiding,  
6           abetting, or encouraging the making, publishing,  
7           disseminating, or circulating of any oral or written  
8           statement or any pamphlet, circular, article, or  
9           literature which is false, or maliciously critical of  
10          or derogatory to the financial condition of an  
11          insurer, and which is calculated to injure any person  
12          engaged in the business of insurance;

13          (4) Boycott, coercion, and intimidation.

14           (A) Entering into any agreement to commit, or by any  
15           action committing, any act of boycott, coercion,  
16           or intimidation resulting in or tending to result  
17           in unreasonable restraint of, or monopoly in, the  
18           business of insurance; or

19           (B) Entering into any agreement on the condition,  
20           agreement, or understanding that a policy will  
21           not be issued or renewed unless the prospective  
22           insured contracts for another class or an

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1 additional policy of the same class of insurance  
2 with the same insurer;

3 (5) False financial statements.

4 (A) Knowingly filing with any supervisory or other  
5 public official, or knowingly making, publishing,  
6 disseminating, circulating, or delivering to any  
7 person, or placing before the public, or  
8 knowingly causing, directly or indirectly, to be  
9 made, published, disseminated, circulated,  
10 delivered to any person, or placed before the  
11 public, any false statement of a material fact as  
12 to the financial condition of an insurer; or

13 (B) Knowingly making any false entry of a material  
14 fact in any book, report, or statement of any  
15 insurer with intent to deceive any agent or  
16 examiner lawfully appointed to examine into its  
17 condition or into any of its affairs, or any  
18 public official to whom the insurer is required  
19 by law to report, or who has authority by law to  
20 examine into its condition or into any of its  
21 affairs, or, with like intent, knowingly omitting  
22 to make a true entry of any material fact

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1           pertaining to the business of the insurer in any  
2           book, report, or statement of the insurer;

3       (6) Stock operations and advisory board contracts.  
4           Issuing or delivering or permitting agents, officers,  
5           or employees to issue or deliver, agency company stock  
6           or other capital stock, or benefit certificates or  
7           shares in any common-law corporation, or securities or  
8           any special or advisory board contracts or other  
9           contracts of any kind promising returns and profits as  
10          an inducement to insurance;

11       (7) Unfair discrimination.  
12           (A) Making or permitting any unfair discrimination  
13           between individuals of the same class and equal  
14           expectation of life in the rates charged for any  
15           policy of life insurance or annuity contract or  
16           in the dividends or other benefits payable  
17           thereon, or in any other of the terms and  
18           conditions of the contract;

19           (B) Making or permitting any unfair discrimination in  
20           favor of particular individuals or persons, or  
21           between insureds or subjects of insurance having  
22           substantially like insuring, risk, and exposure

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1 factors, or expense elements, in the terms or  
2 conditions of any insurance contract, or in the  
3 rate or amount of premium charge therefor, or in  
4 the benefits payable or in any other rights or  
5 privilege accruing thereunder;

6 (C) Making or permitting any unfair discrimination  
7 between individuals or risks of the same class  
8 and of essentially the same hazards by refusing  
9 to issue, refusing to renew, canceling, or  
10 limiting the amount of insurance coverage on a  
11 property or casualty risk because of the  
12 geographic location of the risk, unless:

13 (i) The refusal, cancellation, or limitation is  
14 for a business purpose which is not a mere  
15 pretext for unfair discrimination; or

16 (ii) The refusal, cancellation, or limitation is  
17 required by law or regulatory mandate;

18 (D) Making or permitting any unfair discrimination  
19 between individuals or risks of the same class  
20 and of essentially the same hazards by refusing  
21 to issue, refusing to renew, canceling, or  
22 limiting the amount of insurance coverage on a

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1 residential property risk, or the personal  
2 property contained therein, because of the age of  
3 the residential property, unless:

4 (i) The refusal, cancellation, or limitation is  
5 for a business purpose which is not a mere  
6 pretext for unfair discrimination; or

