
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 I of article 2 a new section to be
3 appropriately designated and to read as follows:
4 "§431:2- Health insurance administrator. There shall
5 be established within the insurance division a health insurance
6 administrator who shall be solely responsible for assisting the
7 commissioner in monitoring, regulating, and developing policies
8 regarding insurance companies, mutual benefit societies, and
9 health maintenance organizations offering insurance for
10 comprehensive medical, prescription drug, long term care, and
11 Medicare supplemental products. The commissioner, with the
12 approval of the director of commerce and consumer affairs, shall
13 appoint the administrator who shall be designated as a deputy
14 commissioner and shall be exempt from chapter 76,
15 notwithstanding section 431:2-105(b) to the contrary. The
16 administrator shall serve at the pleasure of the director of
17 commerce and consumer affairs and shall report directly to the
18 commissioner."

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1 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to part I of article 19 a new section to be
3 appropriately designated and to read as follows:

4 "§431:19- Dormant captive insurance companies. (a) As
5 used in this section, unless the context requires otherwise,
6 "dormant captive insurance company" means a captive insurance
7 company that as of the filing of its application for a
8 certificate of dormancy under this section:

9 (1) Has never transacted the business of insurance; or

10 (2) Has ceased transacting the business of insurance and
11 has no remaining insurance liabilities associated with
12 any business of insurance transacted by it.

13 (b) A captive insurance company may apply to the
14 commissioner for a certificate of dormancy and the commissioner
15 may grant a certificate of dormancy. The certificate of
16 dormancy shall be subject to renewal every five years and shall
17 expire if not renewed. The application for renewal shall be
18 submitted no less than ninety days prior to the certificate
19 expiration date. The issuance of a certificate of dormancy
20 shall automatically cause the certificate of authority of the
21 captive insurance company to be placed in inactive status.

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1 (c) A dormant captive insurance company that has been
2 issued a certificate of dormancy shall:

3 (1) Possess and thereafter maintain unimpaired, paid-in
4 capital and surplus of not less than \$25,000;

5 (2) Prior to March 1 of each year, submit to the
6 commissioner a report of its financial condition,
7 verified by oath of two of its executive officers, in
8 a form as may be prescribed by the commissioner; and

9 (3) Pay a certificate of dormancy renewal fee of \$300.

10 (d) A dormant captive insurance company that has been
11 issued a certificate of dormancy shall not:

12 (1) Conduct the business of insurance;

13 (2) Be subject to or liable for the payment of any tax
14 under section 431:19-116;

15 (3) Be required to file audited annual financial
16 statements and other reports required under section
17 431:19-107;

18 (4) Be subject to examination under section 431:19-108,
19 except for non-compliance with this section.

20 (e) Prior to conducting any insurance business, a dormant
21 captive insurance company shall apply for approval from the

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1 commissioner to surrender its certificate of dormancy and to
2 reactivate its certificate of authority.

3 (f) A certificate of dormancy shall be revoked if a
4 dormant captive insurance company violates any provisions of
5 subsections (a) through (d).

6 (g) The commissioner may adopt rules as necessary to carry
7 out this section."

8 SECTION 3. Section 76-16, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The civil service to which this chapter applies shall
11 comprise all positions in the State now existing or hereafter
12 established and embrace all personal services performed for the
13 State, except the following:

14 (1) Commissioned and enlisted personnel of the Hawaii
15 National Guard as such, and positions in the Hawaii
16 National Guard that are required by state or federal
17 laws or regulations or orders of the National Guard to
18 be filled from those commissioned or enlisted
19 personnel;

20 (2) Positions filled by persons employed by contract where
21 the director of human resources development has
22 certified that the service is special or unique or is

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- 1 essential to the public interest and that, because of
2 circumstances surrounding its fulfillment, personnel
3 to perform the service cannot be obtained through
4 normal civil service recruitment procedures. Any such
5 contract may be for any period not exceeding one year;
- 6 (3) Positions that must be filled without delay to comply
7 with a court order or decree if the director
8 determines that recruitment through normal recruitment
9 civil service procedures would result in delay or
10 noncompliance, such as the Felix-Cayetano consent
11 decree;
- 12 (4) Positions filled by the legislature or by either house
13 or any committee thereof;
- 14 (5) Employees in the office of the governor and office of
15 the lieutenant governor, and household employees at
16 Washington Place;
- 17 (6) Positions filled by popular vote;
- 18 (7) Department heads, officers, and members of any board,
19 commission, or other state agency whose appointments
20 are made by the governor or are required by law to be
21 confirmed by the senate;

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- 1 (8) Judges, referees, receivers, masters, jurors, notaries
2 public, land court examiners, court commissioners, and
3 attorneys appointed by a state court for a special
4 temporary service;
- 5 (9) One bailiff for the chief justice of the supreme court
6 who shall have the powers and duties of a court
7 officer and bailiff under section 606-14; one
8 secretary or clerk for each justice of the supreme
9 court, each judge of the intermediate appellate court,
10 and each judge of the circuit court; one secretary for
11 the judicial council; one deputy administrative
12 director of the courts; three law clerks for the chief
13 justice of the supreme court, two law clerks for each
14 associate justice of the supreme court and each judge
15 of the intermediate appellate court, one law clerk for
16 each judge of the circuit court, two additional law
17 clerks for the civil administrative judge of the
18 circuit court of the first circuit, two additional law
19 clerks for the criminal administrative judge of the
20 circuit court of the first circuit, one additional law
21 clerk for the senior judge of the family court of the
22 first circuit, two additional law clerks for the civil

