
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 a new section to part II of article 9 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,
13 specified by type, with dollar estimates set forth in
14 the contract, and with any additional expenses first
15 approved by the insured;

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



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



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 the amount of a recovered loss
14 might not 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.



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

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



1 (g) If the insured exercises the right to rescind the
2 contract pursuant to subsection (f), anything of value given by
3 the insured under the contract shall be returned to the insured
4 within fifteen business days following the receipt of the
5 cancellation notice by the public adjuster.

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

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

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

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

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



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

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

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

10 "(c) The commissioner may:

11 (1) Make reasonable rules for effectuating any provision
12 of this code, except those relating to the
13 commissioner's appointment, qualifications, or
14 compensation. The commissioner shall adopt rules to
15 effectuate article 10C of chapter 431, subject to the
16 approval of the governor's office and the requirements
17 of chapter 91;

18 (2) Conduct examinations and investigations to determine
19 whether any person has violated any provision of this
20 code or to secure information useful in the lawful
21 administration of any provision;



1 (3) Require applicants to provide fingerprints and pay a
 2 fee to allow the commissioner to make a determination
 3 of license eligibility after obtaining state and
 4 national criminal history record checks from the
 5 Hawaii criminal justice data center and the Federal
 6 Bureau of Investigation; ~~and~~

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

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

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

14 "(f) The taxes imposed by subsections (a), (b), (c), and
 15 (d) shall be paid monthly. The monthly tax shall be due and
 16 payable by electronic payment via the ~~[Automated Clearing House~~
 17 ~~debit or credit payment system]~~ National Association of
 18 Insurance Commissioners' Online Premium Tax for Insurance or an
 19 equivalent service approved by the commissioner on or before the
 20 twentieth day of the calendar month following the month in which



1 it accrues, coinciding with the filing of the statement provided
2 for in section 431:7-201.

3 In addition to the monthly tax and monthly tax statement,
4 the annual tax shall be due and payable by electronic payment
5 via the [~~Automated Clearing House debit or credit payment~~
6 ~~system~~] National Association of Insurance Commissioners' Online
7 Premium Tax for Insurance or an equivalent service approved by
8 the commissioner on or before March 1 coinciding with the filing
9 of the statement provided for in section 431:7-201.

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

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

17 Any insurer failing or refusing to pay the required taxes
18 above stated when due and payable shall be liable for a fine of
19 \$500 or ten per cent of the tax due, whichever is greater; plus
20 interest at a rate of twelve per cent per annum on the
21 delinquent taxes. The taxes may be collected by distraint, or



1 the taxes, fine, and interest may be recovered by an action to
2 be instituted by the commissioner in the name of this State, in
3 any court of competent jurisdiction. The commissioner may
4 suspend the certificate of authority of the delinquent insurer
5 until the taxes, fine, and interest, should any be imposed, are
6 fully paid.

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

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

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



1 statement of all surplus lines insurance transacted during the
2 calendar quarter as follows:

3 (1) The statement for the quarter ending March 31 shall be
4 filed on or before May 15;

5 (2) The statement for the quarter ending June 30 shall be
6 filed on or before August 15;

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

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

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

13 "~~(a) [On or before March 15, 2011, each surplus lines~~
14 ~~broker shall pay to the director of finance, through the~~
15 ~~commissioner, a premium tax on surplus lines insurance~~
16 ~~transacted by the broker during 2010. On or before September~~
17 ~~15, 2011, each surplus lines broker shall pay to the director of~~
18 ~~finance, through the commissioner, a premium tax on surplus~~
19 ~~lines insurance transacted by the broker after December 31,~~
20 ~~2010, and before July 1, 2011. After June 30, 2011, within]~~
21 Within forty-five days after the end of each calendar quarter,



1 each surplus lines broker shall pay to the director of finance,
2 through the commissioner[7] via the National Association of
3 Insurance Commissioners' Online Premium Tax for Insurance or an
4 equivalent service approved by the commissioner, a premium tax
5 on surplus lines insurance transacted by the broker during the
6 calendar quarter for insurance for which this State is the home
7 state of the insured. The tax rate shall be in the amount of
8 4.68 per cent of gross premiums, less return premiums, on
9 surplus lines insurance for which the home state is this State.