7 (ii) The refusal, cancellation, or limitation is  
8 required by law or regulatory mandate;

9 (E) Refusing to insure, refusing to continue to  
10 insure, or limiting the amount of coverage  
11 available to an individual because of the sex or  
12 marital status of the individual; however,  
13 nothing in this subsection shall prohibit an  
14 insurer from taking marital status into account  
15 for the purpose of defining persons eligible for  
16 dependent benefits;

17 (F) Terminating or modifying coverage, or refusing to  
18 issue or renew any property or casualty policy or  
19 contract of insurance solely because the  
20 applicant or insured or any employee of either is  
21 mentally or physically impaired; provided that  
22 this subparagraph shall not apply to accident and

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1 health or sickness insurance sold by a casualty  
2 insurer; provided further that this subparagraph  
3 shall not be interpreted to modify any other  
4 provision of law relating to the termination,  
5 modification, issuance, or renewal of any  
6 insurance policy or contract;

7 (G) Refusing to insure, refusing to continue to  
8 insure, or limiting the amount of coverage  
9 available to an individual based solely upon the  
10 individual's having taken a human  
11 immunodeficiency virus (HIV) test prior to  
12 applying for insurance; or

13 (H) Refusing to insure, refusing to continue to  
14 insure, or limiting the amount of coverage  
15 available to an individual because the individual  
16 refuses to consent to the release of information  
17 which is confidential as provided in section 325-  
18 101; provided that nothing in this subparagraph  
19 shall prohibit an insurer from obtaining and  
20 using the results of a test satisfying the  
21 requirements of the commissioner, which was taken  
22 with the consent of an applicant for insurance;

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1 provided further that any applicant for insurance  
2 who is tested for HIV infection shall be afforded  
3 the opportunity to obtain the test results,  
4 within a reasonable time after being tested, and  
5 that the confidentiality of the test results  
6 shall be maintained as provided by section  
7 325-101;

8 (8) Rebates. Except as otherwise expressly provided by  
9 law:

10 (A) Knowingly permitting or offering to make or  
11 making any contract of insurance, or agreement as  
12 to the contract other than as plainly expressed  
13 in the contract, or paying or allowing, or giving  
14 or offering to pay, allow, or give, directly or  
15 indirectly, as inducement to the insurance, any  
16 rebate of premiums payable on the contract, or  
17 any special favor or advantage in the dividends  
18 or other benefits, or any valuable consideration  
19 or inducement not specified in the contract; or

20 (B) Giving, selling, or purchasing, or offering to  
21 give, sell, or purchase as inducement to the  
22 insurance or in connection therewith, any stocks,

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1           bonds, or other securities of any insurance  
2           company or other corporation, association, or  
3           partnership, or any dividends or profits accrued  
4           thereon, or anything of value not specified in  
5           the contract;

6           (9) Nothing in paragraph (7) or (8) shall be construed as  
7           including within the definition of discrimination or  
8           rebates any of the following practices:

9           (A) In the case of any life insurance policy or  
10           annuity contract, paying bonuses to policyholders  
11           or otherwise abating their premiums in whole or  
12           in part out of surplus accumulated from  
13           nonparticipating insurance; provided that any  
14           bonus or abatement of premiums shall be fair and  
15           equitable to policyholders and in the best  
16           interests of the insurer and its policyholders;

17           (B) In the case of life insurance policies issued on  
18           the industrial debit plan, making allowance to  
19           policyholders who have continuously for a  
20           specified period made premium payments directly  
21           to an office of the insurer in an amount which

