

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 10C to be appropriately designated and to read as follows:

**“§431:10C- Payment of general excise tax and certificate of ownership fee on third party claims.** (a) When a motor vehicle insurer settles a total loss motor vehicle damage liability claim with a third-party claimant, the insurer shall pay the applicable general excise tax and certificate of ownership fee, subject to section 663-31; provided that if the third-party claimant cannot substantiate the purchase and the payment of the general excise tax and certificate of ownership fee by submitting to the insurer appropriate documentation within thirty-three days after the receipt of settlement, the insurer shall not be required to reimburse the third-party claimant for the tax or fee.

(b) In lieu of the procedure in subsection (a), the insurer may directly pay the required general excise tax and certificate of ownership fee to the third-party claimant at the time of settlement.

(c) An insurer’s obligation to reimburse a third-party claimant for the applicable general excise tax and certificate of ownership fee as set forth in this section shall be subject to the property damage liability limit of the policy.”

SECTION 2. Section 431:2-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Violation of subsection (a) is a criminal offense and shall constitute:

- (1) A class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained [~~is more than~~] exceeds \$20,000;

- (2) A class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained [~~is more than \$300;~~ exceeds \$750; or
- (3) A misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is [~~\$300 or less;~~ not in excess of \$750.”

SECTION 3. Section 431:3-212, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-212 Application for authority.** To apply for an original certificate of authority, an insurer shall~~;~~ file with the commissioner a Uniform Certificate of Authority Application from the National Association of Insurance Commissioners that shall set forth or be accompanied by all of the following:

- (1) ~~File with the commissioner its~~ The insurer's request showing:
  - (A) Its name, in compliance with sections 431:3-202(b) and 431:4-104(d)(1), home office location, type of insurer, organization date, ~~and~~ state or country of its domicile, and name and location of the principal office of its attorney-in-fact, if a reciprocal insurer;
  - (B) The classes of insurance it proposes to transact; and
  - (C) Additional information as the commissioner may reasonably require~~;~~.
- (2) ~~File with the commissioner;~~ Documents including the following:
  - (A) A copy of its charter as amended or ~~such copy~~ certified by the proper public officer of the state or country of domicile, if a foreign or alien insurer;
  - (B) A copy of its bylaws as amended, certified by its proper officer;
  - (C) A copy of its annual statement as of December 31 last preceding;
  - (D) An appointment of the commissioner as its attorney to receive service of legal process, if a foreign or alien insurer~~;~~ or a domestic reciprocal insurer;
  - (E) The name and business address of its authorized resident agent upon whom process may be served in all cases, if a foreign or alien insurer;
  - (F) A copy of the appointment and authority of its United States manager, certified by its proper officer, if an alien insurer;
  - (G) A certificate from the proper public official of its state or country of domicile showing that it is duly organized and ~~is~~ authorized to transact the classes of insurance proposed to be transacted, if a foreign or alien insurer;
  - (H) The declaration required by section 431:4-409, if a domestic reciprocal insurer;
  - (I) ~~Certificate~~ A certificate of the proper public official as to any deposit made or held in compliance with this code;
  - (J) ~~Copy~~ A copy of the report of the last examination made of the insurer certified by the insurance supervisory official of its state of domicile or entry into the United States, if a foreign or alien insurer; and
  - (K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this code~~;~~ and.
- (3) ~~Deposit~~ A deposit with the commissioner of the appropriate fees required by this code.”

SECTION 4. Section 431:3-212.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each transferring insurer shall file new policy forms on or before the effective date of the transfer, if such forms are required to be approved by the commissioner. The insurer may use existing policy forms with appropriate endorsements if permitted by ~~and under such conditions as approved by~~ the commissioner. Every ~~such~~ transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly a Uniform Certificate of Authority Application for any resulting amendments to corporate documents filed or required to be filed with the commissioner.”

SECTION 5. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner shall collect, in advance, the following fees:

- (1) Certificate of authority:
  - (A) Application for [a] certificate of authority .....\$900
  - (B) Issuance of certificate of authority .....\$600
  - (C) Application for motor vehicle self-insurance.....\$300
- (2) Organization of domestic insurers and affiliated corporations:
  - (A) Application for [a] solicitation permit .....\$1,500
  - (B) Issuance of solicitation permit.....\$150
- (3) Producer’s license:
  - (A) Issuance~~[-]~~ of regular license ..... \$50
  - (B) Issuance~~[-]~~ of temporary license..... \$50
- (4) Nonresident producer’s license: Issuance ..... \$75
- (5) Independent adjuster’s license: Issuance ..... \$75
- (6) Public adjuster’s license: Issuance ..... \$75
- (7) Claims adjuster’s limited license: Issuance ..... \$75
- (8) Independent bill reviewer’s license:
  - Issuance ..... \$80
- (9) Limited producer’s license: Issuance ..... \$60
- (10) Managing general agent’s license: Issuance ..... \$75
- (11) Reinsurance intermediary’s license:
  - Issuance ..... \$75
- (12) Surplus lines broker’s license: Issuance .....\$150
- (13) Service contract provider’s registration:
  - Issuance ..... \$75
- (14) Approved course provider certificate:
  - Issuance .....\$100
- (15) Approved continuing education course certificate:
  - Issuance ..... \$30
- (16) Vehicle protection product warrantor’s registration:
  - Issuance ..... \$75
- (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 .....\$1,000
- (19) Legal service plan certificate of authority:
  - Issuance before July 1, 2014 .....\$1,000
  - Issuance on or after July 1, 2014 .....\$500
- (20) Life settlement provider’s license:
  - Issuance before July 1, 2014 .....\$150
  - Issuance on or after July 1, 2014 ..... \$75

- (21) Life settlement broker's license:
  - Issuance before July 1, 2014.....\$150
  - Issuance on or after July 1, 2014..... \$75
- (22) Examination for license: For each examination, a fee to be established by the commissioner."

SECTION 6. Section 431:9-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), following a ~~[catastrophe in this State]~~ declaration by the commissioner authorizing assistance of nonresident adjusters, a Hawaii license shall not be required of a nonresident adjuster for the adjustment of losses; provided that:

- (1) The common losses suffered that are to be adjusted are a direct result of ~~[the catastrophe]~~ an event and ~~[shall be]~~ are so severe that licensed adjusters and licensed independent adjusters who are residents of this State will be unable to adjust the losses within a reasonable time as determined by the commissioner;
- (2) The nonresident adjuster provides ~~[to]~~ the commissioner a certified copy of the adjuster's current license in another state. The other state shall have substantially similar licensing requirements to section 431:9-222; and
- (3) Within three working days of the commencement of work by the nonresident adjuster, the insurance company, independent adjusting company, or producer that is using the adjuster shall provide on its letterhead to the commissioner:
  - (A) The name of the nonresident adjuster;
  - (B) The nonresident adjuster's Hawaii mailing and business addresses and phone numbers; and
  - (C) The nonresident adjuster's permanent home and business addresses and phone numbers.

Upon satisfaction of all of these requirements, the nonresident adjuster may be registered with the commissioner and adjust ~~[catastrophe]~~ the event's losses in this State for up to one hundred twenty days from the date of registration or for a period of time determined by the commissioner, whichever is less.

As used in this subsection, ~~["catastrophe"]~~ "event" means insured property losses in Hawaii that result from a sudden, specific, and natural or manmade disaster or phenomenon, as determined by the commissioner."

SECTION 7. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definition of "terminate" to read as follows:

- "~~Terminate~~" means:
- (1) To cancel the relationship between an insurance producer and an insurer; or
  - ~~[(2) To cancel the relationship between an appointing producer and another producer; or~~
  - ~~(3)]~~ (2) To terminate a producer's authority to transact insurance."

SECTION 8. Section 431:9A-114, Hawaii Revised Statutes, is amended to read as follows:

**"§431:9A-114 Appointments.** (a) An insurance producer shall not act as an agent of an insurer unless the ~~[insurane]~~ producer becomes an appointed agent of that insurer ~~[or is contracted with and appointed by an insurance producer so appointed].~~

(b) To appoint a producer as its agent, the ~~[appointing]~~ insurer ~~[or producer]~~ shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency or business entity contract is executed or the first insurance application is submitted to the insurer ~~[or producer]~~. If the appointment form is not received by the commissioner within the fifteen-day period, the appointment shall become effective on the date on which the commissioner receives the appointment form. A producer shall disclose to a client if the conditions of subsection (a) have not been met. An insurer ~~[or producer]~~ may also elect to appoint a producer to all or some insurers within the insurer's ~~[or producer's]~~ holding company system or group by filing with the commissioner a single appointment notice.

(c) Upon receipt of the notice of appointment and within a reasonable time not to exceed thirty days, the commissioner shall verify that the ~~[insurance]~~ producer is eligible for appointment. If the ~~[insurance]~~ producer is determined to be ineligible for appointment, the commissioner shall notify the appointing insurer ~~[or producer]~~ within five days of its determination.