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1 motions judge of the circuit court of the first
2 circuit, two additional law clerks for the criminal
3 motions judge of the circuit court of the first
4 circuit, and two law clerks for the administrative
5 judge of the district court of the first circuit; and
6 one private secretary for the administrative director
7 of the courts, the deputy administrative director of
8 the courts, each department head, each deputy or first
9 assistant, and each additional deputy, or assistant
10 deputy, or assistant defined in paragraph (16);
11 (10) First deputy and deputy attorneys general, the
12 administrative services manager of the department of
13 the attorney general, one secretary for the
14 administrative services manager, an administrator and
15 any support staff for the criminal and juvenile
16 justice resources coordination functions, and law
17 clerks;
18 (11) (A) Teachers, principals, vice-principals, complex
19 area superintendents, deputy and assistant
20 superintendents, other certificated personnel,
21 not more than twenty noncertificated

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- 1 administrative, professional, and technical
2 personnel not engaged in instructional work;
- 3 (B) Effective July 1, 2003, teaching assistants,
4 educational assistants, bilingual/bicultural
5 school-home assistants, school psychologists,
6 psychological examiners, speech pathologists,
7 athletic health care trainers, alternative school
8 work study assistants, alternative school
9 educational/supportive services specialists,
10 alternative school project coordinators, and
11 communications aides in the department of
12 education;
- 13 (C) The special assistant to the state librarian and
14 one secretary for the special assistant to the
15 state librarian; and
- 16 (D) Members of the faculty of the University of
17 Hawaii, including research workers, extension
18 agents, personnel engaged in instructional work,
19 and administrative, professional, and technical
20 personnel of the university;
- 21 (12) Employees engaged in special, research, or
22 demonstration projects approved by the governor;

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1 or profession or other private employment and whose
2 duties require only a portion of their time, if it is
3 impracticable to ascertain or anticipate the portion
4 of time to be devoted to the service of the State;

5 (16) Positions of first deputies or first assistants of
6 each department head appointed under or in the manner
7 provided in section 6, article V, of the Hawaii State
8 Constitution; three additional deputies or assistants
9 either in charge of the highways, harbors, and
10 airports divisions or other functions within the
11 department of transportation as may be assigned by the
12 director of transportation, with the approval of the
13 governor; four additional deputies in the department
14 of health, each in charge of one of the following:
15 behavioral health, environmental health, hospitals,
16 and health resources administration, including other
17 functions within the department as may be assigned by
18 the director of health, with the approval of the
19 governor; two additional deputies in charge of the law
20 enforcement programs, administration, or other
21 functions within the department of law enforcement as
22 may be assigned by the director of law enforcement,

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1 with the approval of the governor; an administrative
2 assistant to the state librarian; and an
3 administrative assistant to the superintendent of
4 education;

5 (17) Positions specifically exempted from this part by any
6 other law; provided that:

7 (A) Any exemption created after July 1, 2014, shall
8 expire three years after its enactment unless
9 affirmatively extended by an act of the
10 legislature; and

11 (B) All of the positions defined by paragraph (9)
12 shall be included in the position classification
13 plan;

14 (18) Positions in the state foster grandparent program and
15 positions for temporary employment of senior citizens
16 in occupations in which there is a severe personnel
17 shortage or in special projects;

18 (19) Household employees at the official residence of the
19 president of the University of Hawaii;

20 (20) Employees in the department of education engaged in
21 the supervision of students during meal periods in the
22 distribution, collection, and counting of meal

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- 1 tickets, and in the cleaning of classrooms after
2 school hours on a less than half-time basis;
- 3 (21) Employees hired under the tenant hire program of the
4 Hawaii public housing authority; provided that not
5 more than twenty-six per cent of the authority's
6 workforce in any housing project maintained or
7 operated by the authority shall be hired under the
8 tenant hire program;
- 9 (22) Positions of the federally funded expanded food and
10 nutrition program of the University of Hawaii that
11 require the hiring of nutrition program assistants who
12 live in the areas they serve;
- 13 (23) Positions filled by persons with severe disabilities
14 who are certified by the state vocational
15 rehabilitation office that they are able to perform
16 safely the duties of the positions;
- 17 (24) The sheriff;
- 18 (25) A gender and other fairness coordinator hired by the
19 judiciary;
- 20 (26) Positions in the Hawaii National Guard youth and adult
21 education programs;

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- 1 (27) In the state energy office in the department of
2 business, economic development, and tourism, all
3 energy program managers, energy program specialists,
4 energy program assistants, and energy analysts;
5 (28) Administrative appeals hearing officers in the
6 department of human services;
7 (29) In the Med-QUEST division of the department of human
8 services, the division administrator, finance officer,
9 health care services branch administrator, medical
10 director, and clinical standards administrator;
11 (30) In the director's office of the department of human
12 services, the enterprise officer, information security
13 and privacy compliance officer, security and privacy
14 compliance engineer, and security and privacy
15 compliance analyst;
16 (31) The Alzheimer's disease and related dementia services
17 coordinator in the executive office on aging;
18 (32) In the Hawaii emergency management agency, the
19 executive officer, public information officer, civil
20 defense administrative officer, branch chiefs, and
21 emergency operations center state warning point
22 personnel; provided that, for state warning point