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- 1                   fairly represents the saving in collection  
2                   expense;
- 3           (C)   Readjustment of the rate of premium for a group  
4                   insurance policy based on the loss or expense  
5                   experience thereunder, at the end of the first or  
6                   any subsequent policy year of insurance  
7                   thereunder, which may be made retroactive only  
8                   for the policy year; ~~and~~
- 9           (D)   In the case of any contract of insurance, the  
10                  distribution of savings, earnings, or surplus  
11                  equitably among a class of policyholders, all in  
12                  accordance with this article; and
- 13           (E)   A reward under a wellness program established  
14                  under a health care plan that favors an  
15                  individual if the wellness program meets the  
16                  following requirements:
- 17                  (i)   The wellness program is reasonably designed  
18                          to promote health or prevent disease;
- 19                  (ii)   An individual has an opportunity to qualify  
20                          for the reward at least once a year;
- 21                  (iii)   The reward is available for all similarly  
22                          situated individuals;



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- 1 (B) This paragraph shall not apply to entities  
2 licensed under chapter 386 or 431:10C; and  
3 (C) For entities licensed under chapter 432 or 432D:  
4 (i) It shall not be a violation of this section  
5 to refuse to provide or limit coverage  
6 available to an individual because the  
7 entity determines that the individual  
8 reasonably appears to have coverage  
9 available under chapter 386 or 431:10C; and  
10 (ii) Payment of claims to an individual who may  
11 have a third-party claim for recovery of  
12 damages may be conditioned upon the  
13 individual first signing and submitting to  
14 the entity documents to secure the lien and  
15 reimbursement rights of the entity and  
16 providing information reasonably related to  
17 the entity's investigation of its liability  
18 for coverage.  
19 Any individual who knows or reasonably should  
20 know that the individual may have a third-party  
21 claim for recovery of damages and who fails to  
22 provide timely notice of the potential claim to

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1 the entity, shall be deemed to have waived the  
2 prohibition of this paragraph against refusal or  
3 limitation of coverage. "Third-party claim" for  
4 purposes of this paragraph means any tort claim  
5 for monetary recovery or damages that the  
6 individual has against any person, entity, or  
7 insurer, other than the entity licensed under  
8 chapter 432 or 432D;

9 (11) Unfair claim settlement practices. Committing or  
10 performing with such frequency as to indicate a  
11 general business practice any of the following:

12 (A) Misrepresenting pertinent facts or insurance  
13 policy provisions relating to coverages at issue;

14 (B) With respect to claims arising under its  
15 policies, failing to respond with reasonable  
16 promptness, in no case more than fifteen working  
17 days, to communications received from:

18 (i) The insurer's policyholder;

19 (ii) Any other persons, including the  
20 commissioner; or

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1 (iii) The insurer of a person involved in an  
2 incident in which the insurer's policyholder  
3 is also involved.

4 The response shall be more than an acknowledgment  
5 that such person's communication has been  
6 received[7] and shall adequately address the  
7 concerns stated in the communication;

8 (C) Failing to adopt and implement reasonable  
9 standards for the prompt investigation of claims  
10 arising under insurance policies;

11 (D) Refusing to pay claims without conducting a  
12 reasonable investigation based upon all available  
13 information;

14 (E) Failing to affirm or deny coverage of claims  
15 within a reasonable time after proof of loss  
16 statements have been completed;

17 (F) Failing to offer payment within thirty calendar  
18 days of affirmation of liability, if the amount  
19 of the claim has been determined and is not in  
20 dispute;

21 (G) Failing to provide the insured, or when  
22 applicable the insured's beneficiary, with a

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- 1 reasonable written explanation for any delay, on  
2 every claim remaining unresolved for thirty  
3 calendar days from the date it was reported;
- 4 (H) Not attempting in good faith to effectuate  
5 prompt, fair, and equitable settlements of claims  
6 in which liability has become reasonably clear;
- 7 (I) Compelling insureds to institute litigation to  
8 recover amounts due under an insurance policy by  
9 offering substantially less than the amounts  
10 ultimately recovered in actions brought by the  
11 insureds;
- 12 (J) Attempting to settle a claim for less than the  
13 amount to which a reasonable person would have  
14 believed the person was entitled by reference to  
15 written or printed advertising material  
16 accompanying or made part of an application;
- 17 (K) Attempting to settle claims on the basis of an  
18 application [~~which~~] that was altered without  
19 notice, knowledge, or consent of the insured;
- 20 (L) Making claims payments to insureds or  
21 beneficiaries not accompanied by a statement

