

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 II of article 9 to be appropriately designated and to read as follows:

“§431:9- **Contracts between public adjuster and insured.** (a) All contracts for services provided by a public adjuster shall be in writing and contain the following terms:

- (1) Title of “Public Adjuster Contract”;
- (2) Description of services to be provided to the insured;
- (3) Full salary, fee, commission, or other consideration the public adjuster is to receive for services;
- (4) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment, specified by type, with dollar estimates set forth in the contract, and with any additional expenses first approved by the insured;
- (5) Attestation language stating that the public adjuster is fully bonded pursuant to section 431:9-223;
- (6) Insured’s full name, street address, insurance company name, and policy number, if known;
- (7) Description of the loss and its location, if applicable;
- (8) Legible full name of the public adjuster signing the contract;
- (9) The public adjuster’s permanent home state, business address, and phone number;
- (10) License number on record with the insurance division;
- (11) Signatures of the public adjuster and the insured; and
- (12) Date the contract was signed by the public adjuster and date the contract was signed by the insured.

(b) A public adjuster contract shall not contain any contract term that:

- (1) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
- (2) Imposes collection costs or late fees; or
- (3) Precludes the insured from pursuing civil remedies.

(c) No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, fee, commission, or other thing of value that is determined to be unreasonable by the commissioner. If the compensation is based on a share of the insurance settlement or proceeds, the exact percentage shall be specified in the contract.

(d) If the insurer, no later than seventy-two hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay the insured the limits of any coverage that are or may be applicable to the specific claim, the public adjuster shall:

- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
- (2) Inform the insured that the amount of a recovered loss might not be increased by the insurer; and
- (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

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

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

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

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

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

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

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

“§431:9A- **Standard of conduct.** An owner issued a limited lines self-service storage producer license shall act in good faith, abstain from deception, and practice honesty and equity in all insurance matters.”

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

“§431:31- **Standard of conduct.** A vendor issued a limited lines license shall act in good faith, abstain from deception, and practice honesty and equity in all insurance matters.”

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

“(c) The commissioner may:

- (1) Make reasonable rules for effectuating any provision of this code, except those relating to the commissioner’s appointment, qualifications, or compensation. The commissioner shall adopt rules to effectuate article 10C of chapter 431, subject to the approval of the governor’s office and the requirements of chapter 91;
- (2) Conduct examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any provision;

- (3) Require applicants to provide fingerprints and pay a fee to allow the commissioner to make a determination of license eligibility after obtaining state and national criminal history record checks from the Hawaii criminal justice data center and the Federal Bureau of Investigation; ~~and~~
- (4) Require, upon reasonable notice, that insurers report any claims information the commissioner may deem necessary to protect the public interest~~[-]; and~~
- (5) Upon showing of good cause, waive or modify, in whole or part, any or all fees by order.

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

“(f) The taxes imposed by subsections (a), (b), (c), and (d) shall be paid monthly. The monthly tax shall be due and payable by electronic payment via the ~~[Automated Clearing House debit or credit payment system]~~ National Association of Insurance Commissioners’ Online Premium Tax for Insurance or an equivalent service approved by the commissioner on or before the twentieth day of the calendar month following the month in which it accrues, coinciding with the filing of the statement provided for in section 431:7-201.

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

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

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

Any insurer failing or refusing to pay the required taxes above stated when due and payable shall be liable for a fine of \$500 or ten per cent of the tax due, whichever is greater; plus interest at a rate of twelve per cent per annum on the delinquent taxes. The taxes may be collected by distraint, or the taxes, fine, and interest may be recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes, fine, and interest, should any be imposed, are fully paid.

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

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

“(a) Each ~~[surplus lines broker shall file with the commissioner on or before March 15, 2011, a verified statement of all surplus lines insurance transacted during 2010. Each surplus lines broker shall file with the commissioner on or before September 15, 2011, a verified statement of all surplus lines insurance transacted after December 31, 2010, and before July 1, 2011. After June 30, 2011, each]~~ surplus lines broker shall file electronically with the commissioner within forty-five days of the end of each calendar quarter a verified statement of all surplus lines insurance transacted during the calendar quarter as follows:

- (1) The statement for the quarter ending March 31 shall be filed on or before May 15;
- (2) The statement for the quarter ending June 30 shall be filed on or before August 15;
- (3) The statement for the quarter ending September 30 shall be filed on or before November 15; and
- (4) The statement for the quarter ending December 31 shall be filed on or before February 15.”

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

“(a) ~~On or before March 15, 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker during 2010. On or before September 15, 2011, each surplus lines broker shall pay to the director of finance, through the commissioner, a premium tax on surplus lines insurance transacted by the broker after December 31, 2010, and before July 1, 2011. After June 30, 2011, within~~ Within forty-five days after the end of each calendar quarter, each surplus lines broker shall pay to the director of finance, through the commissioner~~;~~ via the National Association of Insurance Commissioners’ Online Premium Tax for Insurance or an equivalent service approved by the commissioner, a premium tax on surplus lines insurance transacted by the broker during the calendar quarter for insurance for which this State is the home state of the insured. The tax rate shall be in the amount of 4.68 per cent of gross premiums, less return premiums, on surplus lines insurance for which the home state is this State.