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1 personnel, the director shall determine that
2 recruitment through normal civil service recruitment
3 procedures would result in delay or noncompliance;

4 (33) The executive director and seven full-time
5 administrative positions of the school facilities
6 authority;

7 (34) Positions in the Mauna Kea stewardship and oversight
8 authority[-]; [~~and~~

9 +] (35) [+]
10 In the office of homeland security of the department
11 of defense, the statewide interoperable communications
12 coordinator[-]; and

12 (36) The health insurance administrator in the insurance
13 division of the department of commerce and consumer
14 affairs.

15 The director shall determine the applicability of this
16 section to specific positions.

17 Nothing in this section shall be deemed to affect the civil
18 service status of any incumbent as it existed on July 1, 1955."

19 SECTION 4. Section 431:2-217, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+] §431:2-217 [+] **Trade name.** (a) Prior to the use or
22 change of a trade name to sell, solicit, or negotiate insurance

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1 in this State, the licensee shall register the trade name with
2 the department of commerce and consumer affairs pursuant to part
3 II of chapter 482.

4 (b) Upon registration of the trade name with the
5 department of commerce and consumer affairs, the licensee may
6 apply, on a form approved by the commissioner, to add or remove
7 a trade name on a license. The applicant shall provide proof of
8 registration of a trade name to the commissioner.

9 (c) If the commissioner finds the application for use or
10 change of a trade name is substantially identical to another
11 trade name registered with the department of commerce and
12 consumer affairs, or substantially identical to a legal name or
13 trade name of a revoked license, the commissioner shall deny use
14 of the trade name on a license issued pursuant to this chapter.

15 (d) A licensee shall inform the commissioner, by any means
16 acceptable to the commissioner, of any change of status of a
17 trade name registered with the department of commerce and
18 consumer affairs within thirty days of the change.

19 (e) For purposes of this article, "trade name" shall mean
20 the name under which an individual or business entity is
21 conducting business or doing business as if the true legal name
22 of the individual or business entity cannot be used."

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1 SECTION 5. Section 431:9A-154, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:9A-154 Self-study courses. (a) In addition to the
4 requirements of courses generally, an approved continuing
5 education course provider shall also require for self-study
6 courses, including computer-based courses, a written or
7 computer-based examination at the conclusion of the self-study
8 course. The examination shall:

- 9 (1) Be composed of multiple choice questions, essay
10 questions, or both;
- 11 (2) Have at least three different versions of itself, used
12 on a random or rotating basis;
- 13 (3) If composed of multiple choice questions for a course
14 approved for up to four credit hours, include at least
15 twenty-five multiple choice questions;
- 16 (4) If composed of multiple choice questions for a course
17 approved for more than four credit hours, include at
18 least fifty multiple choice questions;
- 19 (5) Be graded by the continuing education course provider
20 or the continuing education course provider's agent;

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1 (6) If the examination is computer-based, not include
2 prompts designed to aid the person taking the
3 examination; and

4 (7) If the course is a computer-based course with a
5 computer-based examination, be designed to prevent the
6 licensee from taking the examination without reviewing
7 the course materials.

8 (b) To pass a multiple-choice self-study course, the
9 licensee shall answer at least seventy per cent of the
10 examination questions correctly.

11 (c) A self-study course examination shall not be
12 administered by a person who:

13 (1) Is related to, or is a business associate of, the
14 licensee taking the examination; or

15 (2) Has a financial interest in the success or failure of
16 a licensee taking the examination.

17 (d) The effective date of a completed examination pursuant
18 to this section shall be the date the continuing education
19 course provider receives the completed examination. Upon
20 receipt of the completed examination, the continuing education
21 course provider or the continuing education course provider's

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1 agent shall grade the examination and mail the results to the
2 licensee within fifteen days.

3 (e) The written or computer-based examination and contents
4 shall be made available by the continuing education course
5 provider, upon request, to the commissioner, and shall not be
6 required to be submitted for filing."

7 SECTION 6. Section 431:9B-102, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) The commissioner may require a reinsurance
10 intermediary-manager subject to subsection (b) to[+]

11 ~~(1) File a bond from an insurance company licensed to do~~
12 ~~business within the State or with an insurance company~~
13 ~~approved by the commissioner, in an amount equal to~~
14 ~~\$500,000 or ten per cent of the annual reinsurance~~
15 ~~premiums managed by the reinsurance~~
16 ~~intermediary manager, whichever is greater, except~~
17 ~~that the bond amount under this paragraph shall not~~
18 ~~exceed \$10,000,000, for the protection of the~~
19 ~~reinsurer;~~

20 ~~(2) Maintain an errors and omissions policy with an~~
21 ~~insurance company licensed to do business within the~~
22 ~~State or with an insurance company approved by the~~

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1 ~~commissioner, in an amount equal to \$250,000 or~~
2 ~~twenty five per cent of the annual reinsurance~~
3 ~~premiums managed by the reinsurance~~
4 ~~intermediary manager, whichever is greater, except~~
5 ~~that the policy limits under this paragraph shall not~~
6 ~~exceed \$10,000,000; and~~

7 (3) ~~Provide]~~ provide any ~~[other]~~ report required by the
8 commissioner.

