



**GOV. MSG. NO. 1167**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

April 24, 2012

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

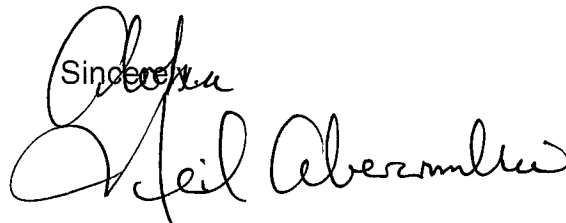
The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 24, 2012, the following bill was signed into law:

SB2768 SD1

RELATING TO INSURANCE.  
**Act 066 (12)**

Sincerely,  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on APR 24 2012

ACT 066

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

S.B. NO. 2768  
S.D. 1

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## A BILL FOR AN ACT

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RELATING TO INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to part III of article 8, nine new sections to  
3 be appropriately designated and to read as follows:

4 "§431:8-A Nonresident licensing. (a) Except as provided  
5 in section 431:8-317, a nonresident applicant shall receive a  
6 nonresident surplus lines broker license if:

- 7 (1) The applicant is currently licensed and is in good  
8 standing as a resident surplus lines broker in the  
9 applicant's home state;
- 10 (2) The applicant has submitted the proper request for  
11 licensure and has paid the fees required by section  
12 431:7-101;
- 13 (3) The applicant has submitted or transmitted to the  
14 commissioner the application for licensure that the  
15 applicant submitted to the applicant's home state, or  
16 in lieu of the same, a completed uniform application;  
17 and



1       (4) The applicant's home state awards nonresident surplus  
2       lines broker licenses to residents of this State on  
3       the same basis.

4       (b) The commissioner may verify the surplus lines broker's  
5       licensing status through the producer database maintained by the  
6       National Association of Insurance Commissioners, its affiliates,  
7       or its subsidiaries.

8       (c) A nonresident surplus lines broker who moves from one  
9       state to another state or a resident surplus lines broker who  
10      moves from this State to another state shall file a change of  
11      address with the commissioner and shall provide certification  
12      from the new resident state within thirty days of the change of  
13      legal residence. No fee or license application shall be  
14      required. Failure to timely inform the commissioner of a change  
15      in address shall result in a penalty pursuant to section 431:2-  
16      203.

17      §431:8-B Reciprocity. (a) The commissioner shall waive  
18      any requirements for a nonresident surplus lines broker license  
19      applicant with a valid license from the applicant's home state,  
20      except for the requirements imposed by section 431:8-A, if the  
21      applicant's home state awards nonresident surplus lines broker  
22      licenses to residents of this State on the same basis.



1        (b) A nonresident surplus lines broker's satisfaction of  
2 the surplus lines broker's home state's continuing education  
3 requirements for licensed surplus lines brokers shall constitute  
4 satisfaction of this State's continuing education requirements  
5 if the nonresident surplus lines broker's home state recognizes  
6 the satisfaction of its continuing education requirements  
7 imposed upon surplus lines brokers from this State on the same  
8 basis.

9        §431:8-C Exemption from examination. (a) Subject to  
10 section 431:8-B, an individual who applies for a non-resident  
11 surplus lines broker license in this State who was previously  
12 licensed to sell surplus lines insurance in another state shall  
13 not be required to complete any prelicensing education or  
14 examination. This exemption is only available if the person is  
15 currently licensed in that state or if the application is  
16 received within ninety days of the cancellation of the  
17 applicant's previous license and if the prior state issues a  
18 certification that, at the time of cancellation, the applicant  
19 was licensed in good standing in that state, or the state's  
20 producer database records, maintained by the National  
21 Association of Insurance Commissioners, its affiliates, or its



1 subsidiaries, indicate that the surplus lines broker's license  
2 is or was in good standing.

3 (b) A person licensed as a surplus lines broker in another  
4 state who moves to this State and makes application within  
5 ninety days of establishing legal residence to become a resident  
6 licensee pursuant to section 431:8-310, shall not be required to  
7 satisfy the prelicensing educational components and examination  
8 otherwise required to obtain any line of authority previously  
9 held in the prior state, provided that the commissioner may  
10 impose these or other requirements by rule.

11 §431:8-D Surplus lines broker license examination. (a)  
12 An applicant for a surplus lines broker license shall pass a  
13 written examination unless exempt pursuant to section 431:8-C.  
14 The examination shall test the knowledge of the applicant  
15 concerning property, marine and transportation; vehicle, general  
16 casualty, and surety insurance, the duties and responsibilities  
17 of a surplus lines broker, and the insurance laws and rules of  
18 this State.

19 (b) The commissioner may make arrangements, including  
20 contracting with an outside testing service, for administering  
21 examinations and collecting fees pursuant to section 431:7-101.  
22 The fees collected shall be nonrefundable.



1        (c) An applicant who fails to appear for the examination  
2 as scheduled or fails to pass the examination shall reapply for  
3 an examination and remit all required fees and forms before  
4 being scheduled for another examination.

5        (d) An applicant's examination scores shall be valid for  
6 two years from the date of the examination.

7        §431:8-E Scope of examination. (a) The commissioner  
8 shall prescribe each examination, and each examination shall be  
9 of reasonably sufficient scope to test the applicant's knowledge  
10 relative to property, marine and transportation, vehicle,  
11 general casualty, and surety insurance, that may be dealt with  
12 under the license applied for, the duties and responsibilities  
13 relating thereto, and the laws of this State that are applicable  
14 to the licensee.

