H .B. NO. 3098

A BILL FOR AN ACT

RELATING TO ACTIVITIES REGULATED BY THE INSURANCE COMMISSIONER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

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

(1) Certificate of authority: Issuance $900

(2) Organization of domestic insurers and affiliated corporations:

(A) Application and all other papers required for issuance of solicitation permit, filing $1,500

(B) Issuance of solicitation permit $150

(3) Producer's license:

(A) Issuance, regular license $50

(B) Issuance, 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) Workers' compensation claim 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 $20

(18) Limited line motor vehicle rental company producer's license: Issuance $1,000

(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) $600 per year for all services (including extension of the certificate of authority) for an authorized insurer;

(2) $50 per year for all services (including extension of the license) for a regularly licensed producer;

(3) $75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;

(4) $45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;

(5) $45 per year for all services (including extension of the license) for a regularly licensed public adjuster;

(6) $45 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;

(7) $60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;

(8) $45 per year for all services (including extension of the license) for a producer's limited license;

(9) $75 per year for all services (including extension of the license) for a regularly licensed managing general agent;

(10) $75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;

(11) $45 per year for all services (including extension of the license) for a licensed surplus lines broker;

(12) $75 per year for all services (including renewal of registration) for a service contract provider;

(13) $65 per year for all services (including extension of the certificate) for an approved course provider;

(14) $20 per year for all services (including extension of the certificate) for an approved continuing education course;

(15) $75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;

(16) $20 for a criminal history record check; and

(17) $600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer.

The services referred to in paragraphs (1) to (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.

(c) The commissioner shall notify the holder of a certificate of authority issued under article 3 by written notice at least thirty days prior to the extension date of the certificate of authority, license, or other certificate. If the fee is not paid before or on the extension date, the fee shall be increased by a penalty in the amount of fifty per cent of the fee. If the fee and the penalty are not paid within the thirty days immediately following the extension date, the commissioner may revoke, suspend, or inactivate the certificate of authority, license, or other certificate, and shall not reissue, remove the

suspension of, or reactivate the certificate of authority, license, or other certificate until the fee and penalty have been paid.

(d) Failure to pay the fee before or on the extension date for a license or other certificate issued under article 8, 9 [~~or~~], 9A, 9B, or 9C shall cause the automatic inactivation of the license or certificate effective as of the extension date.

(e) Failure of a vehicle protection product warrantor or a service contract provider to make timely payment of the annual renewal of registration fee under chapter 481R or 481X shall result in automatic inactivation of the registration of the vehicle protection product warrantor or service contract provider.

[~~(e)~~] (f) All fees and penalties shall be deposited to the credit of the compliance resolution fund."

SECTION 2. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The required number of credit hours shall be as follows:

(1) For a licensee authorized to sell lines of insurance in only one of the following groups:

(A) Life or accident and health or sickness; or

(B) Property, marine and transportation, vehicle, general casualty, or surety;

the requisite number of credit hours shall be [~~twenty~~] twenty-four credit hours, including eighteen credit hours relating to the line of authority for which the license is held [~~, including~~], three credit hours relating to ethics training, and three credit hours relating to the insurance laws and the insurance rules;

(2) For a licensee with a license to sell lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be [~~thirty~~] twenty-four credit hours, [~~of which:~~] including:

(A) [~~Twelve~~] Ten credit hours [~~shall relate~~] relating to paragraph (1)(A), of which two credit hours shall relate to the insurance laws and [~~the~~] rules relating to the line of authority for which the license is held; [~~and~~]

(B) [~~Eighteen~~] Eleven credit hours [~~shall relate~~] relating to paragraph (1)(B), of which two credit hours shall relate to the insurance laws and [~~the~~] rules relating to the line of authority for which the license is held[~~.~~]; and

(C) Three credit hours relating to ethics training. For purposes of this section, ethics training shall include, but shall not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement considerations, and conflicts of interest."

SECTION 3. Section 481R-4, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§481R-4**[~~]~~] **Registration requirements.** (a) Before conducting business in this State or issuing any warranty, a warrantor shall register with the commissioner on a form prescribed by the commissioner, and shall pay to the commissioner a fee as provided under section 431:7-101. A person who sells or solicits a vehicle protection product, but who is not a warrantor, shall not be required to register with the commissioner as a warrantor.

(b) Warrantor registration records shall be updated annually or within thirty days of any change, whichever occurs first, and shall contain the following information:

(1) The address of the principal office of the warrantor;

(2) The name and address of the warrantor's agent for the service of process in this State if other than the provider;

(3) The identities of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;

(4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this State;

(5) A copy of each warranty form the warrantor proposes to use in this State; and

(6) A statement that the warrantor is in compliance with the financial responsibility requirements of section 481R-5 and that details how the warrantor intends to meet the requirements, and proof of compliance with the requirements.