10 As used in this subsection, "gross premiums" means the
11 amount of the policy or coverage premium charged by the insurer
12 in consideration for the insurance contract. Any charges for
13 policy, survey, inspection, service, or similar fees or other
14 charges added by the broker shall not be considered part of
15 gross premiums."

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

18 "§431:9-230 Reporting and accounting for [~~premiums~~]
19 funds. (a) Every licensed adjuster shall have the
20 responsibilities of a trustee for all [~~premium~~] funds and return
21 [~~premium~~] funds received or collected under this article.



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

2 (1) Remit the [~~premiums (less commissions)~~] funds and

3 return [~~premiums~~] funds received or held by the

4 licensee to the [~~insurers or the~~] persons entitled to

5 [~~such~~] the funds; or

6 (2) Maintain the funds at all times in a federally insured

7 account with a bank, savings and loan association, or

8 financial services loan company situated in Hawaii,

9 separate from the licensee's own funds or funds held

10 by the licensee in any other capacity, [~~in an amount~~

11 ~~at least equal to the premiums (net of commissions)~~]

12 and return [~~premiums~~] funds received by [~~such~~] the

13 licensee and unpaid to the insurers or persons

14 entitled to [~~such~~] the funds. Return [~~premiums~~] funds

15 shall be returned within thirty days, unless directed

16 otherwise in writing by the person entitled to the

17 funds.

18 The licensee shall not be required to maintain a separate bank

19 account or other account for the funds of each [~~insurer or~~

20 person entitled to [~~such~~] the funds, [~~if and~~] so long as the

21 funds held for the [~~insurer or~~] person entitled to [~~such~~] the



1 funds are reasonably ascertainable from the books of account and
2 records of the licensee. Only [~~such~~] additional funds [~~as may~~
3 ~~be~~] reasonably necessary to pay bank, savings and loan
4 association, or financial services loan company charges may be
5 commingled with the [~~premium~~] funds. In the event the bank,
6 savings and loan association, or financial services loan company
7 account is an interest earning account, [~~such~~] the licensee may
8 not retain the interest earned on [~~such~~] the funds to the
9 licensee's own use or benefit without the prior written consent
10 of the [~~insurers or~~] person entitled to [~~such~~] the funds. A
11 [~~premium~~] trustee account shall be designated on the records of
12 the bank, savings and loan association, or financial services
13 loan company as a "trustee account established pursuant to
14 section 431:9-230, Hawaii Revised Statutes", or words of similar
15 import.

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



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

3 **"§431:9-235 Denial, suspension, revocation of licenses.**

4 (a) The commissioner may suspend, revoke, or refuse to extend
5 any license issued under this article for any cause specified in
6 any other provision of this article, or for any of the following
7 causes:

- 8 (1) For any cause for which issuance of the license could
9 have been refused had it then existed and been known
10 to the commissioner;
- 11 (2) If the licensee wilfully violates or knowingly
12 participates in the violation of any provision of this
13 code;
- 14 (3) If the licensee has obtained or attempted to obtain
15 any license issued under this article through wilful
16 misrepresentation or fraud, or has failed to pass any
17 examination required by section 431:9-206;
- 18 (4) If the licensee has misappropriated, converted to the
19 licensee's own use, or illegally withheld moneys
20 required to be held in a fiduciary capacity;



- 1 (5) If the licensee, with intent to deceive, has
2 materially misrepresented the terms or effect of any
3 insurance contract; or has engaged or is about to
4 engage in any fraudulent transaction;
- 5 (6) If the licensee has been [~~guilty of~~] found to have
6 committed any unfair practice or fraud as defined in
7 article 13;
- 8 (7) If in the conduct of the licensee's affairs under the
9 license, the licensee has shown oneself to be a source
10 of injury and loss to the public; or
- 11 (8) If the licensee has dealt with, or attempted to deal
12 with, insurance or to exercise powers relative to
13 insurance outside the scope of the licensee's
14 licenses.
- 15 (b) The license of any partnership or corporation may be
16 [~~se~~] suspended, revoked, or refused for any of the causes that
17 relate to any individual designated in the license to exercise
18 its powers.
- 19 (c) The holder of any license, which has been revoked or
20 suspended, shall surrender the license certificate to the
21 commissioner at the commissioner's request.