15        (b) The commissioner shall prepare and make available to  
16 surplus lines brokers a printed manual specifying in general  
17 terms the subjects that may be covered in any examination for a  
18 surplus lines broker license.

19        §431:8-F Time of examinations. (a) The commissioner  
20 shall give examinations within this State at times and places as  
21 may reasonably serve the convenience of both the commissioner  
22 and applicants.



1        (b) The commissioner may require a waiting period of not  
2 more than six months before giving a new examination to an  
3 applicant who has failed to pass two previous examinations for a  
4 surplus brokers license.

5        §431:8-G Prerequisites for license renewal. (a) To  
6 qualify for a license renewal, a licensee shall:

7        (1) During the twenty-four months preceding a license  
8 renewal, complete the required number of credit hours  
9 specified in subsection (b) in approved continuing  
10 education courses; and

11        (2) Pay the fees as required under section 431:7-101.

12        (b) The required number of credit hours in approved  
13 continuing education courses shall be as follows:

14        (1) For a licensee authorized to sell surplus lines  
15 insurance but who does not hold a producer license,  
16 the requisite number of credit hours shall be twenty-  
17 four credit hours, consisting of twenty-one credit  
18 hours relating to property, marine and transportation,  
19 vehicle, general casualty, or surety insurance, and  
20 three credit hours relating to ethics training or  
21 relating to the insurance laws and rules.



- 1        (2) For a licensee who also holds a producer license to  
2        sell life or accident and health or sickness lines of  
3        insurance pursuant to article 9A, the total requisite  
4        number of credit hours shall be twenty-four credit  
5        hours, consisting of:
- 6        (A) Ten credit hours relating to life or accident and  
7        health or sickness insurance;
- 8        (B) Eleven credit hours relating to property, marine  
9        and transportation, vehicle, general casualty, or  
10       surety insurance; and
- 11       (C) Three credit hours relating to ethics training or  
12       to insurance laws and rules.
- 13 For purposes of this section, ethics training shall include but  
14 not be limited to the topics of fiduciary responsibility,  
15 commingling of funds, payment and acceptance of commissions,  
16 unfair claims practices, policy replacement considerations, and  
17 conflicts of interest.
- 18       (c) Continuing education equivalents, as determined and  
19 approved by the commissioner, may include the teaching of  
20 continuing education courses and holding certain professional  
21 designations, but shall not include the use of carryover credit





1 hours earned in excess of the required hours in any two-year  
2 renewal cycle.

3 (d) Unless an extension of time has been granted in  
4 advance by the commissioner, a licensee's failure to satisfy all  
5 of the continuing education requirements by the renewal date  
6 shall result in that licensee's license being automatically  
7 placed on an inactive status. To reactivate a license, the  
8 licensee shall submit proof to the commissioner that the  
9 requisite number of credit hours has been completed and the  
10 licensee shall pay any required fees and penalties.

11 (e) After a licensee completes an approved continuing  
12 education course, the approved course provider shall issue to  
13 the licensee a certificate of completion in a form approved by  
14 the commissioner that certifies that the licensee has  
15 successfully completed the course. Both the licensee and a  
16 person authorized to sign on behalf of the approved course  
17 provider shall sign the certificate of completion. The approved  
18 course provider shall electronically submit the certificate of  
19 completion to the commissioner within fifteen days of course  
20 completion.



1        (f) This section shall not apply to a licensee granted an  
2 exemption by the commissioner from this section pursuant to  
3 section 431:8-B.

4        (g) The commissioner may grant an extension of time to  
5 meet the requirements of this section to a licensee on extended  
6 active military duty for a period of time equal to the number of  
7 days the licensee was on active military duty, provided there  
8 are no federal laws mandating an extension of time in a  
9 specified situation.

10       (h) A licensee need not retake the surplus lines broker  
11 license examination provided that all renewal requirements in  
12 this section are met or reactivation occurs within two years of  
13 the date of inactivation.

14       §431:8-H Continuing education recordkeeping. (a)  
15 Licensees shall maintain their own continuing education records  
16 and shall keep these records for four years after completion of  
17 an approved continuing education course.

18       (b) Approved course providers shall maintain attendance  
19 records for five years to permit the commissioner to verify the  
20 attendance and course completion of all licensees enrolled in an  
21 approved course. Approved course providers shall make their  
22 records available at all times to the commissioner.



1        §431:8-I Commissioner's authority to grant waiver. Upon  
2 receiving a written request and a showing of good cause, the  
3 commissioner may grant a waiver of any requirement of an  
4 insurance law or rule as applied to an applicant or a producer."

5        SECTION 2. Section 431:2-203, Hawaii Revised Statutes, is  
6 amended as follows:

7        (1) By amending subsection (d) to read as follows:

8        "(d) If the commissioner has cause to believe that any  
9 person is violating or is about to violate any provision of this  
10 code or any order of the commissioner, the commissioner may  
11 issue a cease and desist order to enforce compliance with this  
12 code or any order of the commissioner, or bring an action in any  
13 court of competent jurisdiction to enjoin the person from  
14 continuing the violation or doing any act in furtherance  
15 thereof. The commissioner shall have the discretion to include  
16 in a cease and desist order or request in an action brought in  
17 any court an assessment of a monetary penalty and restitution  
18 against any person who violates this code or who has violated an  
19 order of the commissioner."

20        (2) By amending subsection (g) to read as follows:



1           "(g) A monetary penalty and restitution may be imposed in  
2 addition to any applicable suspension, revocation, or denial of  
3 a license or certificate of authority."