(d) An appointing insurer ~~[or producer]~~ shall pay an appointment fee, in the amount and method of payment set forth in article 7, for each ~~[insurance]~~ producer appointed by the appointing insurer ~~[or producer]~~.

(e) An appointing insurer ~~[or producer]~~ shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in article 7."

SECTION 9. Section 431:9A-115, Hawaii Revised Statutes, is amended to read as follows:

**"§431:9A-115 Notification to commissioner of termination.** (a) An insurer~~;~~ or its authorized representative ~~[of the insurer, or a producer]~~ that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the commissioner within thirty days following the effective date of the termination, using the applicable format prescribed by the commissioner. An insurer~~;~~ or its authorized representative ~~[of the insurer, or a producer who]~~ that terminates a producer for one of the reasons set forth in section 431:9A-112, or ~~[who]~~ that has knowledge the producer was found by a court, governmental body, or self-regulatory organization to have engaged in any of the activities in section 431:9A-112, shall use the particular format for that situation as prescribed by the commissioner. Upon the written request of the commissioner, ~~[the]~~ an insurer or its authorized representative that terminates a producer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

(b) ~~[The]~~ An insurer~~;~~ or its authorized representative ~~[of the insurer, or]~~ that terminates a producer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer~~;~~ or its authorized representative ~~[of the insurer, or a producer]~~ discovers additional information that would have been reportable to the commissioner in accordance with subsection (a), had the insurer~~;~~ or its authorized representative ~~[of the insurer, or producer then]~~ known of its existence.

(c) ~~[The]~~ An insurer~~;~~ and its authorized representative ~~[of the insurer, and the]~~ that terminate a producer are subject to the following:

(1) Within fifteen days after making the notification required by subsections (a) and (b), the insurer~~;~~ or its authorized representative ~~[of the insurer, or the producer]~~ shall mail a copy of the notification to the producer at the producer's last known address. If the producer is terminated for any of the causes listed in section 431:9A-112, the

insurer~~;~~ or its authorized representative ~~[of the insurer, or the producer]~~ shall provide a copy of the notification to the producer at the producer's last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

- (2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the commissioner. The producer, by the same means, shall simultaneously send a copy of the comments to the reporting insurer~~;~~ or its authorized representative ~~[of the insurer, or the producer]~~, and the comments shall become ~~[a]~~ part of the commissioner's file and shall accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (e).
- (d) Immunity from civil liability for notification applies as follows:
- (1) In the absence of actual malice, an insurer, the insurer's authorized representative, a producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other commissioners or regulatory or law enforcement agencies shall not be subject to civil liability~~;~~ ~~and a].~~ A civil cause of action of any nature shall not arise against these entities or their respective agents or employees~~;~~ as a result of ~~[any]~~:
- (A) Any statement or information required by or provided pursuant to this section ~~[or any]~~;
- (B) Any information relating to any statement that may be requested in writing by the commissioner~~;~~ from an insurer or producer; or ~~[a]~~
- (C) A statement by a terminating insurer or producer to an insurer or producer limited solely ~~[and exclusively]~~ to whether a termination under subsection (a) was reported to the commissioner, provided that the propriety of any termination under subsection (a) is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.
- (2) In any action brought against a person that may have immunity under paragraph (1) for making any statement required by this section or for providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.
- (3) ~~[Paragraphs]~~ Paragraph (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (e) Confidentiality and privilege from disclosure ~~[is]~~ are established as follows:
- (1) Any documents, materials, or other information in the control or possession of the commissioner or ~~[any]~~ the commissioner's agent ~~[of the commissioner that is]~~ and furnished by an insurer, a producer, or an employee or agent ~~[thereof who is]~~ acting on behalf of the insurer or producer, or ~~[is]~~ obtained by the commissioner, ~~[any]~~ the commissioner's agent ~~[of the commissioner]~~, the insurance division, or any employee of the insurance division, in an investigation pursuant to this section shall be confidential and privileged, shall not be subject to chapter 92F, ~~[shall not be subject to]~~ subpoena,

~~[shall not be subject to]~~ or discovery, and shall not be admissible in evidence in any civil action; provided that the commissioner or the commissioner's designee is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

- (2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be required to testify in any civil action concerning any confidential documents, materials, or information subject to paragraph (1).
- (3) Any provision to the contrary notwithstanding, the commissioner may:
  - (A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (1), with other state, federal, and international regulatory and law enforcement agencies and authorities, the National Association of Insurance Commissioners, and their affiliates or subsidiaries; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
  - (B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and ~~[from]~~ state, federal, and international regulatory and law enforcement agencies and authorities and shall maintain as confidential or privileged any document, material, or information received with the notice or ~~[the]~~ understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and
  - (C) Enter into agreements governing sharing and use of information consistent with this subsection.
- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or ~~[as a result of]~~ sharing, receiving, or using the information as authorized in paragraph (3).
- (5) Nothing in this article shall prohibit the commissioner from releasing final~~ly~~ adjudicated actions, including terminations that are open to public inspection pursuant to section 431:2-209 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.
- (f) An insurer, ~~[the]~~ its authorized representative ~~[of the insurer]~~, or a producer who fails to report as required ~~[under the provisions of]~~ by this section or who is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with article 2."