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

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

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

- (b) The licensee, upon receipt of the funds, shall either:
 - (1) Remit the ~~[premiums (less commissions)] funds~~ and return ~~[premiums] funds~~ received or held by the licensee to the ~~[insurers or the] persons entitled to [such] the funds;~~ or
 - (2) Maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company situated in Hawaii, separate from the licensee’s own funds or funds held by the licensee in any other capacity, ~~[in an amount at least equal to the premiums (net of commissions)]~~ and return ~~[premiums] funds~~ received by ~~[such] the licensee~~ and unpaid to the insurers or persons entitled to ~~[such] the funds.~~ Return ~~[premiums] funds~~ shall be returned within thirty days, unless directed otherwise in writing by the person entitled to the funds.

The licensee shall not be required to maintain a separate bank account or other account for the funds of each ~~[insurer or] person~~ entitled to ~~[such] the funds,~~ ~~[if and]~~ so long as the funds held for the ~~[insurer or] person~~ entitled to ~~[such] the funds~~ are reasonably ascertainable from the books of account and records of the licensee. Only ~~[such] additional funds [as may be]~~ reasonably necessary to pay

bank, savings and loan association, or financial services loan company charges may be commingled with the [premium] funds. In the event the bank, savings and loan association, or financial services loan company account is an interest earning account, [such] the licensee may not retain the interest earned on [such] the funds to the licensee's own use or benefit without the prior written consent of the [insurers or] person entitled to [such] the funds. A [premium] 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 431:9-230, Hawaii Revised Statutes", or words of similar import.

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

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

§431:9-235 Denial, suspension, revocation of licenses. (a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any license issued under this article through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, converted to the licensee's own use, or illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee, with intent to deceive, has materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been [~~guilty of~~] found to have committed any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee's affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public; or
- (8) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses.

(b) The license of any partnership or corporation may be [sø] suspended, revoked, or refused for any of the causes that relate to any individual designated in the license to exercise its powers.

(c) The holder of any license, which has been revoked or suspended, shall surrender the license certificate to the commissioner at the commissioner's request.

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

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

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

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

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

- (1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of accident and health or sickness insurance or baggage insurance on personal effects;
- (2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;
- (3) A limited license to any individual who sells policies of accident and health or sickness insurance as a promotional device to improve the circulation of a newspaper in this State;
- (4) A limited line credit insurance producer license to any individual who sells, solicits, or negotiates limited line credit insurance; or
- (5) A limited license to any owner of a self-service storage facility, as defined in section 507-61, to sell stored property insurance, as defined in section 431:9A-171.

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

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

(d) A person issued a limited license shall act in good faith, abstain from deception, and practice honesty and equity in all insurance matters.”

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

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

- (1) ~~[Five]~~ Four persons from, and members or representatives of, nationally organized insurers or their domestic insurer affiliates;
- (2) One person to represent insurance producers;
- ~~[(3) Two members, each a self-insurer under this article, and nominated by all the certified self-insurers in the State;~~
- ~~(4) Two members, not affiliated with the foregoing organizations, nominated by such nonaffiliated insurers;]~~ and
- ~~[(5) (3) Two members [each, to be] selected by the commissioner or nominated by each of the classifications provided for in section 431:10C-407(b).”~~

SECTION 13. Section 431:10D-107, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three per

cent a year and the following, which shall be specified in the contract if the interest rate will be reset:

- (1) The five-year constant maturity treasury rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one per cent, specified in the contract not later than fifteen months prior to the contract issue date or redetermination date under paragraph (4);
- (2) Reduced by one hundred twenty-five basis points;
- (3) Where the resulting interest rate is ~~not~~ no less than fifteen-hundredth of one per cent; and
- (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this paragraph, “basis” means the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.”

SECTION 14. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison ~~[which:]~~ that:
 - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
 - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
 - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
 - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
 - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
 - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
 - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
 - (H) Misrepresents any insurance policy as being shares of stock;
 - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
 - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital;
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any as-

- sertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading;
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance;
 - (4) Boycott, coercion, and intimidation.
 - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
 - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer;
 - (5) False financial statements.
 - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
 - (B) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer;
 - (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;
 - (7) Unfair discrimination.
 - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any policy of life insurance or annuity contract or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
 - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of

- premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
- (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
 - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination; or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate;
 - (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits;
 - (F) Terminating or modifying coverage, or refusing to issue or renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subparagraph shall not apply to accident and health or sickness insurance sold by a casualty insurer; provided further that this subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
 - (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
 - (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confi-