4           SECTION 3. Section 431:8-102, Hawaii Revised Statutes, is  
5 amended as follows:

6           (1) By adding nine new definitions to be appropriately  
7 inserted and to read as follows:

8           "Approved continuing education course" means a course  
9 approved by the commissioner following receipt of  
10 recommendations from insurance professionals.

11           "Approved course provider" means an individual or entity  
12 that is approved to offer continuing education courses pursuant  
13 to article 9A.

14           "Business entity" means an association, corporation,  
15 individual, limited liability company, limited liability  
16 partnership, partnership, person, or other legal entity.

17           "Credit hour" means the value assigned to an approved  
18 continuing education course that is equivalent to at least fifty  
19 minutes of classroom instruction.

20           "Home state" means, with respect to an insured, the state  
21 in which an insured maintains the insured's principal place of  
22 business or, in the case of a surplus lines broker, the state in



1 which the surplus lines broker maintains the surplus lines  
2 broker's principal residence or principal place of business and  
3 is licensed to act as a surplus lines broker; provided that if  
4 one hundred per cent of the insured risk is located out of the  
5 state where the insured maintains the insured's principal place  
6 of business or the state where the individual maintains the  
7 principal residence, the home state shall be the state where the  
8 greatest percentage of the insured's taxable premium for that  
9 insurance contract is allocated.

10 "Inactive" means that the authority of a license issued by  
11 the commissioner is not in effect.

12 "Individual" means a natural person or a business entity.

13 "License" means a document issued by the commissioner  
14 authorizing a person to act as a surplus lines broker as  
15 specified in the document. The license itself shall not create  
16 any authority, actual, apparent, or inherent, in the holder to  
17 represent or commit an insurer.

18 "Licensee" means a surplus lines broker licensed under this  
19 article."

20 (2) By amending the definition of "surplus lines broker"  
21 to read as follows:



1            "Surplus lines broker" means any [~~producer~~] person  
2 licensed under section 431:8-310 to place insurance on risks  
3 resident, located, or to be performed in this State with  
4 unauthorized insurers."

5            SECTION 4. Section 431:8-310, Hawaii Revised Statutes, is  
6 amended to read as follows:

7            "§431:8-310 Surplus lines broker license required;  
8 application and qualifications for license. (a) No person  
9 shall procure any contract of surplus lines insurance with an  
10 unauthorized insurer unless the person is licensed as a surplus  
11 lines broker.

12           (b) A person applying for a surplus lines broker license  
13 shall apply to the commissioner on the uniform application and  
14 declare under penalty of denial, suspension, or revocation of  
15 the license that the statements made in the application are  
16 true, accurate, and complete to the best of the applicant's  
17 knowledge and belief. Before approving the application, the  
18 commissioner shall find that the applicant:

19           (1) Is at least eighteen years of age;

20           (2) Has not committed any act that is a ground for a  
21 licensure sanction set forth in section 431:8-317;



- 1        (3) Has paid the applicable fees set forth in section  
2                    431:7-101;
- 3        (4) Has passed, within the two years immediately preceding  
4                    the date of the application or issuance of the  
5                    license, whichever is later, the applicable  
6                    examination; and
- 7        (5) Has submitted a full set of fingerprints, including a  
8                    scanned file from a hard copy fingerprint, for the  
9                    commissioner to obtain and receive national and state  
10                   criminal history records checks from the Federal  
11                   Bureau of Investigation and the Hawaii criminal  
12                   justice data center, pursuant to section 846-2.7.
- 13        (c) The commissioner may require any documents reasonably  
14        necessary to verify the information contained in an application.
- 15        [~~(b)~~] (d) The commissioner shall issue a surplus lines  
16        broker license to any producer licensed under article 9A, except  
17        producers licensed under section 431:9A-107(a)(1), (2), or (5),  
18        when the producer has:
- 19            (1) Remitted the annual license fee to the commissioner as  
20            provided in article 7; and
- 21            (2) Submitted a completed license application on a form  
22            furnished by the commissioner.



1           ~~(e)~~ (e) A surplus lines broker license shall be  
2 inactivated if the licensee fails to pay any required fee or  
3 penalty. A surplus lines broker who allows the surplus lines  
4 broker's license to become inactive for nonpayment of the  
5 renewal fee may reinstate that license without the necessity of  
6 a written examination; provided that the surplus lines broker:

7           (1) Pays the fee and a penalty in the amount of fifty per  
8 cent of the then unpaid fees within twenty-four months  
9 from the inactivation date; and

10           (2) Is in compliance with all requirements of chapter 431.

11 The license shall automatically expire if the surplus lines  
12 broker does not reinstate the surplus lines broker's license  
13 within the twenty-four[-]month period.

14           ~~(d)~~ (f) Business entities shall be eligible to be  
15 surplus lines brokers, upon meeting the following conditions:

16           (1) The business entity licensee shall list individuals  
17 within the business entity who have satisfied all  
18 requirements of this part to become surplus lines  
19 brokers;

20           (2) Only those individuals listed on the business entity's  
21 license shall transact surplus lines business; and





1           (3) [~~An individual~~] A natural person licensed as a surplus  
2           lines broker shall be identified as the business  
3           entity's designated representative.

4           [~~(e)~~] (g) Licensing procedure, duration, and related  
5 matters [are] shall be governed by [~~articles~~] article 7 [and  
6 9A]."

7           SECTION 5. Section 431:8-317, Hawaii Revised Statutes, is  
8 amended as follows:

9           (1) By amending its title to read as follows:

10           "§431:8-317 [~~Suspension~~] License denial, nonrenewal,  
11 suspension, or revocation [~~of license~~]."