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- 1            setting forth the coverage under which the  
2            payments are being made;
- 3            (M) Making known to insureds or claimants a policy of  
4            appealing from arbitration awards in favor of  
5            insureds or claimants for the purpose of  
6            compelling them to accept settlements or  
7            compromises less than the amount awarded in  
8            arbitration;
- 9            (N) Delaying the investigation or payment of claims  
10           by requiring an insured, claimant, or the  
11           physician or advanced practice registered nurse  
12           of either to submit a preliminary claim report  
13           and then requiring the subsequent submission of  
14           formal proof of loss forms, both of which  
15           submissions contain substantially the same  
16           information;
- 17           (O) Failing to promptly settle claims, where  
18           liability has become reasonably clear, under one  
19           portion of the insurance policy coverage to  
20           influence settlements under other portions of the  
21           insurance policy coverage;

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- 1 (P) Failing to promptly provide a reasonable  
2 explanation of the basis in the insurance policy  
3 in relation to the facts or applicable law for  
4 denial of a claim or for the offer of a  
5 compromise settlement; and
- 6 (Q) Indicating to the insured on any payment draft,  
7 check, or in any accompanying letter that the  
8 payment is "final" or is "a release" of any claim  
9 if additional benefits relating to the claim are  
10 probable under coverages afforded by the policy;  
11 unless the policy limit has been paid or there is  
12 a bona fide dispute over either the coverage or  
13 the amount payable under the policy;
- 14 (12) Failure to maintain complaint handling procedures.  
15 Failure of any insurer to maintain a complete record  
16 of all the complaints [~~which~~] that it has received  
17 since the date of its last examination under section  
18 431:2-302. This record shall indicate the total  
19 number of complaints, their classification by line of  
20 insurance, the nature of each complaint, the  
21 disposition of [~~these~~] the complaints, and the time it  
22 took to process each complaint. For purposes of this

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1           ~~[section,]~~ subsection, "complaint" means any written  
2           communication primarily expressing a grievance;

3           (13) Misrepresentation in insurance applications. Making  
4           false or fraudulent statements or representations on  
5           or relative to an application for an insurance policy,  
6           for the purpose of obtaining a fee, commission, money,  
7           or other benefit from any insurer, producer, or  
8           individual; and

9           (14) Failure to obtain information. Failure of any  
10          insurance producer, or an insurer where no producer is  
11          involved, to comply with section 431:10D-623(a), (b),  
12          or (c) by making reasonable efforts to obtain  
13          information about a consumer before making a  
14          recommendation to the consumer to purchase or exchange  
15          an annuity."

16          SECTION 14. Section 431K-3.5, Hawaii Revised Statutes, is  
17          amended to read as follows:

18          "~~[+]~~**§431K-3.5**~~[+]~~ **Registration fees and service fees of**  
19          **risk retention groups not chartered in this State.** (a) A risk  
20          retention group chartered in states other than this State and  
21          seeking to do business as a risk retention group in this State  
22          shall pay an initial registration fee of \$300 to the

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1 commissioner and shall thereafter pay annually a service fee of  
2 \$150 on or before [~~August 16 of each year in which the risk~~  
3 ~~retention group intends to do business in this State.~~] the  
4 extension date of the certificate of authority, as established  
5 pursuant to section 431:3-214. The commissioner may, upon  
6 showing of good cause, waive or modify, in whole or part, all  
7 fees in this subsection by order.

8 (b) If the service fee is not paid on or before [~~August 16~~  
9 ~~of the year in which payment is due,~~] the extension date, a  
10 penalty shall be imposed in the amount of fifty per cent of the  
11 service fee. The commissioner shall provide written notice of  
12 the delinquency of payment and the imposition of the authorized  
13 penalty. If the service fee and the penalty are not paid within  
14 thirty days immediately following the date of the notice of  
15 delinquency, the commissioner may revoke the registration of the  
16 risk retention group and may not reinstate the registration  
17 until the service fee and the penalty have been paid."

