H.B. NO. 3103

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

SECTION 1. Section 431:9A-112, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty days of receipt of the written demand and shall be held pursuant to chapter 91; provided that if the action is for the suspension, revocation, or refusal to renew a license, the commissioner may suspend the license pending the hearing; and provided further that this subsection shall not apply to an action taken pursuant to subsection (a)(15), and following that action, unless otherwise provided by law, the commissioner shall without further review or hearing renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity."

SECTION 2. Section 431:9C-102, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9C-102 Licensure.** (a) No person, firm, association, or corporation shall act as a managing general agent, with respect to risks located in this State for an insurer licensed in this State, unless licensed as a producer in this State.

(b) No person, firm, association, or corporation shall act as a managing general agent, representing an insurer domiciled in this State with respect to risks located outside this State, unless licensed as a producer in this State.

[~~(c) The commissioner shall require the managing general agent to furnish a bond in an amount equal to $100,000 or ten per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, for the protection of the insurer. Each managing general agent shall provide the commissioner with:~~

~~(1) Proof of the bond at the time of the initial application for licensure;~~

~~(2) Appropriate documentation at the time of each renewal to show that the bond continues to be in effect or that a new bond has been secured; and~~

~~(3) Any other report required by the commissioner.~~

~~(d) The commissioner shall require the managing general agent to maintain an errors and omissions policy in an amount equal to $1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company approved by the commissioner. Each managing general agent shall provide the commissioner with:~~

~~(1) Proof of the policy at the time of the initial application for licensure;~~

~~(2) Appropriate documentation at the time of each renewal to show that the policy continues to be in effect or that a new policy has been secured; and~~

~~(3) Any other report required by the commissioner.~~]"

SECTION 3. Section 431:9C-103, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9C-103 Required contract provisions.** No person, firm, association, or corporation acting as a managing general agent shall place business with an insurer unless there is in force, a written contract between the managing general agent and the insurer which sets forth the responsibilities of each party and, where both the managing general agent and the insurer share

1 responsibility for a particular function, specifies the division
2 of those responsibilities, and which contains at least the
3 following additional provisions:
4 (1) The insurer may terminate the contract for cause upon
5 written notice to the managing general agent. The
6 insurer may suspend the underwriting authority of the
7 managing general agent during the pendency of any
8 dispute regarding the cause for termination;
9 (2) The managing general agent shall render accounts to the
10 insurer detailing all transactions and remit all funds
11 due under the contract to the insurer on not less than
12 a monthly basis;
13 (3) All funds collected for the account of an insurer shall
14 be held by the managing general agent in a fiduciary
15 capacity and deposited in an account in a bank which is
16 a member of the Federal Reserve System. This account
17 shall be used for all payments on behalf of the insurer
18 by the managing general agent. The managing general
19 agent may retain no more than three months estimated
20 claims payments and allocated loss adjustment expenses;
21 (4) Separate records of business written by the managing
22 general agent shall be maintained in the licensee's

office. The insurer shall have access to and the right to copy all accounts and records of the managing general agent related to the insurer's business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Records shall be in an organized form according to each class of insurance and shall include the following information to the extent it is applicable:

(A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance;

(B) The names of any other licensees from whom business is accepted and the names of persons to whom commissions or allowances of any kind are promised or paid;

(C) A record of each investigation or adjustment undertaken or consummated and a statement of any

fee, commission, or other compensation received or to be received by the adjuster on account of the investigation or adjustment;

(D) A record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and

(E) Any additional information as shall be customary or as may reasonably be required by the commissioner.

This paragraph shall not apply to life or accident and health or sickness insurance if the records required of such insurance are customarily maintained in the offices of the insurer;

(5) The contract may not be assigned in whole or in part by the managing general agent;

(6) Appropriate underwriting guidelines including:

(A) The maximum annual premium volume;

(B) The basis of the rates to be charged;

(C) The types of risks which may be written;

(D) Maximum limits of liability;

(E) Applicable exclusions;

(F) Territorial limitations;

(G) Policy cancellation provisions; and

(H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies;

(7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be in the amount of $100,000 or ten per cent of the managing general agent's total annual written premium nationwide for the insurer in the prior calendar year, whichever is greater; provided that the amount of the surety bond shall not exceed $500,000;

(8) The insurer shall require the managing general agent to obtain and maintain an errors and omissions policy in the minimum amount of $1,000,000 with an insurance company licensed to do business within the State or an insurance company approved by the commissioner;

[~~(7)~~] (9) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(A) All claims shall be reported to the insurer in a timely manner;

(B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;

(C) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;

(D) Any settlement authority granted to the managing general agent may be terminated for cause upon the

insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and

(E) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;

[~~(8)~~] (10) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and, in any event, not until the profits have been verified through examination pursuant to section 431:9C-105; and

[~~(9)~~] (11) The managing general agent shall not:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent

may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(B) Commit the insurer to participate in insurance or reinsurance syndicates;

(C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer

without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;

(F) Permit its subagent to serve on the board of directors of the insurer;

(G) Employ an individual who is employed by the insurer also; or

(H) Appoint a sub-managing general agent."

SECTION 4. Section 431:20-122, Hawaii Revised Statutes, is amended to read as follows:

"**§431:20-122 Annual statement.** (a) Every domestic title insurer shall include in its annual statement furnished to the commissioner pursuant to section 431:20-103(4), the name of each person in this State which is a controlled escrow company or underwritten title company by reason of its relationship with [~~such~~] title insurer.