12           (2) By amending subsections (a) and (b) to read as  
13 follows:

14           "(a) The commissioner may deny, place on probation,  
15 suspend, revoke, or refuse to [~~extend~~] issue or renew any  
16 surplus lines broker's license and may levy a civil penalty in  
17 accordance with articles 2 and 3, or any combination of these  
18 actions, for any cause specified in any other provision of this  
19 chapter, or for any of the following causes:

20           (1) Failure to file statements required by section 431:8-  
21           313 or to pay the tax required by section 431:8-315;



- 1 (2) Failure to keep records or to allow the commissioner  
2 to examine the surplus lines broker's records as  
3 provided in this article;
- 4 (3) Removal of office accounts and records from this State  
5 during the period in which the accounts are required  
6 to be maintained under this article;
- 7 (4) Any of the causes for which a producer's license may  
8 be suspended or revoked under article 9A;
- 9 (5) Any cause for which issuance of the license could have  
10 been refused had it then existed and been known to the  
11 commissioner;
- 12 (6) Wilful violation or knowing participation in the  
13 violation of any provision of this code;
- 14 (7) Obtaining or attempting to obtain a license under this  
15 chapter through wilful misrepresentation or fraud, or  
16 failure to pass any examination required by section  
17 [~~431:9A-105;~~] 431:8-D;
- 18 (8) Misappropriation, conversion to the licensee's own  
19 use, or illegally withholding moneys required to be  
20 held in a fiduciary capacity;
- 21 (9) Material misrepresentation with intent to deceive of  
22 the terms or effect of any insurance contract, or



- 1 engagement or intent to engage in any fraudulent  
2 transaction;
- 3 (10) Commission of any unfair practice or fraud as defined  
4 in article 13;
- 5 (11) Conduct of affairs under a license issued pursuant to  
6 this chapter in a manner that causes injury and loss  
7 to the public;
- 8 (12) The issuance or purported issuance of any binder as to  
9 any insurer named in the binder if the licensee is not  
10 authorized to bind the insurer; or
- 11 (13) Dealing or attempting to deal with insurance or  
12 exercising powers relative to insurance outside the  
13 scope of the licensee's [~~licenses.~~] license.
- 14 (b) The license of any [~~partnership or corporation~~]  
15 business entity may be denied, placed on probation, suspended,  
16 revoked, [~~or refused~~] not issued, or not renewed for any of the  
17 causes applicable to any individual designated in the license to  
18 exercise the [~~partnership's or corporation's~~] business entities'  
19 powers."

20 SECTION 6. Section 431:9A-102, Hawaii Revised Statutes, is  
21 amended by amending the definition of "credit hour" to read as  
22 follows:



1        "Credit hour" means the value assigned to[+  
2        ~~(1) Fifty minutes of classroom instruction; or~~  
3        ~~(2) In the case of self study courses, fifteen to twenty~~  
4        ~~full pages of reading materials excluding graphics,~~  
5        ~~quizzes, and illustrations, depending on content and~~  
6        ~~type face, as determined by the commissioner;~~  
7        in] an approved continuing education course [-] that is  
8        equivalent to at least fifty minutes of classroom instruction."

9        SECTION 7. Section 431:9A-105, Hawaii Revised Statutes, is  
10       amended by amending subsection (d) as follows:

11        "(d) An applicant's examination scores shall be valid for  
12       two years from the date of the examination [~~or last renewal,~~  
13       ~~whichever is later]~~."

14        SECTION 8. Section 431:9A-108, Hawaii Revised Statutes, is  
15       amended to read as follows:

16        "**§431:9A-108 Nonresident licensing.** (a) Except as  
17       provided in section 431:9A-112, a nonresident applicant shall  
18       receive a nonresident producer license if:

19        (1) The applicant is currently licensed [~~as a resident]~~  
20        and is in good standing as a resident producer in the  
21        applicant's home state;



- 1           (2) The applicant has submitted the proper request for  
2           licensure and has paid the fees required by section  
3           431:7-101;
- 4           (3) The applicant has submitted or transmitted to the  
5           commissioner the application for licensure that the  
6           applicant submitted to the applicant's home state, or  
7           in lieu of the same, a completed uniform application;  
8           and
- 9           (4) The applicant's home state awards nonresident producer  
10          licenses to residents of this State on the same basis.
- 11          (b) The commissioner may verify the producer's licensing  
12          status through the producer database maintained by the National  
13          Association of Insurance Commissioners, its affiliates, or  
14          subsidiaries.
- 15          (c) A nonresident producer who moves from one state to  
16          another state or a resident producer who moves from this State  
17          to another state shall file a change of address with the  
18          commissioner and shall provide certification from the new  
19          resident state within thirty days of the change of legal  
20          residence. No fee or license application shall be required.  
21          Failure to timely inform the commissioner of a change in address  
22          shall result in a penalty pursuant to section 431:2-203.



1       ~~[(d) Notwithstanding any other provision of this article,~~  
2 ~~an applicant licensed as a surplus lines producer in the~~  
3 ~~applicant's home state shall receive a surplus lines broker~~  
4 ~~license if:~~

- 5       ~~(1) The applicant complies with subsection (a); and~~  
6       ~~(2) The applicant's home state issues nonresident surplus~~  
7       ~~lines broker licenses to residents of this State on~~  
8       ~~the same basis.~~

9       ~~(e)]~~ (d) Notwithstanding any other provision of this  
10 article, an applicant licensed as a limited line credit  
11 insurance producer or other type of limited lines producer in  
12 the person's home state shall receive a nonresident limited  
13 lines producer license, pursuant to subsection (a), granting the  
14 same scope of authority as granted under the license issued by  
15 the producer's home state. Limited lines insurance authority is  
16 any authority granted by the home state, that restricts the  
17 authority of the license to less than the total authority  
18 prescribed in the associated major lines pursuant to section  
19 431:9A-107(a) (1) through (5)."