9 ~~[At the commissioner's request, the reinsurance~~
10 ~~intermediary manager shall provide the commissioner with proof~~
11 ~~of the bond and policy and appropriate documentation to show~~
12 ~~that the bond and policy continue to be in effect, or that a new~~
13 ~~bond and new policy have been secured.]"~~

14 SECTION 7. Section 431:9B-108, Hawaii Revised Statutes, is
15 amended to read as follows:

16 " ~~[+]~~ §431:9B-108 ~~[+]~~ **Duties of reinsurers utilizing the**
17 **services of a reinsurance intermediary-manager.** (a) A
18 reinsurer shall not engage the services of any person, firm,
19 association, or corporation to act as a reinsurance
20 intermediary-manager on its behalf unless the person, firm,
21 association, or corporation is licensed as required by section
22 431:9B-102 (b) .

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1 (b) The reinsurer shall annually obtain a copy of
2 statements of the financial condition of each reinsurance
3 intermediary-manager which the reinsurer has engaged prepared by
4 an independent certified accountant in a form acceptable to the
5 commissioner.

6 (c) If a reinsurance intermediary-manager establishes loss
7 reserves, the reinsurer shall annually obtain the opinion of an
8 actuary attesting to the adequacy of loss reserves established
9 for losses incurred and outstanding on business produced by the
10 reinsurance intermediary-manager. This opinion shall be in
11 addition to any other required loss reserve certification.

12 (d) The reinsurer shall require the reinsurance
13 intermediary-manager to:

14 (1) File a bond for the protection of the reinsurer from
15 an insurance company licensed to do business within
16 the State or with an insurance company approved by the
17 commissioner, in an amount equal to \$500,000 or ten
18 per cent of the annual reinsurance premiums managed by
19 the reinsurance intermediary-manager, whichever is
20 greater, except that the bond amount under this
21 paragraph shall not exceed \$10,000,000; and

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1 (2) Maintain an errors and omissions policy with an
2 insurance company licensed to do business within the
3 State or with an insurance company approved by the
4 commissioner, in an amount equal to \$250,000 or
5 twenty-five per cent of the annual reinsurance
6 premiums managed by the reinsurance
7 intermediary-manager, whichever is greater, except
8 that the policy limits under this paragraph shall not
9 exceed \$10,000,000.

10 At the commissioner's request, the reinsurance
11 intermediary-manager shall provide the commissioner with proof
12 of the bond and policy required, and appropriate documentation
13 to show that the bond and policy continue to be in effect, or
14 that a new bond and new policy have been secured.

15 ~~[-d-]~~ (e) Binding authority for all retrocessional
16 contracts or participation in reinsurance syndicates shall rest
17 with an officer of the reinsurer who shall not be affiliated
18 with the reinsurance intermediary-manager.

19 ~~[-e-]~~ (f) Within thirty days of termination of a contract
20 with a reinsurance intermediary-manager, the reinsurer shall
21 provide written notification of the termination to the
22 commissioner.

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1 [~~f~~] (g) A reinsurer shall not appoint to its board of
2 directors any officer, director, employee, controlling
3 shareholder, or subagent of its reinsurance intermediary-
4 manager; provided that this subsection shall not apply to
5 relationships governed by article 11."

6 SECTION 8. Section 431:9J-103, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§431:9J-103 Surety bond required.** (a) Before the
9 issuance of the administrator license, the administrator shall
10 file with the commissioner, and maintain in force while so
11 licensed, a surety bond of at least \$100,000~~[7]~~ for the first
12 two years, and at least \$300,000 from the third year, in the
13 form and penal sum acceptable to the commissioner, and shall
14 provide that the bond may not be canceled or otherwise
15 terminated until two years have elapsed from the last day the
16 applicant was an administrator, unless the commissioner has
17 given prior written consent. The surety bond shall be
18 undertaken and may be enforced in the name of "Commissioner of
19 Insurance, State of Hawaii".

20 (b) [~~Fer~~] At the first renewal, and each subsequent
21 [annual report filing,] year, the surety bond amount shall be at

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1 least [~~\$100,000~~] \$300,000 and filed in accordance with §431:9J-
2 112."

3 SECTION 9. SECTION 431:9J-112, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§431:9J-112 Annual report required.** (a) An
6 administrator shall file an annual report for the preceding
7 calendar year with the commissioner on or before March 1 of each
8 year, in a form and manner prescribed by the commissioner.

9 (b) The annual report shall include:

10 (1) The names and addresses of all insurers with which the
11 administrator had an agreement during the preceding
12 calendar year;

13 (2) A renewal certificate for the surety bond required in
14 section 431:9J-103 and an updated surety bond form, if
15 needed; and

16 (3) An audited financial statement prepared by an
17 independent certified public accountant.