(b) Every foreign and alien title insurer shall comply with the reporting requirements of sections 431:3-301 and 431:3-302."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

H.B. NO. 3103

1 INTRODUCED BY: Calvin K.Y. Say

2 BY REQUEST

JAN 22 2008

Report Title:
Insurance Licensing; Suspension; Managing General Agents; Bond; Errors and Omissions Policy; Title Insurance

Description:
Clarifies suspension pending a hearing requirements for actions to suspend, revoke, or refuse to renew a license. Establishes a cap on the bond amount that managing general agents are required to furnish. Requires insurers to require managing general agents's compliance with bond and errors and omissions policy requirements. Conforms financial statement filing requirements for title insurers with existing law.

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To improve Hawaii's business climate for insurers and to make the insurance statutes more understandable, technically correct, and consistent by:

(1) Clarifying, for producer licensing purposes, the insurance commissioner's authority to summarily suspend a license pending a hearing on actions to suspend, revoke, or refuse to renew a license;

(2) Limiting to $500,000, the amount of the bond that managing general agents are required to furnish as part of their licensure requirements;

(3) Deleting the requirement for managing general agents to obtain an errors and omissions policy in an amount based on an upper limit of twenty-five per cent of annual gross direct written premiums and substituting a minimum $1,000,000 errors and omission policy requirement;

(4) Requiring insurers, as part of their required contract provisions with managing general agents, to ensure managing general agents' compliance with statutory bond and errors and omissions policy requirements; and

(5) Conforming section 431:20-122, Hawaii Revised Statutes (HRS), with existing Hawaii law with respect to annual and quarterly financial statement filing requirements for foreign and alien title insurers.

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MEANS: Amend sections 431:9A-112(b), 431:9C-102, 431:9C-103, and 431:20-122, HRS.

JUSTIFICATION: Section 431:9A-112, HRS, which addresses license denial, renewal, suspension, or revocation, gives the insurance commissioner the explicit authority to, among other things, suspend an insurance producer's license. Section 431:2-308, HRS, refers to the commissioner's authority to suspend a license pending a hearing. This bill places the suspension-pending-hearing language in section 431:9A-112(b) for clarification purposes only. However, it does not expand the commissioner's existing authority.

Section 431:9C-103 requires managing general agents to furnish with the insurer a bond in an amount equal to $100,000 or ten per cent of annual gross direct written premiums, whichever is greater. Presently, Hawaii law requires managing general agents to furnish a bond as part of the requirements of licensing. Recently, the National Association of Insurance Commissioners (NAIC) adopted amendments to its Managing General Agents Model Law that removes this requirement from licensing and makes it a part of the required contract provisions between the insurance companies and managing general agents. This revision places the burden of compliance with the party that is statutorily responsible for the acts of the managing general agent. This revision also makes sense because, as explicitly stated in section 431:9C-102, the bond requirement is for the protection of the insurer. This being the case, benefit will ultimately inure to consumers should problems develop with the managing general agent.

The upper bond amount limit of ten per cent requires insurance companies writing large amounts of direct written premiums to furnish bonds in an extraordinarily high amount, conceivably in the millions of dollars. This has had a deterrent effect on large insurance companies desiring to do business in the State of Hawaii.

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Recognizing this problem, the NAIC revised the Managing General Agents Model Act to impose the $500,000 cap on the bond requirement. Adoption of this cap, as proposed, will improve Hawaii's business climate for insurers, which in turn will improve the State's competitiveness in the global insurance industry and enhance its potential to increase insurance options for its businesses and residents. This amendment also will conform Hawaii law to national standards, thus improving reciprocity with the other states.

Section 431:9C-102 also requires managing general agents to maintain an errors and omissions policy in an amount equal to $1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company approved by the Commissioner. As with the ten per cent upper limit on bond requirements, the twenty-five per cent upper limit applicable to the coverage amount for the errors and omissions policy requirement has a deterrent effect on insurance companies writing large amounts of direct written premiums since it may result in requiring a managing general agent to have an errors and omissions policy in the amount of several million dollars.

The NAIC's Managing General Agents Model Act authorizes but does not require state commissioners to impose errors and omissions policy requirements on managing general agents. Having enacted the errors and omissions requirement for managing general agents, our State provides enhanced protections that other states may not provide. As with the bond requirements, the proposed deletion of the twenty-five per cent upper limit will enhance our State's potential to increase insurance options for its businesses and residents. Furthermore, the inclusion of the errors and omissions

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requirements in the insurer's required contract provisions, rather than as part of licensing, will again place the burden of compliance with the party that is statutorily responsible for the acts of the managing general agent. Accordingly, this revision ultimately will benefit consumers should problems develop with the managing general agent.

In 2003, sections 431:3-301 and 431:3-302, HRS, were amended to, among other things, exclude authorized foreign and alien insurers from having to file hard copies of their Annual Financial Statements and Quarterly Financial Statements with the insurance commissioner; provided that these insurers filed these statements with the NAIC. However, conforming amendments to section 431:20-122, HRS, were mistakenly overlooked. This bill makes the conforming amendments, thus conforming section 431:20-122 to existing Hawaii law.

Impact on the public: This bill will improve Hawaii's business climate for insurers, which in turn will improve the State's competitiveness in the global insurance industry and enhance its potential to increase insurance options for its businesses and residents. This bill also provides added assurance that managing general agents have the required bond and errors and omissions policy coverage, the benefits of which will inure to insurance consumers should problems develop with an insurer's managing general agent.

In addition, these amendments make the insurance statutes more understandable, technically correct, and consistent.

Impact on the department and other agencies: This bill will reduce the time it takes to issue licenses for managing general agents. Also, by making the insurance statutes more understandable, technically correct, and

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consistent, these amendments reduce confusion and inefficiency in the implementing Hawaii law.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.