

## ACT 47

S.B. NO. 2701

A Bill for an Act Relating to Consumer Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 488, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to section 488-1 to be appropriately inserted and to read:

“Accumulation or payment of money” or “accumulates funds” means the payment of funds by a member to the plan.

“Commissioner” means the insurance commissioner.”

2. By amending subsections (a) and (b) in section 488-2, to read:

“(a) This chapter shall apply to all plans in the [State] state other than:

[(1) Plans in which either the group or the plan administrator is otherwise subject to regulation under chapter 431 or 432;

(2) (1) Plans in which any party to the plan is the federal government or any agency thereof; or

[(3) (2) Any employer-employee plan that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

(b) The commissioner shall have jurisdiction to enforce this chapter.

The operation of all plans subject to this chapter shall also be subject to chapters 480, part I of chapter 481, 481A, and 481B, 481C, and other provisions of law that may be applicable. Chapters 431 and 432 shall not apply to any plans or the operations thereof that are subject to this chapter, except as provided in sections 488-4, 488-5, [and] 488-6[-], and 488-7.”

3. By amending section 488-3 to read:

**“[§488-3] Filing and other requirements. (a)** Sixty days prior to the implementation of any plan and the accumulation or payment of money thereunder, all plan documents shall be submitted in writing [to the department.] for approval by the commissioner.

(b) [Such] The documentation required by subsection (a) shall contain in writing the following:

(1) A brief statement of the plan’s financial structure, including a statement of the amount of prepayment, [and] other charges or dues to be paid by plan members, and the manner in which [such amount is] the amounts are to be paid[-];

- (2) A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a plan, and the period during which it will be furnished; and, if there are exceptions, reductions, exclusions, limitations, or restrictions of [such] benefits, legal services, or reimbursements, a detailed statement of [such] the exceptions, reductions, exclusions, limitations, or restrictions[-];
- (3) A statement of the terms and conditions upon which the plan may be canceled or otherwise terminated by the group, the plan administrator, the persons furnishing legal services, or the member; provided that for any [such] cancellation or termination, other than by a member, there shall be provision made for the disposition of funds accumulated under the plan[-];
- (4) A statement describing the applicability or nonapplicability of the benefits of the plan to the family dependents of the member[-];
- (5) A statement of the period of grace which will be allowed the member or the member's group for making any payment due under the plan[-];
- (6) A statement describing a procedure for settling disputes between or among the group, the plan administrator, the persons furnishing legal services, and the member[-]; and
- (7) A statement that the plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used [between] among all parties to a plan.

Any amendments or changes to the documents filed under paragraphs (1) to (7) shall be filed with the [department] commissioner for approval at least sixty days before they take effect. All documents filed under this section shall be public documents."

4. By amending section 488-4 to read:

**"§488-4 Accumulated funds, protection, violation.** (a) Any plan [which] that accumulates funds from payments of premiums prior to [the payment of such] paying those funds to [the] persons providing legal services shall meet the requirements of this section.

(b) The plan administrator shall have the responsibilities of a trustee for all funds received or collected under this chapter.

(c) The plan administrator, upon receipt of premium funds intended for payment to a person providing legal services pursuant to this chapter, shall maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company located in Hawaii, separate from the plan's own funds or funds held by the plan administrator in any other capacity, in an amount at least equal to the funds collected and unpaid to the persons providing legal services, unless otherwise approved by the commissioner. Only additional funds that are reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with premium funds accumulated pursuant to this section. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the plan shall not retain the interest earned on accumulated funds for the plan or plan administrator's own use or benefit without the prior written consent of the person entitled to the funds. A plan trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 488-4, Hawaii Revised Statutes", or words of similar import.

(d) The plan administrator shall obtain a bond in an amount and form approved by the ~~[department]~~ commissioner which shall be executed by the plan administrator and a surety company authorized to do business in the ~~[State]~~ state as a surety. The bond shall be to the benefit of the members of the plan and shall be filed with the ~~[department.]~~ commissioner. In lieu of the bond required by this section, the ~~[department shall]~~ commissioner may accept letters of credit, certificates of deposits, or other evidences of security in form and amounts deemed appropriate by the [department.] commissioner.

(e) Any plan administrator who, not being lawfully entitled to do so, diverts or appropriates funds accumulated pursuant to this section or any portion thereof to the plan or plan administrator's own use, shall be subject to penalties as provided by law."

5. By amending section 488-5 to read:

**"§488-5 Annual exhibits; examination by ~~[director.]~~ commissioner.** (a) Each plan shall file with the ~~[director of commerce and consumer affairs]~~ commissioner within ~~[thirty]~~ sixty days after the end of its fiscal year ~~[a statement under oath in such form as the director prescribes containing:~~

- (1) ~~A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year;~~
- (2) ~~The assets and liabilities of the plan at the close of its fiscal year; and~~
- (3) ~~The profit and loss of the plan during its fiscal year.]~~

an income statement and balance sheet compiled, reviewed, or audited by a certified public accountant.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the ~~[insurance]~~ commissioner under chapter 431 ~~[are extended to and imposed upon the director in]~~ apply with respect to examinations of [the] plans[;] subject to this section; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the rules for client-lawyer confidentiality as contained in the Hawaii rules of professional conduct adopted by the supreme court."

6. By amending section 488-7 to read:

**"[H] 488-7[H] Failure to comply; penalty.** (a) Any plan ~~[which]~~ that neglects or refuses to comply with this chapter shall be notified in writing by the ~~[director of commerce and consumer affairs]~~ commissioner of the neglect or refusal, and of the need to take corrective action[; if] within seven days. If the neglect or refusal continues for seven days after notification, the plan, group, or plan administrator may be fined not more than \$1,000. Every day's neglect or refusal after the expiration of seven days shall be a separate offense.

(b) The commissioner may deny, suspend, revoke, or refuse to approve any plan or plan amendments and may levy civil penalties as allowed by chapters 431, 432, 480, 481A, 481B, and 481C, and any other applicable law for any violation of this chapter."

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

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved April 23, 2010.)

#### Note

1. Prior to amendment section symbol appeared here.