18 (c) An audited financial statement and annual report
19 prepared on a consolidated basis shall include a columnar
20 consolidating or combining worksheet filed with the report and
21 shall include the following:

22 (1) Worksheet showing the amounts shown on the

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- 1 consolidated audited financial report;
2 (2) Amounts for each entity that shall be stated
3 separately; and
4 (3) Explanations of consolidating and eliminating entries.
5 (d) The annual report shall be in the form, and contain
6 such matters, as the commissioner prescribes and shall be
7 verified by at least two officers of the administrator."

8 SECTION 10. 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 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;

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- 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

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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,
22 disseminating, or circulating of any oral or written

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

6 (4) Boycott, coercion, and intimidation.

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

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

18 (5) False financial statements.

19 (A) Knowingly filing with any supervisory or other
20 public official, or knowingly making, publishing,
21 disseminating, circulating, or delivering to any
22 person, or placing before the public, or

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1 knowingly causing, directly or indirectly, to be
2 made, published, disseminated, circulated,
3 delivered to any person, or placed before the
4 public, any false statement of a material fact as
5 to the financial condition of an insurer; or

6 (B) Knowingly making any false entry of a material
7 fact in any book, report, or statement of any
8 insurer with intent to deceive any agent or
9 examiner lawfully appointed to examine into its
10 condition or into any of its affairs, or any
11 public official to whom the insurer is required
12 by law to report, or who has authority by law to
13 examine into its condition or into any of its
14 affairs, or, with like intent, knowingly omitting
15 to make a true entry of any material fact
16 pertaining to the business of the insurer in any
17 book, report, or statement of the insurer;

18 (6) Stock operations and advisory board
19 contracts. Issuing or delivering or permitting
20 agents, officers, or employees to issue or deliver,
21 agency company stock or other capital stock, or
22 benefit certificates or shares in any common-law

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1 corporation, or securities or any special or advisory
2 board contracts or other contracts of any kind
3 promising returns and profits as an inducement to
4 insurance;

5 (7) Unfair discrimination.

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

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

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- 1 (C) Making or permitting any unfair discrimination
2 between individuals or risks of the same class
3 and of essentially the same hazards by refusing
4 to issue, refusing to renew, canceling, or
5 limiting the amount of insurance coverage on a
6 property or casualty risk because of the
7 geographic location of the risk, unless:
8 (i) The refusal, cancellation, or limitation is
9 for a business purpose which is not a mere
10 pretext for unfair discrimination; or
11 (ii) The refusal, cancellation, or limitation is
12 required by law or regulatory mandate;
- 13 (D) Making or permitting any unfair discrimination
14 between individuals or risks of the same class
15 and of essentially the same hazards by refusing
16 to issue, refusing to renew, canceling, or
17 limiting the amount of insurance coverage on a
18 residential property risk, or the personal
19 property contained therein, because of the age of
20 the residential property, unless:

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

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

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

14 (F) Terminating or modifying coverage, or refusing to
15 issue or renew any property or casualty policy or
16 contract of insurance solely because the
17 applicant or insured or any employee of either is
18 mentally or physically impaired; provided that
19 this subparagraph shall not apply to accident and
20 health or sickness insurance sold by a casualty
21 insurer; provided further that this subparagraph
22 shall not be interpreted to modify any other

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1 provision of law relating to the termination,
2 modification, issuance, or renewal of any
3 insurance policy or contract;

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

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

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1 obtain the test results, within a reasonable time
2 after being tested, and that the confidentiality
3 of the test results shall be maintained as
4 provided by section 325-101;

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

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

17 (B) Giving, selling, or purchasing, or offering to
18 give, sell, or purchase as inducement to the
19 insurance or in connection therewith, any stocks,
20 bonds, or other securities of any insurance
21 company or other corporation, association, or
22 partnership, or any dividends or profits accrued

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1 thereon, or anything of value not specified in
2 the contract;

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

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

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

21 (C) Readjustment of the rate of premium for a group
22 insurance policy based on the loss or expense

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1 experience thereunder, at the end of the first or
2 any subsequent policy year of insurance
3 thereunder, which may be made retroactive only
4 for the policy year;

5 (D) In the case of any contract of insurance, the
6 distribution of savings, earnings, or surplus
7 equitably among a class of policyholders, all in
8 accordance with this article; and

9 (E) ~~[A reward under a wellness program established~~
10 ~~under a health care plan that favors an~~
11 ~~individual if the wellness program meets the~~
12 ~~following requirements:~~

13 ~~(i) The wellness program is reasonably designed~~
14 ~~to promote health or prevent disease;~~

15 ~~(ii) An individual has an opportunity to qualify~~
16 ~~for the reward at least once a year;~~

17 ~~(iii) The reward is available for all similarly~~
18 ~~situated individuals;~~

19 ~~(iv) The wellness program has alternative~~
20 ~~standards for individuals who are unable to~~
21 ~~obtain the reward because of a health~~
22 ~~factor;~~

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1 ~~(v) Alternative standards are available for an~~
2 ~~individual who is unable to participate in a~~
3 ~~reward program because of a health~~
4 ~~condition;~~

5 ~~(vi) The insurer provides information explaining~~
6 ~~the standard for achieving the reward and~~
7 ~~discloses the alternative standards; and~~

