

ACT 81

H.B. NO. 1049

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:2-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a chief deputy commissioner, who shall be subject to chapter 76. The chief deputy commissioner shall have the power to perform any act or duty assigned by the commissioner. If a commissioner has not been appointed, the chief deputy commissioner shall have the power to perform any act that the commissioner is authorized to perform until an appointment becomes effective. The certificate of the chief deputy commissioner’s appointment shall be filed in the office of the lieutenant governor.”

SECTION 2. Section 431:2-202.5, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-202.5 Approval; when deemed effective.** Except as provided otherwise, any approval required by law shall be deemed granted on the ~~[thirtieth]~~ sixtieth calendar day following the filing of the request for approval if the commissioner does not take any affirmative action to grant or deny the approval within ~~[thirty]~~ sixty calendar days of the request.”

SECTION 3. Section 431:2-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person competent to serve a summons shall serve upon the commissioner triplicate copies of legal process against an insurer for whom the commissioner is attorney. In the absence of the commissioner, the process may be served upon the chief deputy or the deputy in charge of the insurance function. At the time of service the plaintiff shall pay to the commissioner ~~[\$12,]~~ \$25, taxable as costs in the action.”

SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“**§431:7-101 Fees.** (a) The commissioner shall collect in advance the following fees:

- (1) Certificate of authority: Issuance.....\$1,800
- (2) Organization of domestic insurers and affiliated corporations:
  - (A) Application and all other papers required for issuance of solicitation permit, filing .....\$3,000
  - (B) Issuance of solicitation permit.....\$300
- (3) Producer’s license:
  - (A) Issuance, regular license.....\$100

	(B) Issuance, temporary license .....	\$100
(4)	Nonresident producer's license: Issuance .....	\$150
(5)	Independent adjuster's license: Issuance .....	\$150
(6)	Public adjuster's license: Issuance .....	\$150
(7)	<del>[Workers' compensation claim]</del> <u>Claims</u> adjuster's limited license: Issuance .....	\$150
(8)	Independent bill reviewer's license: Issuance .....	\$160
(9)	Limited producer's license: Issuance .....	\$120
(10)	Managing general agent's license: Issuance .....	\$150
(11)	Reinsurance intermediary's license: Issuance .....	\$150
(12)	Surplus lines broker's license: Issuance .....	\$300
(13)	Service contract provider's registration: Issuance .....	\$150
(14)	Approved course provider certificate: Issuance .....	\$200
(15)	Approved continuing education course certificate: Issuance .....	\$60
(16)	Vehicle protection product warrantor's registration: Issuance .....	\$150
(17)	Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.	
(18)	Limited line motor vehicle rental company producer's license: Issuance .....	\$2,000
<del>[(19)]</del>	<del>Life settlement contract provider's license: Issuance .....</del>	<del>\$150</del>
(20)	<del>Life settlement contract broker's license: Issuance .....</del>	<del>\$150</del>
<del>(21)]</del>	(19) Examination for license: For each examination, a fee to be established by the commissioner.	

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$90 per year for all services (including extension of the license) for a ~~[workers' compensation]~~ claims adjuster's limited license;
- (7) \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;

- (10) \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) ~~[\$40]~~ A fee to be determined by the commissioner for [a] each criminal history record check[;] and fingerprinting; and
- (17) \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer[;]
- (18) ~~\$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and~~
- (19) ~~\$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker].~~

The services referred to in paragraphs (1) to ~~[(19)]~~ (17) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

SECTION 5. Section 431:9-204, Hawaii Revised Statutes, is amended to read as follows:

**"§431:9-204 Applications for license.** (a) Application for ~~[any such]~~ an adjuster or independent bill reviewer license shall be made to the commissioner upon forms ~~[as]~~ prescribed and furnished by the commissioner. As a part of or in connection with ~~[any such]~~ the application, the applicant shall furnish information including:

- (1) The applicant's identity, personal history, experience, business records, and a full set of fingerprints, including a scanned file from a hard copy fingerprint, for the commissioner to obtain and receive national and state criminal history ~~[[record]]~~ checks from the Federal Bureau of Investigation and the Hawaii criminal justice data center, pursuant to section 846-2.7; and
  - (2) Other pertinent facts as the commissioner may reasonably require.
- ~~[(b)]~~ (1) ~~If the applicant is a partnership or corporation, the application shall furnish in addition to the requirements set forth in subsection (a):~~
- ~~(A) The names of all partners or officers; and~~
  - ~~(B) A designation of each individual who is to exercise the powers to be conferred by the license upon the partnership or corporation.~~
- (2) ~~Each individual shall be required to furnish information to the commissioner as though for an individual license.~~

~~(e)]~~ (b) Any person ~~who wilfully [misrepresenting]~~ misrepresents or ~~[omitting]~~ omits any fact required to be disclosed in ~~[any such]~~ an application filed pursuant to this section shall be liable for penalties as provided by this code."

SECTION 6. Section 431:9C-101, Hawaii Revised Statutes, is amended by amending the definition of “managing general agent” to read as follows:

““Managing general agent” means any person, firm, association, or corporation that manages all or part of the insurance business of an insurer [(including the management of a separate division, department, or underwriting office)] and acts as an agent for ~~[such]~~ the insurer regardless of whether the person, firm, association, or corporation is known as a managing general agent, manager, or [other] similar term[.] and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five per cent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year~~[, together with one or more of the following activities related to the business produced:]~~ and adjusts or pays claims in excess of ~~[an amount determined by the commissioner,]~~ \$10,000 or negotiates reinsurance on behalf of the insurer. Notwithstanding the ~~[preceding sentence,]~~ specified requirements, the following persons shall not be considered ~~[as]~~ managing general agents for ~~[the]~~ purposes of this article:

- (1) An employee of the insurer;
- (2) A United States manager of the United States branch of an alien insurer;
- (3) An underwriting manager who, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer~~[,]~~ subject to article 11, and whose compensation is not based on the volume of premiums written;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under a power of attorney; and
- (5) Any person, firm, association, or corporation domiciled in the State ~~[and]~~, authorized to do business only in the State, and acting as a managing general agent for an insurer licensed and conducting business only in the State.”