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

4 (1) Given to the licensee at least fifteen days prior to
5 the order's effective date, subject to the right of
6 the licensee to have a hearing as provided in section
7 431:2-308. The license shall be suspended pending the
8 hearing; or

9 (2) Made after a hearing as provided in section 431:2-308.
10 The effective date of the order shall be ten days
11 after the date the order is given to the licensee.
12 The order may be appealed to the circuit court of the
13 first judicial circuit of this State as provided in
14 chapter 91."

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

17 **"§431:9A-107.5 Limited license.** (a) Notwithstanding any
18 other provision of this article, the commissioner may issue:

19 (1) A limited license to persons selling travel tickets of
20 a common carrier of persons or property who shall act
21 only as to travel ticket policies of accident and



1 health or sickness insurance or baggage insurance on
2 personal effects;

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

6 (3) A limited license to any individual who sells policies
7 of accident and health or sickness insurance as a
8 promotional device to improve the circulation of a
9 newspaper in this State;

10 (4) A limited line credit insurance producer license to
11 any individual who sells, solicits, or negotiates
12 limited line credit insurance; or

13 (5) A limited license to any owner of a self-service
14 storage facility, as defined in section 507-61, to
15 sell stored property insurance, as defined in section
16 431:9A-171.

17 (b) The commissioner may prescribe and furnish forms
18 calling for any information that the commissioner deems proper
19 in connection with the application for or extension of these
20 limited licenses.



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

3 (d) A person holding a limited license shall act in good
4 faith, abstain from deception, and practice honesty and equity
5 in all insurance matters."

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

8 "(a) The commissioner shall establish a board of governors
9 within the bureau [~~, a board of governors for the purpose of~~
10 ~~providing~~] to provide expertise and consultation on all matters
11 pertaining to the operation of the bureau and the joint
12 underwriting plan. The [~~board~~] commissioner shall appoint
13 members to the board, which shall be composed of:

14 (1) [~~Five~~] Four persons from, and members or
15 representatives of, nationally organized insurers or
16 their domestic insurer affiliates;

17 (2) One person to represent insurance producers;

18 [~~(3) Two members, each a self insurer under this article,~~
19 ~~and nominated by all the certified self insurers in~~
20 ~~the State;~~



1 ~~(4) Two members, not affiliated with the foregoing~~
2 ~~organizations, nominated by such nonaffiliated~~
3 ~~insurers]; and~~

4 [~~(5)~~] (3) Two members [~~each, to be~~] selected by the
5 commissioner or nominated by each of the
6 classifications provided for in section 431:10C-
7 407(b)."

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

10 "(a) The following are defined as unfair methods of
11 competition and unfair or deceptive acts or practices in the
12 business of insurance:

13 (1) Misrepresentations and false advertising of insurance
14 policies. Making, issuing, circulating, or causing to
15 be made, issued, or circulated, any estimate,
16 illustration, circular, statement, sales presentation,
17 omission, or comparison [~~which-~~] that:

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

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



- 1 (C) Makes any false or misleading statement as to the
2 dividends or share of surplus previously paid on
3 any insurance policy;
- 4 (D) Is misleading or is a misrepresentation as to the
5 financial condition of any insurer, or as to the
6 legal reserve system upon which any life insurer
7 operates;
- 8 (E) Uses any name or title of any insurance policy or
9 class of insurance policies misrepresenting the
10 true nature thereof;
- 11 (F) Is a misrepresentation for the purpose of
12 inducing or tending to induce the lapse,
13 forfeiture, exchange, conversion, or surrender of
14 any insurance policy;
- 15 (G) Is a misrepresentation for the purpose of
16 effecting a pledge or assignment of or effecting
17 a loan against any insurance policy;
- 18 (H) Misrepresents any insurance policy as being
19 shares of stock;
- 20 (I) Publishes or advertises the assets of any insurer
21 without publishing or advertising with equal