8 ~~(vii) The total rewards for all wellness programs~~
9 ~~under the health care plan do not exceed~~
10 ~~twenty per cent of the cost of coverage;]~~

11 The offer or provision by insurers or producers,
12 by or through employees, affiliates, or third-
13 party representatives, of value-added products or
14 services at no or reduced cost when such products
15 or services are not specified in the policy of
16 insurance if the product or service:

17 (i) Relates to the insurance coverage; and

18 (ii) Is primarily designed to satisfy one or more
19 of the following:

20 (I) Provide loss mitigation or loss
21 control;

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- 1 (II) Reduce claim costs or claim settlement
2 costs;
- 3 (III) Provide education about liability risks
4 or risk of loss to persons or property;
- 5 (IV) Monitor or assess risk, identify
6 sources of risk, or develop strategies
7 for eliminating or reducing risk;
- 8 (V) Enhance health;
- 9 (VI) Provide post-loss services; or
- 10 (VII) Incentivize behavioral changes to
11 improve the health or reduce the risk
12 of death or disability of a customer.
- 13 (iii) The cost to the insurer or producer offering
14 the product or service to any given customer
15 shall be reasonable in comparison to that
16 customer's premiums or insurance coverage
17 for the policy class.
- 18 (iv) If the insurer or producer is providing the
19 product or service offered, the insurer or
20 producer shall ensure that the customer is
21 provided with contact information to assist

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1 the customer with questions regarding the
2 product or service.

3 (v) The commissioner may adopt rules when
4 implementing the permitted practices set
5 forth in this paragraph to ensure consumer
6 protection. Such rules, consistent with
7 applicable law, may address, among other
8 issues, consumer data protections and
9 privacy, consumer disclosure and unfair
10 discrimination.

11 (vi) The availability of the value-added product
12 or service shall be based on documented
13 objective criteria and offered in a manner
14 that is not unfairly discriminatory. The
15 documented criteria shall be maintained by
16 the insurer or producer and produced upon
17 request by the commissioner.

18 (vii) If an insurer or producer does not have
19 sufficient evidence but has a good-faith
20 belief that the product or service meets the
21 criteria in subparagraph (E) (ii), the
22 insurer or producer may provide the product

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1 or service in a manner that is not unfairly
2 discriminatory as part of a pilot or testing
3 program for no more than one year. An
4 insurer or producer shall notify the
5 commissioner of such a pilot or testing
6 program offered to consumers in the State
7 prior to launching and may proceed with the
8 program unless the commissioner objects
9 within twenty-one days of notice.

10 (F) For purposes of this paragraph, "customer" means
11 a policyholder, potential policyholder,
12 certificate holder, potential certificate holder,
13 insured, potential insured or applicant.

14 (10) Refusing to provide or limiting coverage available to
15 an individual because the individual may have a third-
16 party claim for recovery of damages; provided that:

17 (A) Where damages are recovered by judgment or
18 settlement of a third-party claim, reimbursement
19 of past benefits paid shall be allowed pursuant
20 to section 663-10;

21 (B) This paragraph shall not apply to entities
22 licensed under chapter 386 or 431:10C; and

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

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

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

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

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

16 (i) The insurer's policyholder;

17 (ii) Any other persons, including the
18 commissioner; or

19 (iii) The insurer of a person involved in an
20 incident in which the insurer's policyholder
21 is also involved.

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1 The response shall be more than an acknowledgment
2 that such person's communication has been
3 received and shall adequately address the
4 concerns stated in the communication;

5 (C) Failing to adopt and implement reasonable
6 standards for the prompt investigation of claims
7 arising under insurance policies;

8 (D) Refusing to pay claims without conducting a
9 reasonable investigation based upon all available
10 information;

11 (E) Failing to affirm or deny coverage of claims
12 within a reasonable time after proof of loss
13 statements have been completed;

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

18 (G) Failing to provide the insured, or when
19 applicable the insured's beneficiary, with a
20 reasonable written explanation for any delay, on
21 every claim remaining unresolved for thirty
22 calendar days from the date it was reported;

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- 1 (H) Not attempting in good faith to effectuate
2 prompt, fair, and equitable settlements of claims
3 in which liability has become reasonably clear;
- 4 (I) Compelling insureds to institute litigation to
5 recover amounts due under an insurance policy by
6 offering substantially less than the amounts
7 ultimately recovered in actions brought by the
8 insureds;
- 9 (J) Attempting to settle a claim for less than the
10 amount to which a reasonable person would have
11 believed the person was entitled by reference to
12 written or printed advertising material
13 accompanying or made part of an application;
- 14 (K) Attempting to settle claims on the basis of an
15 application that was altered without notice,
16 knowledge, or consent of the insured;
- 17 (L) Making claims payments to insureds or
18 beneficiaries not accompanied by a statement
19 setting forth the coverage under which the
20 payments are being made;
- 21 (M) Making known to insureds or claimants a policy of
22 appealing from arbitration awards in favor of

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1 insureds or claimants for the purpose of
2 compelling them to accept settlements or
3 compromises less than the amount awarded in
4 arbitration;