20       SECTION 9. Section 431:9A-124, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "§431:9A-124 Prerequisites for license renewal. (a) To  
2 qualify for a license renewal, a licensee shall:

3           (1) During the twenty-four months preceding a license  
4 renewal, complete the required number of credit hours  
5 as set forth in subsection (b) in approved continuing  
6 education courses; and

7           (2) Pay the fees as required under section 431:7-101.

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

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

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

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

15 the requisite number of credit hours shall be twenty-  
16 four credit hours, consisting of twenty-one credit  
17 hours relating to the line of authority for which the  
18 license is held and three credit hours relating to  
19 ethics training or relating to the insurance laws and  
20 the insurance rules;

21          (2) For a licensee with a license to sell lines of  
22 insurance in both groups in paragraph (1), the total



1           requisite number of credit hours shall be twenty-four  
2           credit hours, consisting of:

3           (A) Ten credit hours relating to paragraph (1) (A);

4           (B) Eleven credit hours relating to paragraph (1) (B);  
5           and

6           (C) Three credit hours relating to ethics training or  
7           to insurance laws and rules.

8 For purposes of this section, ethics training shall include but  
9 shall not be limited to the study of fiduciary responsibility,  
10 commingling of funds, payment and acceptance of commissions,  
11 unfair claims practices, policy replacement considerations, and  
12 conflicts of interest.

13           (c) Continuing education equivalents, as determined and  
14 approved by the commissioner, may include the teaching of  
15 continuing education courses and holding certain professional  
16 designations, but shall not include the use of carryover credit  
17 hours earned in excess of the required hours in any two-year  
18 renewal cycle.

19           (d) Unless an extension of time has been granted in  
20 advance by the commissioner, a licensee's failure to satisfy all  
21 of the continuing education requirements by the renewal date  
22 shall result in that licensee's license being automatically





1 placed on an inactive status. To reactivate a license, the  
2 licensee shall submit proof to the insurance division that the  
3 requisite number of credit hours has been completed and the  
4 licensee shall pay any required fees and penalties.

5 (e) After a licensee completes an approved continuing  
6 education course, the approved course provider shall issue to  
7 the licensee a certificate of completion in a form approved by  
8 the commissioner that certifies that the licensee has  
9 successfully completed the course. Both the licensee and a  
10 person authorized to sign on behalf of the approved course  
11 provider shall sign the certificate of completion. The approved  
12 course provider shall electronically submit the certificate of  
13 completion to the insurance division within fifteen days of  
14 course completion.

15 (f) This section shall not apply to a licensee granted an  
16 exemption by the commissioner from this section pursuant to  
17 section 431:9A-116.

18 (g) The commissioner may grant an extension of time to  
19 meet the requirements of this section to a licensee on extended  
20 active military duty for a period of time equal to the number of  
21 days the licensee was on active military duty.



1        (h) A licensee need not retake the producer license  
2 examination provided that renewal requirements in this section  
3 are met or reactivation occurs within two years of the date of  
4 inactivation."

5        SECTION 10. Section 431:9B-101, Hawaii Revised Statutes,  
6 is amended as follows:

7        (1) By amending the definition of "reinsurance  
8 intermediary" to read as follows:

9        "Reinsurance intermediary" or "producer" means a  
10 reinsurance intermediary-broker or a reinsurance intermediary-  
11 manager [as these terms are defined in this section.] licensed  
12 pursuant to this article and article 9A."

13        (2) By repealing the definition of "licensed producer" or  
14 "producer".

15        [~~"Licensed producer" or "producer" means a producer or~~  
16 ~~reinsurance intermediary licensed pursuant to this chapter."~~]

17        SECTION 11. Section 431:9B-102, Hawaii Revised Statutes,  
18 is amended to read as follows:

19        ~~"§431:9B-102 Licensure. (a) [No person, firm,~~  
20 ~~association, or corporation shall act as a reinsurance~~  
21 ~~intermediary broker in this State if the reinsurance~~  
22 ~~intermediary broker maintains an office either directly or as a~~



1 ~~member or employee of a firm or association or as an officer,~~  
2 ~~director, or employee of a corporation:~~

3 ~~(1) In this State, unless the reinsurance intermediary-~~  
4 ~~broker is a licensed producer in this State, or~~

5 ~~(2) In another state, unless the reinsurance intermediary-~~  
6 ~~broker is a licensed producer in this State or another~~  
7 ~~state having a law substantially similar to this law,~~  
8 ~~or such reinsurance intermediary broker is licensed in~~  
9 ~~this State as a nonresident reinsurance intermediary.]~~

10 Persons, firms, associations, and corporations acting as a  
11 reinsurance intermediary-broker in this State shall maintain a  
12 license as a reinsurance intermediary-broker in this State. The  
13 reinsurance intermediary-broker shall maintain a license in  
14 every state where it maintains an office, either directly, as a  
15 member or employee of a firm or association, or as an officer,  
16 director, or employee of a corporation.