- dentiality of the test results shall be maintained as provided by section 325-101;
- (8) Rebates. Except as otherwise expressly provided by law:
 - (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or
 - (B) Giving, selling, or purchasing, or offering to give, sell, or purchase as inducement to the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract;
 - (9) Nothing in paragraph (7) or (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:
 - (A) In the case of any life insurance policy or annuity contract, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and in the best interests of the insurer and its policyholders;
 - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;
 - (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; ~~and~~
 - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this article; and
 - (E) A reward under a wellness program established under a health care plan that favors an individual if the wellness program meets the following requirements:
 - (i) The wellness program is reasonably designed to promote health or prevent disease;
 - (ii) An individual has an opportunity to qualify for the reward at least once a year;
 - (iii) The reward is available for all similarly situated individuals;
 - (iv) The wellness program has alternative standards for individuals who are unable to obtain the reward because of a health factor;
 - (v) Alternative standards are available for an individual who is unable to participate in a reward program because of a health condition;

- (vi) The insurer provides information explaining the standard for achieving the reward and discloses the alternative standards; and
 - (vii) The total rewards for all wellness programs under the health care plan do not exceed twenty per cent of the cost of coverage;
- (10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:
- (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10;
 - (B) This paragraph shall not apply to entities licensed under chapter 386 or 431:10C; and
 - (C) For entities licensed under chapter 432 or 432D:
 - (i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and
 - (ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity and providing information reasonably related to the entity's investigation of its liability for coverage.

Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party claim" for purposes of this paragraph means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D;
- (11) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
 - (i) The insurer's policyholder;
 - (ii) Any other persons, including the commissioner; or
 - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.

The response shall be more than an acknowledgment that such person's communication has been received[.] and shall adequately address the concerns stated in the communication;
 - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

- (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
 - (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
 - (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
 - (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
 - (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
 - (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
 - (K) Attempting to settle claims on the basis of an application [~~which~~] that was altered without notice, knowledge, or consent of the insured;
 - (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
 - (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
 - (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician or advanced practice registered nurse of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
 - (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage to influence settlements under other portions of the insurance policy coverage;
 - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
 - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is "final" or is "a release" of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy;
- (12) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints [~~which~~]

that it has received since the date of its last examination under section 431:2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of ~~[these]~~ the complaints, and the time it took to process each complaint. For purposes of this section, “complaint” means any written communication primarily expressing a grievance;

- (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, producer, or individual; and
- (14) Failure to obtain information. Failure of any insurance producer, or an insurer where no producer is involved, to comply with section 431:10D-623(a), (b), or (c) by making reasonable efforts to obtain information about a consumer before making a recommendation to the consumer to purchase or exchange an annuity.”

SECTION 15. Section 431K-3.5, Hawaii Revised Statutes, is amended to read as follows:

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

(b) If the service fee is not paid on or before ~~[August 16 of the year in which payment is due,]~~ the extension date, a penalty shall be imposed in the amount of fifty per cent of the service fee. The commissioner shall provide written notice of the delinquency of payment and the imposition of the authorized penalty. If the service fee and the penalty are not paid within thirty days immediately following the date of the notice of delinquency, the commissioner may revoke the registration of the risk retention group and may not reinstate the registration until the service fee and the penalty have been paid.”

SECTION 16. Section 431K-7.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

SECTION 17. Section 431S-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each person seeking to register as a pharmacy benefit manager shall file with the commissioner an application on a form prescribed by the commissioner. The application shall include:

- (1) The name, address, official position, and professional qualifications of each individual who is responsible for the conduct of the affairs of the pharmacy benefit manager, including all members of the board of directors; board of trustees; executive commission; other governing board or committee; principal officers, as applicable; partners or members, as applicable; and any other person who exercises control or influence over the affairs of the pharmacy benefit manager;
- (2) The name and address of the applicant's agent for service of process in the State; and
- (3) A nonrefundable [application] issuance fee of \$140.

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

SECTION 18. Section 431S-4, Hawaii Revised Statutes, is amended to read as follows:

~~“§431S-4~~ **Annual renewal requirement.** (a) Each pharmacy benefit manager shall renew its registration by March 31 each year.

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

- (1) An application for renewal on a form prescribed by the commissioner; and
- (2) A [renewal] service fee of \$140.

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

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

SECTION 19. Section 432:1-108, 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; and
 - (B) Issuance of certificate of authority: \$600;
- (2) Organization of domestic mutual benefit societies:
 - (A) Application for a certificate of registration: \$1,500; and
 - (B) Issuance of certificate of registration: \$150; and
- (3) For all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority: \$600 per year.

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

SECTION 20. Section 432:2-108, 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;
- (2) Organization of domestic fraternal benefit societies:
 - (A) Application for a preliminary certificate of authority: \$1,500;
 - (B) Issuance of preliminary certificate of authority: \$150; and

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- (3) For all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority: \$600 per year.

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

SECTION 21. Section 432D-17, 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; and
(B) Issuance of certificate of authority: \$600; and
(2) For all services subsequent to the issuance of certificate of authority, including extension of the certificate of authority: \$600 per year.

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

SECTION 22. Section 432G-12, 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; and
(B) Issuance of certificate of authority: \$600; and
(2) For all services subsequent to the issuance of a certificate of authority, including extension of the certificate of authority: \$600 per year.

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

SECTION 23. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 25. This Act shall take effect upon its approval.

(Approved June 28, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.