5 (N) Delaying the investigation or payment of claims
6 by requiring an insured, claimant, or the
7 physician or advanced practice registered nurse
8 of either to submit a preliminary claim report
9 and then requiring the subsequent submission of
10 formal proof of loss forms, both of which
11 submissions contain substantially the same
12 information;

13 (O) Failing to promptly settle claims, where
14 liability has become reasonably clear, under one
15 portion of the insurance policy coverage to
16 influence settlements under other portions of the
17 insurance policy coverage;

18 (P) Failing to promptly provide a reasonable
19 explanation of the basis in the insurance policy
20 in relation to the facts or applicable law for
21 denial of a claim or for the offer of a
22 compromise settlement; and

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1 (Q) Indicating to the insured on any payment draft,
2 check, or in any accompanying letter that the
3 payment is "final" or is "a release" of any claim
4 if additional benefits relating to the claim are
5 probable under coverages afforded by the policy;
6 unless the policy limit has been paid or there is
7 a bona fide dispute over either the coverage or
8 the amount payable under the policy;

9 (12) Failure to maintain complaint handling
10 procedures. Failure of any insurer to maintain a
11 complete record of all the complaints that it has
12 received since the date of its last examination under
13 section 431:2-302. This record shall indicate the
14 total number of complaints, their classification by
15 line of insurance, the nature of each complaint, the
16 disposition of the complaints, and the time it took to
17 process each complaint. For purposes of this section,
18 "complaint" means any written communication primarily
19 expressing a grievance;

20 (13) Misrepresentation in insurance applications. Making
21 false or fraudulent statements or representations on
22 or relative to an application for an insurance policy,

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1 for the purpose of obtaining a fee, commission, money,
2 or other benefit from any insurer, producer, or
3 individual; and

4 (14) Failure to obtain information. Failure of any
5 insurance producer, or an insurer where no producer is
6 involved, to comply with section [~~431:10D-623(a), (b),~~
7 ~~or (c) by making reasonable efforts to obtain~~
8 ~~information about a consumer before making a~~
9 ~~recommendation to the consumer to purchase or exchange~~
10 ~~an annuity.] 431:10D-623."~~

11 SECTION 10. Section 431:19-101, Hawaii Revised Statutes,
12 is amended as follows:

13 1. By amending the definition of "controlled unaffiliated
14 business" to read:

15 ""Controlled unaffiliated business" means, in the case of a
16 pure captive insurance company, any person[+], or in the case of
17 a sponsored captive insurance company, any participant:

18 (1) That is not in the corporate system of a parent or
19 sponsor and its affiliated entities;

20 (2) That has an existing contractual relationship with a
21 parent or sponsor or one of its affiliated entities;
22 and;

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1 (3) Whose risks are managed by the pure captive insurance
2 company[+] or the sponsored captive insurance
3 company."

4 2. By amending the definition of "participant" to read:

5 "Participant" means an entity that meets the requirements
6 of section 431:19-305, and any affiliated or controlled
7 unaffiliated business entities thereof that are insured by a
8 sponsored captive insurance company where the losses of the
9 participant may be limited through a participant contract to the
10 participant's pro rata share of the assets of one or more
11 protected cells identified in the participant contract."

12 SECTION 12. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act shall take effect upon its approval;
15 provided that the amendments made to section 76-16(b), Hawaii
16 Revised Statutes, by section 3 of this Act shall not be repealed
17 when section 24 of Act 278, Session Laws of Hawaii 2022, takes
18 effect.

19

20

INTRODUCED BY: 

21

BY REQUEST

JAN 23 2023

H.B. NO. 1026

Report Title:

Insurance Code; Health Insurance Administrator; Captive Insurers; Producers; Trade Name; Third Party Administrators; Surety Bond; Reinsurance Intermediary-Managers; Unfair Methods of Competition; Unfair and Deceptive Acts and Practices; Reinsurers; Non-Insurance Benefits

Description:

Amends various provisions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions. Adds a Health Insurance Administrator deputy commissioner position. Defines "dormant captive insurance company" and sets out a procedure to apply for the certificate of dormancy. Adds the term "doing business as" to "trade name" statutory references. Clarifies continuing education provider filing requirements. Clarifies reinsurance intermediary-manager filing requirements. Amends the surety bond threshold requirement for third party administrators and clarifies the audited financial statements requirements. Adopts revised National Association of Insurance Commissioners Model #880 Unfair Trade Practices Act regarding expansion of value-added products beyond health products. Aligns section 431:13-103 with changes made to article 9 of chapter 431 by Act 110, Session Laws of Hawaii 2021. Amends the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies.