1 conspicuousness the liabilities of the insurer,
2 both as shown by its last annual statement; or
3 (J) Publishes or advertises the capital of any
4 insurer without stating specifically the amount
5 of paid-in and subscribed capital;
6 (2) False information and advertising generally. Making,
7 publishing, disseminating, circulating, or placing
8 before the public, or causing, directly or indirectly,
9 to be made, published, disseminated, circulated, or
10 placed before the public, in a newspaper, magazine, or
11 other publication, or in the form of a notice,
12 circular, pamphlet, letter, or poster, or over any
13 radio or television station, or in any other way, an
14 advertisement, announcement, or statement containing
15 any assertion, representation, or statement with
16 respect to the business of insurance or with respect
17 to any person in the conduct of the person's insurance
18 business, which is untrue, deceptive, or misleading;
19 (3) Defamation. Making, publishing, disseminating, or
20 circulating, directly or indirectly, or aiding,
21 abetting, or encouraging the making, publishing,



1 disseminating, or circulating of any oral or written
2 statement or any pamphlet, circular, article, or
3 literature which is false, or maliciously critical of
4 or derogatory to the financial condition of an
5 insurer, and which is calculated to injure any person
6 engaged in the business of insurance;

7 (4) Boycott, coercion, and intimidation.

8 (A) Entering into any agreement to commit, or by any
9 action committing, any act of boycott, coercion,
10 or intimidation resulting in or tending to result
11 in unreasonable restraint of, or monopoly in, the
12 business of insurance; or

13 (B) Entering into any agreement on the condition,
14 agreement, or understanding that a policy will
15 not be issued or renewed unless the prospective
16 insured contracts for another class or an
17 additional policy of the same class of insurance
18 with the same insurer;

19 (5) False financial statements.

20 (A) Knowingly filing with any supervisory or other
21 public official, or knowingly making, publishing,



1 disseminating, circulating, or delivering to any
2 person, or placing before the public, or
3 knowingly causing, directly or indirectly, to be
4 made, published, disseminated, circulated,
5 delivered to any person, or placed before the
6 public, any false statement of a material fact as
7 to the financial condition of an insurer; or
8 (B) Knowingly making any false entry of a material
9 fact in any book, report, or statement of any
10 insurer with intent to deceive any agent or
11 examiner lawfully appointed to examine into its
12 condition or into any of its affairs, or any
13 public official to whom the insurer is required
14 by law to report, or who has authority by law to
15 examine into its condition or into any of its
16 affairs, or, with like intent, knowingly omitting
17 to make a true entry of any material fact
18 pertaining to the business of the insurer in any
19 book, report, or statement of the insurer;
20 (6) Stock operations and advisory board contracts.
21 Issuing or delivering or permitting agents, officers,



1 or employees to issue or deliver, agency company stock
2 or other capital stock, or benefit certificates or
3 shares in any common-law corporation, or securities or
4 any special or advisory board contracts or other
5 contracts of any kind promising returns and profits as
6 an inducement to insurance;

7 (7) Unfair discrimination.

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

15 (B) Making or permitting any unfair discrimination in
16 favor of particular individuals or persons, or
17 between insureds or subjects of insurance having
18 substantially like insuring, risk, and exposure
19 factors, or expense elements, in the terms or
20 conditions of any insurance contract, or in the
21 rate or amount of premium charge therefor, or in



1 the benefits payable or in any other rights or
2 privilege accruing thereunder;

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

10 (i) The refusal, cancellation, or limitation is
11 for a business purpose which is not a mere
12 pretext for unfair discrimination; or

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

15 (D) Making or permitting any unfair discrimination
16 between individuals or risks of the same class
17 and of essentially the same hazards by refusing
18 to issue, refusing to renew, canceling, or
19 limiting the amount of insurance coverage on a
20 residential property risk, or the personal



1 property contained therein, because of the age of
2 the residential property, unless:

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

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

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

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



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



1 with the consent of an applicant for insurance;
2 provided further that any applicant for insurance
3 who is tested for HIV infection shall be afforded
4 the opportunity to obtain the test results,
5 within a reasonable time after being tested, and
6 that the confidentiality of the test results
7 shall be maintained as provided by section
8 325-101;

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

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



1 (B) Giving, selling, or purchasing, or offering to
2 give, sell, or purchase as inducement to the
3 insurance or in connection therewith, any stocks,
4 bonds, or other securities of any insurance
5 company or other corporation, association, or
6 partnership, or any dividends or profits accrued
7 thereon, or anything of value not specified in
8 the contract;

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

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

20 (B) In the case of life insurance policies issued on
21 the industrial debit plan, making allowance to



1 policyholders who have continuously for a
2 specified period made premium payments directly
3 to an office of the insurer in an amount which
4 fairly represents the saving in collection
5 expense;

6 (C) Readjustment of the rate of premium for a group
7 insurance policy based on the loss or expense
8 experience thereunder, at the end of the first or
9 any subsequent policy year of insurance
10 thereunder, which may be made retroactive only
11 for the policy year; ~~and~~

12 (D) In the case of any contract of insurance, the
13 distribution of savings, earnings, or surplus
14 equitably among a class of policyholders, all in
15 accordance with this article; and

16 (E) A reward under a wellness program established
17 under a health care plan that favors an
18 individual if the wellness program meets the
19 following requirements:

20 (i) The wellness program is reasonably designed
21 to promote health or prevent disease;



- 1 (ii) An individual has an opportunity to qualify
- 2 for the reward at least once a year;
- 3 (iii) The reward is available for all similarly
- 4 situated individuals;
- 5 (iv) The wellness program has alternative
- 6 standards for individuals who are unable to
- 7 obtain the reward because of a health
- 8 factor;
- 9 (v) Alternative standards are available for an
- 10 individual who is unable to participate in a
- 11 reward program because of a health
- 12 condition;
- 13 (vi) The insurer provides information explaining
- 14 the standard for achieving the reward and
- 15 discloses the alternative standards; and
- 16 (vii) The total rewards for all wellness programs
- 17 under the health care plan do not exceed
- 18 twenty per cent of the cost of coverage;
- 19 (10) Refusing to provide or limiting coverage available to
- 20 an individual because the individual may have a third-
- 21 party claim for recovery of damages; provided that:



- 1 (A) Where damages are recovered by judgment or
- 2 settlement of a third-party claim, reimbursement
- 3 of past benefits paid shall be allowed pursuant
- 4 to section 663-10;
- 5 (B) This paragraph shall not apply to entities
- 6 licensed under chapter 386 or 431:10C; and
- 7 (C) For entities licensed under chapter 432 or 432D:
- 8 (i) It shall not be a violation of this section
- 9 to refuse to provide or limit coverage
- 10 available to an individual because the
- 11 entity determines that the individual
- 12 reasonably appears to have coverage
- 13 available under chapter 386 or 431:10C; and
- 14 (ii) Payment of claims to an individual who may
- 15 have a third-party claim for recovery of
- 16 damages may be conditioned upon the
- 17 individual first signing and submitting to
- 18 the entity documents to secure the lien and
- 19 reimbursement rights of the entity and
- 20 providing information reasonably related to



1 the entity's investigation of its liability
2 for coverage.

3 Any individual who knows or reasonably should
4 know that the individual may have a third-party
5 claim for recovery of damages and who fails to
6 provide timely notice of the potential claim to
7 the entity, shall be deemed to have waived the
8 prohibition of this paragraph against refusal or
9 limitation of coverage. "Third-party claim" for
10 purposes of this paragraph means any tort claim
11 for monetary recovery or damages that the
12 individual has against any person, entity, or
13 insurer, other than the entity licensed under
14 chapter 432 or 432D;

15 (11) Unfair claim settlement practices. Committing or
16 performing with such frequency as to indicate a
17 general business practice any of the following:
18 (A) Misrepresenting pertinent facts or insurance
19 policy provisions relating to coverages at issue;
20 (B) With respect to claims arising under its
21 policies, failing to respond with reasonable



1 promptness, in no case more than fifteen working
2 days, to communications received from:

- 3 (i) The insurer's policyholder;
- 4 (ii) Any other persons, including the
5 commissioner; or
- 6 (iii) The insurer of a person involved in an
7 incident in which the insurer's policyholder
8 is also involved.