18 SECTION 15. Section 431K-7.1, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) A purchasing group that intends to do business in  
21 this State shall pay an initial registration fee of \$300 to the  
22 commissioner and shall thereafter pay annually a service fee of

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1 \$150 on or before [~~August 16 of each year in which the~~  
2 ~~purchasing group intends to do business in this State~~] the  
3 extension date of the certificate of authority, as established  
4 pursuant to section 431:3-214. The commissioner may, upon  
5 showing of good cause, waive or modify, in whole or part, all  
6 fees in this subsection by order."

7 SECTION 16. Section 431S-3, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

9 "(b) Each person seeking to register as a pharmacy benefit  
10 manager shall file with the commissioner an application on a  
11 form prescribed by the commissioner. The application shall  
12 include:

13 (1) The name, address, official position, and professional  
14 qualifications of each individual who is responsible  
15 for the conduct of the affairs of the pharmacy benefit  
16 manager, including all members of the board of  
17 directors; board of trustees; executive commission;  
18 other governing board or committee; principal  
19 officers, as applicable; partners or members, as  
20 applicable; and any other person who exercises control  
21 or influence over the affairs of the pharmacy benefit  
22 manager;

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1 (2) The name and address of the applicant's agent for  
2 service of process in the State; and

3 (3) A nonrefundable [~~application~~] issuance fee of \$140.  
4 The commissioner may, upon showing of good cause, waive or  
5 modify, in whole or part, the fee in this subsection by order."

6 SECTION 17. Section 431S-4, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[~~f~~]**\$431S-4**[~~}]~~ **Annual renewal requirement.** (a) Each  
9 pharmacy benefit manager shall renew its registration by March  
10 31 each year.

11 (b) When renewing its registration, a pharmacy benefit  
12 manager shall submit to the commissioner the following:

13 (1) An application for renewal on a form prescribed by the  
14 commissioner; and

15 (2) A [~~renewal~~] service fee of \$140.

16 The commissioner may, upon showing of good cause, waive or  
17 modify, in whole or part, the fee in this subsection by order.

18 [~~(c) Failure on the part of a pharmacy benefit manager to~~  
19 ~~renew its registration as provided in this section shall result~~  
20 ~~in a penalty of \$140 and may cause the registration to be~~  
21 ~~revoked or suspended by the commissioner until the requirements~~  
22 ~~for renewal have been met.] "~~

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1 SECTION 18. Section 432:1-108, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The commissioner shall collect, in advance, the  
4 following fees:

5 (1) Certificate of authority:

6 (A) Application for a certificate of  
7 authority: \$900; and

8 (B) Issuance of certificate of authority: \$600;

9 (2) Organization of domestic mutual benefit societies:

10 (A) Application for a certificate of registration:  
11 \$1,500; and

12 (B) Issuance of certificate of registration: \$150;  
13 and

14 (3) For all services subsequent to the issuance of a  
15 certificate of authority, including extension of the  
16 certificate of authority: \$600 per year.

17 The commissioner may, upon showing of good cause, waive or  
18 modify, in whole or part, all fees in this subsection by order."

19 SECTION 19. Section 432:2-108, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) The commissioner shall collect, in advance, the  
22 following fees:

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- 1 (1) Certificate of authority:  
2 (A) Application for a certificate of authority:  
3 \$900;  
4 (B) Issuance of certificate of authority: \$600;  
5 (2) Organization of domestic fraternal benefit societies:  
6 (A) Application for a preliminary certificate of  
7 authority: \$1,500;  
8 (B) Issuance of preliminary certificate of  
9 authority: \$150; and  
10 (3) For all services subsequent to the issuance of a  
11 certificate of authority, including extension of the  
12 certificate of authority: \$600 per year.