SECTION 10. Section 431:15-201, Hawaii Revised Statutes, is amended to read as follows:

**"§431:15-201 Commissioner's summary orders and supervision proceedings.**

(a) If, upon examination or at any other time, the commissioner finds that any domestic insurer requires supervision because it is in ~~[such]~~ a condition ~~[as to]~~

~~that would~~ render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the commissioner shall issue a supervision order and shall:

- (1) Notify the insurer of the commissioner's order; and
- (2) Furnish to the insurer a written list of the commissioner's requirements to abate the commissioner's order. The commissioner shall also proceed, if necessary, against the insurer pursuant to section 431:2-203.

(b) During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer~~[-]~~ and may employ counsel, clerks, and assistants as necessary. The supervisor shall have all the powers and responsibilities granted under this section. Any person appointed under this section shall serve at the pleasure of the commissioner.

(c) The compensation of the supervisor, counsel, clerks, and assistants and all expenses of the supervision shall be approved by the commissioner and paid out of the funds or assets of the insurer upon presentation of a detailed account of the expenses filed by the supervisor or other persons employed or appointed by the commissioner. The commissioner may in whole or in part defer payment of expenses due from the insurer pursuant to this section upon a showing that payment would adversely impact the financial condition of the insurer and jeopardize its recovery during supervision. Deferred payments shall be made by the insurer when payment no longer adversely impacts its financial condition.

~~(d)~~ The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsection (a) and ~~[also]~~ may ~~[require that]~~ prohibit the insurer ~~[shall not do]~~ from doing any of the following ~~[things]~~ during the period of supervision without ~~[the]~~ prior written approval of the commissioner or ~~[the]~~ supervisor:

- (1) Dispose of, convey, or encumber any of its assets or ~~[its]~~ business in force;
- (2) Withdraw from any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company;
- (8) Enter into any new reinsurance contract or treaty; or
- (9) Write any new or renewal business.

~~[(e)]~~ (e) Any insurer subject to an order under this section shall comply with the requirements of the commissioner within sixty days from the date the supervision order is served. If the insurer fails to comply within the time specified, the commissioner may institute proceedings under section 431:15-301 or section 431:15-306 to have a rehabilitator or liquidator appointed~~[-]~~ or seek to enforce the order pursuant to section 431:2-203.

~~[(d)]~~ (f) Any insurer subject to an order under this section may request a hearing to review the order. The hearing shall be held as provided in chapter 91, but the request for a hearing shall not stay the effect of the order. The insurer, at any time, may waive said hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies.

~~[(e)]~~ (g) During the period of supervision, the insurer may request that the commissioner [tø] review an action taken or proposed to be taken by the supervisor~~[-]~~, specifying where the action complained of is believed not to be that the insurer believes is not in the best interest of the insurer.



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~~[(f)]~~ (h) If any person has violated any supervision order issued under this section ~~[which as to the person was then still in effect]~~, the person shall pay a penalty imposed by the circuit court of the first judicial circuit of this State, which shall not ~~[to]~~ exceed \$10,000 for each violation.

~~[(g)]~~ (i) The commissioner may apply for, and the court may grant, ~~[such]~~ restraining orders, preliminary ~~[and]~~ or permanent injunctions, ~~[and]~~ or other orders ~~[as may be deemed necessary and proper]~~ to enforce a supervision order.

~~[(h)]~~ (j) If any person:

- (1) With authority over or in charge of any segment of the insurer's affairs; or
- (2) Who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer; knowingly violates any valid order of the commissioner issued under this section and, as a result of the violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, the person shall become personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor may bring an action on behalf of the insurer in the circuit court of the first judicial circuit of this State to recover the amount of the reduction or loss together with any costs."

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 2017; provided that sections 7, 8, and 9 shall take effect on January 1, 2019.

(Approved July 10, 2017.)

### Note

1. Edited pursuant to HRS §23G-16.5.