Failure to timely notify the commissioner of any change in registration records shall result in a penalty, pursuant to section 481R-13.

(c) Each warrantor shall pay to the commissioner the applicable fee, pursuant to section 431:7-101. Failure to make

timely payment of the applicable fee shall result in automatic inactivation of the registration of the warrantor, effective the day after the fee payment was due. A warrantor whose registration has been suspended for nonpayment of the fee may reinstate the registration, provided that the fee payable and a penalty, in the amount of fifty per cent of the unpaid fees, are paid within thirty days from the inactivation date and the warrantor is in compliance with all of the requirements of chapter 481R. If the warrantor fails to reinstate the warrantor's registration within the thirty-day period, the registration shall automatically expire.

[~~(c)~~] (e) The marketing, selling, offering for sale, issuing, making, proposing to make, and administering of vehicle protection products shall be exempt from:

(1) Chapter 481X; and

(2) The insurance laws of this State[~~.~~], unless specifically made applicable by this chapter.

[~~(d)~~] (f) The following contracts and agreements shall be exempt from this chapter and shall only be subject to other statutes and laws that specifically apply to them:

(1) Warranties or guarantees, other than those provided as part of a vehicle protection product; and

(2) Service contracts regulated by chapter 481X.

[~~(e)~~] (g) A seller shall not be deemed to be a warrantor unless, in addition to acting as a seller, the person is named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer."

SECTION 4. Section 481R-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor shall comply with financial security requirements by insuring each vehicle protection product warranty issued by the warrantor under a reimbursement insurance policy issued by an insurer authorized to engage in the business of insurance in this State or [~~under a surplus lines insurance policy issued by an insurer eligible to place coverage in this State as regulated under the insurance laws of this State.~~] with an insurer approved by the commissioner."

SECTION 5. Section 481X-3, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§481X-3**[~~]~~] **Registration.** (a) Before conducting business in this State, a provider shall register with the commissioner on a form prescribed by the commissioner, and shall

pay to the commissioner a fee as provided under section 431:7-101.

(b) Provider registration shall be updated annually or within thirty days of any change, whichever occurs first, and shall contain the following information:

(1) The address of the principal office of the provider;

(2) The name and address of the provider's agent for the service of process in this State, if other than the provider;

(3) The identities of the provider's executive officer or officers directly responsible for the provider's service contract business;

(4) The name, address, and telephone number of any administrators designated by the provider to be responsible for the administration of service contracts in this State;

(5) A copy of each service contract form the provider proposes to use in this State; and

(6) A statement that the provider is in compliance with the financial responsibility requirements of section 481X-4 and that details how the provider intends to meet the

1 requirements, and proof of compliance with the
2 requirements.
3 Failure to timely notify the commissioner of any change in
4 registration records shall result in a penalty, pursuant to
5 section 481X-12.
6 (c) Each provider shall pay to the commissioner the
7 applicable fee, pursuant to section 431:7-101. Failure to make
8 timely payment of the applicable fee shall result in automatic
9 inactivation of the registration of the provider, effective the
10 day after the fee payment was due. A provider whose
11 registration has been suspended for nonpayment of the fee may
12 reinstate the registration, provided that the fee payable and a
13 penalty, in the amount of fifty per cent of the unpaid fees, are
14 paid within thirty days from the inactivation date and the
15 provider is in compliance with all of the requirements of
16 chapter 481X. If the provider fails to meet the requirements to
17 reinstate the provider's registration within the thirty-day
18 period, the registration shall automatically expire."
19 SECTION 6. Section 481X-4, Hawaii Revised Statutes, is
20 amended to read as follows:
21 "**§481X-4 Financial responsibility.** A provider shall comply
22 with the requirements under any one of the following paragraphs,

and shall not be subject to any other financial security requirements under state law:

(1) The provider shall insure all service contracts under a contractual liability insurance policy issued by an insurer authorized to transact insurance in this State or [~~issued pursuant to part III of article 8 of chapter 431,~~] with an insurer approved by the commissioner;

(2) The provider shall:

(A) Maintain a funded reserve account for all obligations under service contracts issued and in force in this State. The reserves shall not be less than forty per cent of the gross consideration received from the sale of the service contract, less claims paid, for all in force contracts. The reserve account shall be subject to examination by the commissioner; and

(B) Place in trust with the commissioner, for all service contracts issued and in force in this State, a financial security deposit having a value that is the larger of $25,000 or five per cent of the gross consideration received, less claims paid for the sale of the service contracts. The financial security deposit shall consist of one of the following:

(i) A surety bond issued by an authorized surety;

(ii) Securities of the type eligible for deposit by authorized insurers in this State;

(iii) Cash;

(iv) A letter of credit issued by a qualified financial institution; or

(v) Another form of security authorized by the commissioner [~~by rule~~]; or

(3) The provider or its parent company shall:

(A) Maintain a net worth or stockholders' equity of at least $100,000,000; and

(B) Upon request, provide the commissioner with a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements.