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

13 (C) Failing to adopt and implement reasonable
14 standards for the prompt investigation of claims
15 arising under insurance policies;

16 (D) Refusing to pay claims without conducting a
17 reasonable investigation based upon all available
18 information;

19 (E) Failing to affirm or deny coverage of claims
20 within a reasonable time after proof of loss
21 statements have been completed;



- 1 (F) Failing to offer payment within thirty calendar
2 days of affirmation of liability, if the amount
3 of the claim has been determined and is not in
4 dispute;
- 5 (G) Failing to provide the insured, or when
6 applicable the insured's beneficiary, with a
7 reasonable written explanation for any delay, on
8 every claim remaining unresolved for thirty
9 calendar days from the date it was reported;
- 10 (H) Not attempting in good faith to effectuate
11 prompt, fair, and equitable settlements of claims
12 in which liability has become reasonably clear;
- 13 (I) Compelling insureds to institute litigation to
14 recover amounts due under an insurance policy by
15 offering substantially less than the amounts
16 ultimately recovered in actions brought by the
17 insureds;
- 18 (J) Attempting to settle a claim for less than the
19 amount to which a reasonable person would have
20 believed the person was entitled by reference to



- 1 written or printed advertising material
2 accompanying or made part of an application;
- 3 (K) Attempting to settle claims on the basis of an
4 application [~~which~~] that was altered without
5 notice, knowledge, or consent of the insured;
- 6 (L) Making claims payments to insureds or
7 beneficiaries not accompanied by a statement
8 setting forth the coverage under which the
9 payments are being made;
- 10 (M) Making known to insureds or claimants a policy of
11 appealing from arbitration awards in favor of
12 insureds or claimants for the purpose of
13 compelling them to accept settlements or
14 compromises less than the amount awarded in
15 arbitration;
- 16 (N) Delaying the investigation or payment of claims
17 by requiring an insured, claimant, or the
18 physician or advanced practice registered nurse
19 of either to submit a preliminary claim report
20 and then requiring the subsequent submission of
21 formal proof of loss forms, both of which



- 1 submissions contain substantially the same
2 information;
- 3 (O) Failing to promptly settle claims, where
4 liability has become reasonably clear, under one
5 portion of the insurance policy coverage to
6 influence settlements under other portions of the
7 insurance policy coverage;
- 8 (P) Failing to promptly provide a reasonable
9 explanation of the basis in the insurance policy
10 in relation to the facts or applicable law for
11 denial of a claim or for the offer of a
12 compromise settlement; and
- 13 (Q) Indicating to the insured on any payment draft,
14 check, or in any accompanying letter that the
15 payment is "final" or is "a release" of any claim
16 if additional benefits relating to the claim are
17 probable under coverages afforded by the policy;
18 unless the policy limit has been paid or there is
19 a bona fide dispute over either the coverage or
20 the amount payable under the policy;



- 1 (12) Failure to maintain complaint handling procedures.
2 Failure of any insurer to maintain a complete record
3 of all the complaints [~~which~~] that it has received
4 since the date of its last examination under section
5 431:2-302. This record shall indicate the total
6 number of complaints, their classification by line of
7 insurance, the nature of each complaint, the
8 disposition of [~~these~~] the complaints, and the time it
9 took to process each complaint. For purposes of this
10 [~~section,~~] subsection, "complaint" means any written
11 communication primarily expressing a grievance;
- 12 (13) Misrepresentation in insurance applications. Making
13 false or fraudulent statements or representations on
14 or relative to an application for an insurance policy,
15 for the purpose of obtaining a fee, commission, money,
16 or other benefit from any insurer, producer, or
17 individual; and
- 18 (14) Failure to obtain information. Failure of any
19 insurance producer, or an insurer where no producer is
20 involved, to comply with section 431:10D-623(a), (b),
21 or (c) by making reasonable efforts to obtain



1 information about a consumer before making a
2 recommendation to the consumer to purchase or exchange
3 an annuity."