17 ~~[(b) No person, firm, association, or corporation shall~~  
18 ~~act as a reinsurance intermediary manager:~~

19 ~~(1) For a reinsurer domiciled in this State, unless the~~  
20 ~~reinsurance intermediary manager is a licensed~~  
21 ~~producer in this State,~~



1       ~~(2) In this State, if the reinsurance intermediary manager~~  
2       ~~maintains an office either directly or as a member or~~  
3       ~~employee of a firm or association, or an officer,~~  
4       ~~director, or employee of a corporation in this State,~~  
5       ~~unless the reinsurance intermediary manager is [a]~~  
6       ~~licensed producer in this State; or~~

7       ~~(3) In another state for a nondomestic insurer, unless the~~  
8       ~~reinsurance intermediary manager is a licensed~~  
9       ~~producer in this State or another state having a law~~  
10       ~~substantially similar to this law, or the person is~~  
11       ~~licensed in this State as a nonresident reinsurance~~  
12       ~~intermediary.]~~

13       (b) Persons, firms, associations, and corporations acting  
14       as a reinsurance intermediary-manager for a reinsurer domiciled  
15       in this State shall maintain a license as a reinsurance  
16       intermediary-manager in this State. A reinsurance intermediary-  
17       manager license shall be required to act as a reinsurance  
18       intermediary-manager in this State for a nondomestic reinsurer.

19       (c) The commissioner [~~shall~~] may require a reinsurance  
20       intermediary-manager subject to subsection (b) to:

21       (1) File a bond from an insurance company licensed to do  
22       business within the State or with an insurance company



1 approved by the commissioner in an amount equal to  
2 \$500,000 or ten per cent of the annual reinsurance  
3 premiums managed by the reinsurance intermediary-  
4 manager, whichever is greater, except that the bond  
5 amount under this paragraph shall not exceed  
6 \$10,000,000, for the protection of the reinsurer;

- 7 (2) Maintain an errors and omissions policy, with an  
8 insurance company licensed to do business within the  
9 State or with an insurance company approved by the  
10 commissioner, in an amount equal to \$250,000 or  
11 twenty-five per cent of the annual reinsurance  
12 premiums managed by the reinsurance intermediary-  
13 manager, whichever is greater, except that the policy  
14 limits under this paragraph shall not exceed  
15 \$10,000,000; and

- 16 (3) Provide any other report required by the commissioner.

17 At the [~~time of application for licensure and each renewal,~~  
18 ~~each~~] commissioner's request, the reinsurance intermediary-  
19 manager shall provide the commissioner with proof of the bond  
20 and the policy, and appropriate documentation to show that the  
21 bond and the policy continue to be in effect or that a new bond  
22 and a new policy have been secured.



- 1 (d) (1) The commissioner may issue a reinsurance intermediary  
2 license to any person, firm, association, or  
3 corporation that has complied with the requirements of  
4 this article. Any such license issued to a firm or  
5 association [~~will~~] shall authorize all the members of  
6 that firm or association and any designated employees  
7 to act as reinsurance intermediaries under the  
8 license, and all those persons shall be named in the  
9 application and any supplements thereto. Any such  
10 license issued to a corporation shall authorize all of  
11 the officers, and any designated employees and  
12 directors thereof to act as reinsurance intermediaries  
13 on behalf of the corporation, and all those persons  
14 shall be named in the application and any supplements  
15 thereto.
- 16 (2) If the applicant for a reinsurance intermediary  
17 license is a nonresident, the applicant, as a  
18 condition precedent to receiving or holding a license,  
19 shall designate the commissioner as agent for service  
20 of process in the manner, and with the same legal  
21 effect, provided for by this article for service of  
22 process upon unauthorized insurers; and also shall



1 furnish the commissioner with the name and address of  
2 a resident of this State upon whom notices or orders  
3 of the commissioner or process affecting the  
4 nonresident reinsurance intermediary may be served.  
5 The licensee shall promptly notify the commissioner in  
6 writing of every change in its designated agent for  
7 service of process, and such change shall not become  
8 effective until acknowledged by the commissioner.

9 (3) The commissioner shall issue a nonresident reinsurance  
10 intermediary license if:

11 (A) The applicant is currently licensed as a resident  
12 reinsurance intermediary or insurance producer  
13 pursuant to article 9A and in good standing in  
14 the applicant's home state;

15 (B) The applicant has submitted the proper request  
16 for licensure and paid the fees required by  
17 section 431:7-101;

18 (C) The applicant has submitted or transmitted to the  
19 commissioner the application for licensure that  
20 the applicant submitted to the applicant's home  
21 state, or in lieu of the same, a completed  
22 uniform application; and



1           (D) The person's home state awards nonresident  
2                   licenses to residents of this State on the same  
3                   basis.

4           (e) The commissioner may refuse to issue a reinsurance  
5 intermediary license if, in the commissioner's judgment, the  
6 applicant, anyone named on the application, or any member,  
7 principal, officer, or director of the applicant, is not  
8 trustworthy, or that any controlling person of the applicant is  
9 not trustworthy to act as a reinsurance intermediary, or that  
10 any of the foregoing has given cause for revocation or  
11 suspension of such license, or has failed to comply with any  
12 prerequisite for the issuance of the license. Upon written  
13 request therefor, the commissioner shall furnish a summary of  
14 the basis for refusal to issue a license, which document shall  
15 be privileged and not subject to disclosure pursuant to chapter  
16 92F.

17           (f) Licensed attorneys at law of this State when acting in  
18 their professional capacity as such shall be exempt from this  
19 section.

20           (g) Licensing procedure, duration, and related matters  
21 affecting reinsurance intermediaries shall be governed by  
22 articles 7 and 9A."