If the financial responsibility requirement under this paragraph is to be maintained by the provider's parent company, the parent company shall guarantee the provider's obligations under service contracts sold by the provider in this State."

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

H.B. NO. 3098

1 SECTION 8. This Act shall take effect on July 1, 2008.

2

3 INTRODUCED BY: Calvin K.Y. Say

4 BY REQUEST

JAN 22 2008

H.B. NO. 3098

Report Title:
Insurance Producers; Continuing Education; Automatic Inactivation; Financial Responsibility

Description:
Creates uniformity between other states' laws and Hawaii law in regard to licensing requirements. Increases educational requirements to keep a license, automatically inactivates a license if fees are not paid on time, allows reactivation if the fee is paid in 30 days, and broadens the types of reinsurance that can be used to meet the financial obligations of insurance agents.

HB 3098

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO ACTIVITIES REGULATED BY THE INSURANCE COMMISSIONER.

PURPOSE:

(1) To amend the number of continuing education credit hours required for insurer producer license renewal as recommended by the National Association of Insurance Commissioners for the purpose of achieving nationwide uniformity and reciprocity;

(2) To authorize the imposition of automatic inactivation of license, certificate, or registration with respect to surplus lines brokers, reinsurance intermediaries, managing general agents, service contract providers, and vehicle protection product warrantors who fail to timely pay license, certificate, or registration renewal fees; and

(3) To impose upon service contract providers and vehicle protection product warrantors similar procedures for reinstatement of a registration that has been inactivated for failure to timely pay renewal fees as are presently imposed upon insurance producers, surplus lines brokers, reinsurance intermediary brokers, and managing general agents; provided that payment of the fee and fine for untimely payment of the fee are made within thirty days of the inactivation date.

(4) To permit service contract providers and vehicle protection product warrantors more options in selecting an insurer of a contractual liability and reimbursement insurance policy to meet

HB 3098

the financial responsibility requirements.

MEANS: Amend sections 431:7-101, 431:9A-124(b), 481R-4, 481R-5, 481X-3, and 481X-4, Hawaii Revised Statutes.

JUSTIFICATION: The continuing education provisions of this bill adopt the recommendation of the Uniformity Subgroup of the Producer Licensing Working Group of the National Association of Insurance Commissioners to attain uniformity and reciprocity with other states with respect to:

(1) The number of continuing education credit hours required as a prerequisite for license renewal for insurance producers; and

(2) The inclusion of ethics training in the continuing education requirement.

All states have agreed to reciprocity in insurance producer licensing. Accordingly, many states already have adopted these continuing education recommendations. Achieving nationwide uniformity in insurance licensing will make insurance regulation less burdensome and complicated for insurers, producers, and regulators, and this in turn will benefit the public. This proposal is an important step in achieving that goal.

The automatic inactivation provisions imposed by the bill are identical to the automatic inactivation provisions presently imposed on insurance producers and adjusters who fail to make timely payment of license or certificate renewal fees. These provisions promote administrative efficiency and place the burden of timely payment of renewal fees on the party that is responsible for paying the fees. Furthermore, the automatic inactivation provisions proposed by the bill comport with the requirement of section 431:7-101, that requires the Insurance Commissioner's collection of fees from all of the entities affected by this bill *in advance* of the license, certificate, or registration renewal.

HB 3098

The Insurance Division provides 30-day notice regarding the payment of fees for renewals of licenses and certificates to insurance producers, adjusters, surplus lines brokers, reinsurance intermediaries, and managing agents. This bill proposes to provide the same notice to service contract providers and vehicle product warrantors with respect to registration renewal and updating.

The bill provides a service contract provider or vehicle product protection warrantor greater latitude in selecting a qualified insurer to provide its contractual liability or reimbursement insurance policy. As presently written the statute does not permit the commissioner to consider insurance policies that would provide adequate protection for the public.

Impact on the public: With respect to the continuing education portions of the bill, achieving nationwide uniformity in insurance licensing will make insurance regulation less burdensome and complicated for insurers, producers, and regulators, and this in turn will benefit the public. The inclusion of ethics training in the continuing education requirements for insurance producers will improve consumer protection and consumer service.

The automatic inactivation provisions will promote administrative efficiency, reduce the costs of regulation, and promote the timely payment of license renewal fees.

The financial responsibility sections will promote administrative efficiency, reduce the costs of regulation, and provide companies with more alternatives for compliance without any reduction in protection of the public.

Impact on the department and other agencies: The bill benefits the Department of Commerce and Consumer Affairs by promoting administrative efficiency, reducing the costs of regulation, and promoting the timely payment of fees. The bill also enhances the Department's ability to protect insurance consumers by conforming the

HB 3098

continuing education requirements for insurance producers to a national standard.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2008.