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

6 "[~~§~~431K-3.5~~]~~ **Registration fees and service fees of**
7 **risk retention groups not chartered in this State.** (a) A risk
8 retention group chartered in states other than this State and
9 seeking to do business as a risk retention group in this State
10 shall pay an initial registration fee of \$300 to the
11 commissioner and shall thereafter pay annually a service fee of
12 \$150 on or before [~~August 16 of each year in which the risk~~
13 ~~retention group intends to do business in this State.~~] the
14 extension date of the certificate of authority, as established
15 pursuant to section 431:3-214. The commissioner may, upon
16 showing of good cause, waive or modify, in whole or part, all
17 fees in this subsection by order.

18 (b) If the service fee is not paid on or before [~~August 16~~
19 ~~of the year in which payment is due,~~] the extension date, a
20 penalty shall be imposed in the amount of fifty per cent of the
21 service fee. The commissioner shall provide written notice of



1 the delinquency of payment and the imposition of the authorized
2 penalty. If the service fee and the penalty are not paid within
3 thirty days immediately following the date of the notice of
4 delinquency, the commissioner may revoke the registration of the
5 risk retention group and may not reinstate the registration
6 until the service fee and the penalty have been paid."

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

9 "(a) A purchasing group that intends to do business in
10 this State shall pay an initial registration fee of \$300 to the
11 commissioner and shall thereafter pay annually a service fee of
12 \$150 on or before ~~[August 16 of each year in which the~~
13 ~~purchasing group intends to do business in this State.]~~ the
14 extension date of the certificate of authority, as established
15 pursuant to section 431:3-214. The commissioner may, upon
16 showing of good cause, waive or modify, in whole or part, all
17 fees in this subsection by order."

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

20 "(b) Each person seeking to register as a pharmacy benefit
21 manager shall file with the commissioner an application on a



1 form prescribed by the commissioner. The application shall
2 include:

- 3 (1) The name, address, official position, and professional
4 qualifications of each individual who is responsible
5 for the conduct of the affairs of the pharmacy benefit
6 manager, including all members of the board of
7 directors; board of trustees; executive commission;
8 other governing board or committee; principal
9 officers, as applicable; partners or members, as
10 applicable; and any other person who exercises control
11 or influence over the affairs of the pharmacy benefit
12 manager;
- 13 (2) The name and address of the applicant's agent for
14 service of process in the State; and
- 15 (3) A nonrefundable [~~application~~] issuance 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 SECTION 17. Section 431S-4, Hawaii Revised Statutes, is
19 amended to read as follows:



1 " ~~[f]~~ §431S-4 ~~[f]~~ Annual renewal requirement. (a) Each
2 pharmacy benefit manager shall renew its registration by March
3 31 each year.

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

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

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

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

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

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

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

20 (1) Certificate of authority:



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

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

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

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

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



- 1 (2) Organization of domestic fraternal benefit societies:
2 (A) Application for a preliminary certificate of
3 authority: \$1,500;
4 (B) Issuance of preliminary certificate of authority:
5 \$150; and
6 (3) For all services subsequent to the issuance of a
7 certificate of authority, including extension of the
8 certificate of authority: \$600 per year.
9 The commissioner may, upon showing of good cause, waive or
10 modify, in whole or part, all fees in this subsection by order."

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

13 "(a) The commissioner shall collect, in advance, the
14 following fees:

- 15 (1) Certificate of authority:
16 (A) Application for a certificate of authority:
17 \$900; and
18 (B) Issuance of certificate of authority: \$600; and
19 (2) For all services subsequent to the issuance of
20 certificate of authority, including extension of the
21 certificate of authority: \$600 per year.



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

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

5 "(a) The commissioner shall collect, in advance, the
6 following fees:

7 (1) Certificate of authority:

8 (A) Application for a certificate of authority:
9 \$900; and

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

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

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

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



1 SECTION 23. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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



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. (SD1)

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