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

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

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

- (1) Adding a new section to part I of article 2, chapter 431, Hawaii Revised Statutes (HRS) to establish a health insurance administrator deputy commissioner (section 1 of the bill);
- (2) Adding a new section to part I of article 19 of chapter 431 regarding dormant captive insurance companies (section 2);
- (3) Amending section 76-16(b) to exclude the health administrator position from civil service laws beyond three years (section 3);
- (4) Amending section 431:2-217 to clarify that a "trade name" used by individuals and business entities is also the name used to conduct business for uniformity and to ensure an expedited and smooth transition to the new electronic licensing platform (section 4);
- (5) Amending section 431:9A-154 to clarify that self-study exams are not required to be submitted for approval and review of contents to the insurance division (section 5);
- (6) Deleting the surety bond and Errors and Omissions ("E&O") policy filing requirements in section 431:9B-102(c)(1) and (2) and inserting the surety bond and E&O policy filing

requirements in section 431:9B-108
(sections 6 and 7);

- (7) Amending the surety bond threshold requirement for third party administrators in section 431:9J-103, HRS, to \$300,000 from the third year of licensure filing; and clarifying the audited financial statements requirements in section 431:9J-112 (sections 8 and 9);
- (8) Amending section 431:13-103(a) by: (1) adopting section 4 H(2)(e) of revised National Association of Insurance Commissioners Model #880 Unfair Trade Practices Act ("NAIC Model #880") regarding expansion of value-added products beyond health products; and (2) aligning section 431:13-103 with changes made to article 9 of chapter 431 by Act 110, Session Laws of Hawaii 2021 (section 10); and
- (9) Amending the definitions of "controlled unaffiliated business" and "participant" in section 431:19-101 (section 11).

MEANS:

Add new section to part I of article 2 of chapter 431, HRS, and a new section to part I of article 19, chapter 431, HRS, and amend sections 76-16(b), 431:2-217, 431:9A-154, 431:9B-102(c), 431:9B-108, 431:9J-103, 431:9J-112, 431:13-103(a), and 431:19-101, HRS.

JUSTIFICATION:

- (1) Currently, the health branch administrator is not defined by statute. The health branch administrator position has been occupied for a number of years with no clearly defined duties or deputy commissioner designation. With the complexities of the Affordable Care Act, rising long-term care insurance premiums, insolvencies, and calls for

oversight on pharmaceuticals, a deputy commissioner title for the health insurance administrator is necessary to assist the commissioner in policy decisions (section 1).

- (2) There is no standardized process for a captive insurance company to transition to a dormant status. A dormant captive insurance company maintains a certificate of authority and is not intending to dissolve, but does not transact any business of insurance. Under current practices, a dormant captive insurance company must obtain approval from the Insurance Division to be dormant and if approved, must comply with modified filing requirements. A clear standardized process codified in statute will increase efficiency, promote uniformity, reduce confusion, and provide clarity for both the captive insurance company and the Insurance Division (section 2).
- (3) Any position created after July 1, 2014, that is excluded from civil service laws for longer than three years must specifically be excluded by statute. The health administrator position is intended to be excluded from chapter 76, HRS, beyond three years, necessitating the inclusion of this position in section 76-16(b), HRS (section 3).
- (4) Uniformity in terminology is essential to allow for electronic applications and renewals via the National Association of Insurance Commissioners (NAIC) State Based Systems and National Insurance Producer Registry (NIPR). The NIPR Uniform Online application does not use the term "trade name", therefore clarifying that "trade name" also means the name individuals and business entities are doing business as

will allow for applicants and licensees to add or maintain trade names on licenses (section 4).

- (5) Continuing Education (CE) providers are required to only submit the licensing self-study course to the Insurance Division. However, CE providers are also submitting exam questions. By accepting and filing the exam courses, providers may have a false impression that the division is also approving exam content/questions. The statutory amendment will make clear that exam content and questions are not required to be approved or filed with the division and are to be made available upon request of the commissioner (section 5).
- (6) Surety bond requirements and Errors & Omissions (E&O) policy filing requirements for Reinsurance Intermediary-Managers (RIM) are better placed in section 431:9B-108 than in section 431:9B-102, as RIMs have the authority to bind or manage all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and act as an agent for the reinsurer. Similar requirements for reinsurers and Managing General Agents are codified in section 431:9C-103(7) and (8) (sections 6 and 7).
- (7) Amending sections 431:9J-103 and 431:9J-112 to increase the surety bond amount at the third year of licensure, and requiring proof of requisite surety bond amount filed with the annual report, as well as clarification regarding annual report filings starting March 1, 2024, will ensure adequate consumer protection and promote transparency of Third Party

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Administrators operating in the State of Hawaii (sections 8 and 9).

- (8) Amending section 431:13-103(a) by: (1) making 431:13-103(a)(9)(E) consistent with revisions to NAIC Model #880. The revisions seek to provide consistent treatment of value-added (aka non-insurance benefits) that are beneficial to consumers across all lines of insurance. Although the 2021 statutory amendments to article 13 of chapter 431 in Act 110, Sessions Laws of Hawaii 2021, were specific to health plans (i.e. permits access to fitbits and gym memberships), numerous other lines of insurance and policyholders may benefit from similar rationale where a non-insurance benefit can mitigate health or safety risk. For example, discounts on fire suppression devices (extinguishers) for the home; and (2) aligning section 431:13-103 with changes made to article 9 by Act 110, Session Laws of Hawaii 2021 (section 10).
- (9) Clarification is necessary to the definition of a "controlled unaffiliated business" in section 431:19-101 to make clear that this term applies to sponsored captive insurance companies that are subject to part III of article 19, chapter 431 (section 11).

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

Impact on the department and other agencies: This bill will streamline division processing of licenses and certificates of authority, promote efficiency, decrease costs, and reduce resource waste.

GENERAL FUNDS: None.

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OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.