13 The commissioner may, upon showing of good cause, waive or  
14 modify, in whole or part, all fees in this subsection by order."

15 SECTION 20. Section 432D-17, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) The commissioner shall collect, in advance, the  
18 following fees:

- 19 (1) Certificate of authority:  
20 (A) Application for a certificate of authority:  
21 \$900; and  
22 (B) Issuance of certificate of authority: \$600; and

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1           (2) For all services subsequent to the issuance of  
2           certificate of authority, including extension of the  
3           certificate of authority: \$600 per year.

4 The commissioner may, upon showing of good cause, waive or  
5 modify, in whole or part, all fees in this subsection by order."

6           SECTION 21. Section 432G-12, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8           "(a) The commissioner shall collect, in advance, the  
9 following fees:

10           (1) Certificate of authority:

11           (A) Application for a certificate of  
12           authority: \$900; and

13           (B) Issuance of certificate of authority: \$600; and

14           (2) For all services subsequent to the issuance of a  
15           certificate of authority, including extension of the  
16           certificate of authority: \$600 per year.

17 The commissioner may, upon showing of good cause, waive or  
18 modify, in whole or part, all fees in this subsection by order."

19           SECTION 22. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the Act that can be given effect without the

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1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 23. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 24. This Act shall take effect upon its approval.

6

7

INTRODUCED BY:



8

BY REQUEST

JAN 25 2021

# H.B. NO. 942

**Report Title:**

Insurance; Public Adjuster; Bill Reviewer; Motor Vehicle Rental Company; Portable Electronic; Self-service Storage; Limited Line License; Fee; National Association of Insurance Commissioners; Surplus Line; Hawaii Joint Underwriting Plan; Wellness Program; Chapter 431; Chapter 431K; Chapter 431S; Chapter 432; Chapter 432D; Chapter 432G

**Description:**

Amends various portions of title 24 of the Hawaii Revised Statutes to update and improve existing provisions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To amend various portions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions, including:

- (1) Adding a new section to chapter 431, article 9, part II by including mandatory contractual terms, mandatory disclosures, and reasonable commissions that adjusters may charge insureds (section 1 of bill);
- (2) Adding a new section to chapter 431, article 9A, part II, a new section to chapter 431, article 9A, part IV, and a new section to chapter 431, article 31, and amending section 431:9A-107.5 to set forth standards of conduct for limited lines producers, hold them to standards consistent with other producers, and enhance consumer protection (sections 2, 3, 4, and 11);
- (3) Amending sections 431:2-201(c), 431K-3.5, 431K-7.1, 431S-3(b), 431S-4, 432:1-108(a), 432:2-108(a), 432D-17(a), and 432G-12(a) by giving the Insurance Commissioner authority to waive, in part or whole, or reduce fees deposited in the Commissioner's Education and Training Fund and the Compliance Resolution Fund (sections 5, 14, 15, 16, 17, 18, 19, 20, and 21);
- (4) Amending section 431:7-202(f) by replacing "Automated Clearing House debit or credit payment system" with "National Association of Insurance Commissioners' Online Premium Tax for

Insurance or an equivalent service approved by the commissioner" (section 6);

- (5) Amending sections 431:8-313(a) and 431:8-315(a) by mandating electronic filing of surplus lines reports and payment of surplus lines premium taxes (sections 7 and 8);
- (6) Amending section 431:9-230 by replacing "premiums" with "client funds" (section 9);
- (7) Amending section 431:9-235 by reinserting the right to an administrative hearing and appeal from an order suspending, revoking, or refusing to extend any license for any cause specified in article 9 (section 10);
- (8) Amending the Hawaii Joint Underwriting Program (HJUP) Board of Governors' composition in section 431:10C-405(a) by reducing the number of members and eliminating outdated and nonexistent criteria from which board members are selected (section 11);
- (9) Amending section 431:13-103(a) by including wellness programs and related products to promote fitness and health (section 12); and
- (10) Amending sections 431K-3.5 and 431K-7.1(a) by replacing the specified dates for extensions of certificates for risk retention groups with the extension dates established pursuant to section 431:3-214 (sections 14 and 15).