1 SECTION 12. Section 431:9B-106, Hawaii Revised Statutes,  
2 is amended to read as follows:

3 "§431:9B-106 Required contract provisions; reinsurance  
4 intermediary-managers. Transactions between a reinsurance  
5 intermediary-manager and the reinsurer it represents in that  
6 capacity shall only be entered into pursuant to a written  
7 contract, specifying the responsibilities of each party that  
8 shall be approved by the reinsurer's board of directors. [~~At  
9 least thirty days before the reinsurer assumes or cedes business  
10 through the reinsurance intermediary manager, a true copy of the  
11 approved contract shall be filed with the commissioner for  
12 approval.~~] The contract, at a minimum, shall provide that:

13 (1) The reinsurer may terminate the contract for cause  
14 upon written notice to the reinsurance intermediary-  
15 manager. The reinsurer may immediately suspend the  
16 authority of the reinsurance intermediary-manager to  
17 assume or cede business during the pendency of any  
18 dispute regarding the cause for termination;

19 (2) The reinsurance intermediary-manager [~~will~~] shall  
20 render accounts to the reinsurer accurately detailing  
21 all material transactions, including information  
22 necessary to support all commissions, charges, and



1 other fees received by or owing to the reinsurance  
2 intermediary-manager, and remit all funds due under  
3 the contract to the reinsurer on not less than a  
4 monthly basis;

5 (3) All funds collected for the reinsurer's account [~~will~~]  
6 shall be held by the reinsurance intermediary-manager  
7 in a fiduciary capacity and deposited in a bank that  
8 is a qualified United States financial institution.  
9 The reinsurance intermediary-manager may retain no  
10 more than three months estimated claims payments and  
11 allocated loss adjustment expenses. The reinsurance  
12 intermediary-manager shall maintain a separate bank  
13 account for each reinsurer that it represents;

14 (4) For at least ten years after expiration of each  
15 contract of reinsurance transacted by the reinsurance  
16 intermediary-manager, the reinsurance intermediary-  
17 manager [~~will~~] shall keep a complete record for each  
18 transaction showing:

19 (A) The type of contract, limits, underwriting  
20 restrictions, classes or risks, and territory;

21 (B) Period of coverage, including effective and  
22 expiration dates, cancellation provisions and



- 1 notice required for cancellation, and disposition
- 2 of outstanding reserves on covered risks;
- 3 (C) Reporting and settlement requirements of
- 4 balances;
- 5 (D) Rate used to compute the reinsurance premium;
- 6 (E) Names and addresses of reinsurers;
- 7 (F) Rates of all reinsurance commissions, including
- 8 the commissions on any retrocessions handled by
- 9 the reinsurance intermediary-manager;
- 10 (G) Related correspondence and memoranda;
- 11 (H) Proof of placement;
- 12 (I) Details regarding retrocessions handled by the
- 13 reinsurance intermediary-manager, as permitted by
- 14 section 431:9B-108(d), including the identity of
- 15 retrocessionaires and percentage of each contract
- 16 assumed or ceded;
- 17 (J) Financial records, including but not limited to,
- 18 premium and loss accounts; and
- 19 (K) When the reinsurance intermediary-manager places
- 20 a reinsurance contract on behalf of a ceding
- 21 insurer:



- 1 (i) Directly from any assuming reinsurer,  
2 written evidence that the assuming reinsurer  
3 has agreed to assume the risk; or
- 4 (ii) If placed through a representative of the  
5 assuming reinsurer, other than an employee,  
6 written evidence that the reinsurer has  
7 delegated binding authority to the  
8 representative;
- 9 (5) The reinsurer [~~will~~] shall have access and the right  
10 to copy all accounts and records maintained by the  
11 reinsurance intermediary-manager related to its  
12 business in a form usable by the reinsurer;
- 13 (6) The contract [~~cannot~~] shall not be assigned in whole  
14 or in part by the reinsurance intermediary-manager;
- 15 (7) The reinsurance intermediary-manager [~~will~~] shall  
16 comply with the written underwriting and rating  
17 standards established by the insurer for the  
18 acceptance, rejection, or cession of all risks;
- 19 (8) [~~Sets~~] The contract sets forth the rates, terms, and  
20 purposes of commissions, charges, and other fees that  
21 the reinsurance intermediary-manager may levy against  
22 the reinsurer;



- 1 (9) If the contract permits the reinsurance intermediary-  
2 manager to settle claims on behalf of the reinsurer:
  - 3 (A) All claims shall be reported to the reinsurer in  
4 a timely manner;
  - 5 (B) A copy of the claim file shall be sent to the  
6 reinsurer at its request or as soon as it becomes  
7 known that the claim:
    - 8 (i) Has the potential to exceed the lesser of an  
9 amount determined by the commissioner or the  
10 limit set by the reinsurer;
    - 11 (ii) Involves a coverage dispute;
    - 12 (iii) May exceed the reinsurance intermediary-  
13 manager's claims settlement authority;
    - 14 (iv) Is open for more than six months; or
    - 15 (v) Is closed by payment of the lesser of an  
16 amount set by the commissioner or an amount  
17 set by the reinsurer;
  - 18 (C) All claim files shall be the joint property of  
19 the reinsurer and reinsurance intermediary-  
20 manager. However, upon an order of liquidation  
21 of the reinsurer, the files shall become the sole  
22 property of the reinsurer or its estate; the



1 reinsurance intermediary-manager shall have  
2 reasonable access to and the right to copy the  
3 files on a timely basis; and