SECTION 7. Section 431:10H-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer, health care service plan, or other entity providing long-term care insurance or benefits in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State ~~[whether]~~ through written, radio, or television ~~[medium]~~ media to the commissioner for review or approval by the commissioner to ~~[the extent it may be reviewed under state law. In addition, all]~~ determine compliance with this article. All advertisements subject to this section shall be retained by the insurer, health care service plan, or other entity for at least three years from the date the advertisement was first used.”

SECTION 8. Section 431:11-106, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:
- (A) The terms shall be fair and reasonable;
  - (B) Charges or fees for services performed shall be reasonable;
  - (C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

- (D) The books, accounts, and records of each party to all transactions shall be maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and
  - (E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
- (2) The following transactions involving a domestic insurer and any person in its holding company system shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior ~~[thereto;]~~ to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved ~~[it]~~ the transaction within that period:
- (A) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments; provided that the transactions are equal to or exceed:
    - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
    - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
  - (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit; provided that the transactions are equal to or exceed:
    - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
    - (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
  - (C) Reinsurance agreements or modifications ~~[thereto]~~ to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per cent of the insurer's surplus as regards policyholders~~[-]~~ as of the thirty-first day of December next preceding, including those agreements ~~[which]~~ that may require as consideration the transfer of assets from an insurer to a nonaffiliate~~[-]~~ if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
  - (D) All management agreements, service contracts, and ~~[all]~~ cost-sharing arrangements; and

- (E) Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law;

- (3) A domestic insurer may not enter into transactions ~~[which]~~ that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur~~[-If]~~; provided that the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111;
- (4) The commissioner, in reviewing transactions pursuant to subsection (a)(2), shall consider whether the transactions comply with the standards set forth in subsection (a)(1) and whether ~~[they]~~ the transactions may adversely affect the interests of policyholders; and
- (5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one person if the total investment in the person by the insurance holding company system exceeds ten per cent of the ~~[corporation's]~~ person's voting securities~~[-]~~ or the domestic insurer possesses control of the person as the term "control" is defined in section 431:11-102."

SECTION 9. Section 431:14G-105, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every managed care plan shall file ~~[in triplicate]~~ with the commissioner~~[-]~~ every rate, charge, classification, schedule, practice, or rule and every modification of any of the foregoing that it proposes to use. Every filing shall ~~[state]~~:

- (1) State its proposed effective date [and shall indicate];
- (2) Indicate the character and extent of the coverage contemplated[-. The filing also shall include];
- (3) Include a report on investment income[-]; and
- (4) Be accompanied by a \$50 fee payable to the commissioner which shall be deposited in the commissioner's education and training fund.

(b) ~~[Each filing shall be accompanied by a \$50 fee payable to the commissioner and shall be deposited in the commissioner's education and training fund.-] For each filing, an insurer shall submit to the commissioner:~~

- (1) An electronic copy of the filing; or
- (2) Two printed copies of the filing;

provided that the commissioner may request an insurer that submits an electronic copy of the filing pursuant to paragraph (1) to also submit a printed copy of the electronic filing."

SECTION 10. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) After each covered event, if the board ~~[shall determine]~~ determines that the moneys in the hurricane reserve trust fund, excluding moneys determined by the board to be needed to continue fund operations following ~~[that]~~

the covered event, will be insufficient to pay claims and other obligations of the fund arising out of that covered event, the Hawaii hurricane relief fund [is authorized to] shall levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for all property and casualty insurance policies issued for risks insured in this State. These moneys may be deposited into the hurricane reserve trust fund or into trust or custodial accounts[;] created for the benefit of the fund's secured parties[;] that are held inside or outside the hurricane reserve trust fund. The [formula to calculate the amount and period of the surcharge for each covered event and the procedures and methodology for payment of claims and other obligations of the fund shall be provided in the plan of operation and the] surcharge [may] shall remain in effect until all claims and other obligations of the fund, including but not limited to claims under fund policies of hurricane property insurance, claims financing transactions, bonds, notes, and other obligations arising out of that covered event[, shall] have been fully discharged. The amount and reason for any surcharge made pursuant to this subsection shall be separately stated on any billing sent to an insured. The surcharge shall not be considered premiums for any other purpose[;] including the computation of gross premium tax or the determination of producers' commissions. The fund may establish procedures for insurers to collect the surcharge from customers who hold property or casualty policies."

SECTION 11. Section 432:1-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~"(a) [After the organization of the society is completed, and before a certificate of compliance is granted by the commissioner, the] The society shall deposit with the commissioner [one-half the maximum amount required to be maintained in its death benefit and disability, or sick, or other benefit fund, as provided in section 432:1-401,] fifty per cent of the minimum net worth requirement provided in section 432:1-407(a)(2), either in cash or in securities approved by the commissioner[;]; provided that the deposit shall be no less than \$1,000,000 and shall not exceed \$20,000,000."~~

SECTION 12. Section 432:1-401, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2011; provided that the amendments made to section 431:7-101, Hawaii Revised Statutes, shall not be repealed when that section is reenacted on July 1, 2014, pursuant to section 7(3) of Act 59, Session Laws of Hawaii 2010.

(Approved June 1, 2011.)

#### Note

1. Edited pursuant to HRS §23G-16.5.