MEANS:

Add new sections to part II of article 9, parts II and IV of article 9A, and article 31 of chapter 431, HRS, and amend sections 431:2-201(c), 431:7-202(f), 431:8-313(a), 431:8-315(a), 431:9-230, 431:9-235, 431:9A-

107.5, 431:10C-405(a), 431:13-103(a), 431K-3.5, 431K-7.1(a), 431S-3(b), 431S-4, 432:1-108(a), 432:2-108(a), 432D-17(a), and 432G-12(a), HRS.

JUSTIFICATION:

(1) Currently, chapter 431, article 9 does not mandate contractual terms for agreements between public adjusters and insureds, leaving an insured facing a loss in a vulnerable position. Without any regulatory oversight, this vulnerability can be exploited by exorbitant commissions and unreasonable contractual terms unfavorable to insureds. (Section 1)

(2) Niche insurance markets are increasingly seeking to obtain limited lines producer licenses from the Department of Commerce and Consumer Affairs' Insurance Division. Chapter 431, article 31, chapter 431, article 9A, and section 431:9A-107.5 authorize the use of these licenses; however, the various limited lines licenses are not subject to uniform standards, creating potential for consumer misinformation and harm. (Sections 2, 3, 4, and 11)

(3) Fees deposited into the Commissioner's Education and Training Fund and the Compliance Resolution Fund may exceed expenditures in a given fiscal year, and the Insurance Commissioner has no authority to waive, in part or whole, the fees deposited into these funds when expenditures are not commensurate with deposits. (Sections 5, 14, 15, 16, 17, 18, 19, 20, and 21)

(4) Insurers submit premium taxes via OPTIns, an electronic payment platform developed by the National Association of Insurance Commissioners to facilitate the submission of premium tax, surplus lines, and other state-specific filings and payments to participating states. However, section 431:7-202(f) does not employ the term "OPTIns" to describe the electronic

system used to facilitate insurers' electronic payment of premium taxes. (Section 6)

(5) Insurers currently file paper statements and pay fees and surplus lines taxes via paper check. This can create inefficiency, delays, and errors in manual processing. (Sections 7 and 8)

(6) Section 431:9-230 inaccurately provides that adjusters and bill reviewers handle premiums, when they handle only funds from clients. (Section 9)

(7) Act 279, Session Laws of Hawaii 2019, repealed section 431:9-235(e), which provides for the right to an administrative hearing and appeal from an order suspending, revoking, or refusal to extend any license for any cause specified in chapter 431, article 9. Act 279 intended to eliminate sanctioning professional and vocational licensees for defaulting on their student loans, student loan repayment contracts, and scholarship contracts. However, Act 279 also inadvertently deleted the right to a hearing and an appeal from an order in all cases, even when the suspension, revocation, or nonrenewal does not stem from defaults involving student loans or scholarship contracts. (Section 10)

(8) Section 431:10C-405(a) has outdated and nonexistent criteria for the HJUP Board of Governors and does not accurately reflect the member composition commensurate with the HJUP's plan size and operations. (Section 12)

(9) Wellness programs and devices tied to monitoring health may be viewed as rebates and in violation of section 431:13-103(a)(9) when offered by insurers. (Section 13)

(10) In sections 431K-3.5 and 431K-7.1(a), the specified dates for extensions of

certificates for risk retention groups are inconsistent with the extension dates established pursuant to section 431:3-214. (Sections 14 and 15)

Impact on the public: This bill will enhance consumer protection by making necessary updates and improvements to HRS title 24.

Impact on the department and other agencies:  
None.

GENERAL FUNDS: None.

OTHER FUNDS: Commissioner's Education and Training Fund; Compliance Resolution Fund.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.