4 (D) Any settlement authority granted to the  
5 reinsurance intermediary-manager may be  
6 terminated for cause upon the reinsurer's written  
7 notice to the reinsurance intermediary-manager or  
8 upon the termination of the contract. The  
9 reinsurer may suspend the settlement authority  
10 during the pendency of the dispute regarding the  
11 cause of termination;

12 (10) If the contract provides for a sharing of interim  
13 profits by the reinsurance intermediary-manager, [~~that~~  
14 ~~such~~] interim profits shall not be paid until one year  
15 after the end of each underwriting period for property  
16 business and five years after the end of each  
17 underwriting period for casualty business (or a later  
18 period set by the commissioner for specified lines of  
19 insurance) and not until the adequacy of reserves on  
20 remaining claims has been verified pursuant to section  
21 431:9B-108(c);



- 1           (11) The reinsurance intermediary-manager shall annually  
2           provide the reinsurer with a statement of its  
3           financial condition prepared by an independent  
4           certified accountant;
- 5           (12) The reinsurer shall, at a minimum, semiannually  
6           conduct an on-site review of the underwriting and  
7           claims processing operations of the reinsurance  
8           intermediary-manager;
- 9           (13) The reinsurance intermediary-manager shall disclose to  
10          the reinsurer any relationship it has with any insurer  
11          prior to ceding or assuming any business with the  
12          insurer pursuant to the contract; and
- 13          (14) Within the scope of its actual or apparent authority  
14          the acts of the reinsurance intermediary-manager shall  
15          be deemed to be the acts of the reinsurer on whose  
16          behalf it is acting."

17           SECTION 13. Section 431:10D-622, Hawaii Revised Statutes,  
18   is amended by adding two new definitions to be appropriately  
19   inserted and to read as follows:

20           "Approved continuing education course provider" means an  
21   individual or entity that is approved to offer continuing  
22   education courses pursuant to article 9A.



1        "Continuing education credit" means one continuing  
2 education credit hour. For the purposes of this paragraph,  
3 "credit hour" has the same meaning as set forth in section  
4 431:9A-102."

5            SECTION 14. Section 431:10D-626, Hawaii Revised Statutes,  
6 is amended to read as follows:

7            "[+] §431:10D-626 [+] Insurance producer training. (a) An  
8 insurance producer shall not solicit the sale of an annuity  
9 product unless the insurance producer has adequate knowledge of  
10 the product to recommend the annuity and the insurance producer  
11 is in compliance with the insurer's standards for product  
12 training. An insurance producer may rely on insurer-provided  
13 product-specific training standards and materials to comply with  
14 this subsection.

15            (b) Any insurance producer who is authorized to sell [~~life~~  
16 ~~or accident and health or sickness insurance and who engages in~~  
17 ~~the sale of]~~ annuity products on or before January 31, 2012,  
18 shall complete by January 31, 2012, a one-time training course  
19 on annuity products [~~that is approved by the commissioner and is~~  
20 ~~conducted by an approved continuing education course provider.]~~  
21 meeting the requirements of subsection (d).





1        (c) An insurance producer who obtains a life [insurantee]  
2 or variable life and variable annuity products line of authority  
3 after January 31, 2012, shall not engage in the sale of  
4 annuities until the insurance [provider] producer has completed  
5 training [~~that meets the following~~] meeting the requirements[+]  
6 of subsection (d).

7        (d) The training required by this section shall be  
8 approved by the commissioner, be conducted by an approved  
9 continuing education course provider, and meet the following  
10 requirements:

11        (1) The minimum length of the training shall be sufficient  
12        to qualify for at least four continuing education  
13        credits;

14        (2) The training shall include information on the  
15        following topics:

16        (A) The types and various classifications of  
17        annuities available on the market;

18        (B) Identification of the parties to an annuity;

19        (C) How fixed, variable, and indexed annuity contract  
20        provisions affect consumers;

21        (D) The application of income taxation to qualified  
22        and non-qualified annuities;



- 1 (E) The primary uses of annuities; and
- 2 (F) Appropriate sales practices, replacement, and
- 3 disclosure requirements; and
- 4 (3) The training shall not include any marketing
- 5 information for products of any particular insurer or
- 6 training on sales techniques.
- 7 (e) A provider of an annuity training course intending to
- 8 comply with this section shall register as an approved
- 9 continuing education course provider in this State and comply
- 10 with the rules and guidelines applicable to insurance producer
- 11 continuing education courses as set forth in article 9A.
- 12 (f) Annuity training courses may be conducted and
- 13 completed by classroom or self-study methods in accordance with
- 14 article 9A.
- 15 (g) Providers of annuity training shall comply with the
- 16 reporting requirements and shall issue certificates of
- 17 completion in accordance with article 9A.
- 18 (h) The satisfaction of the training requirements of
- 19 another state that are substantially similar to the provisions
- 20 of this section shall be deemed to satisfy the training
- 21 requirements of this section in this State.



1       ~~(e)~~ (i) An insurer shall verify that an insurance  
2 producer has completed the annuity training course required by  
3 this section before allowing the producer to sell an annuity  
4 product for the insurer. An insurer may satisfy its  
5 responsibility under this subsection by obtaining certificates  
6 of completion ~~[from the training course provider, or by~~  
7 ~~obtaining reports from the commissioner, from training course~~  
8 ~~providers,]~~ of the training course or from a reasonably reliable  
9 commercial database vendor that has a reporting arrangement with  
10 approved ~~[insurance]~~ continuing education course providers."

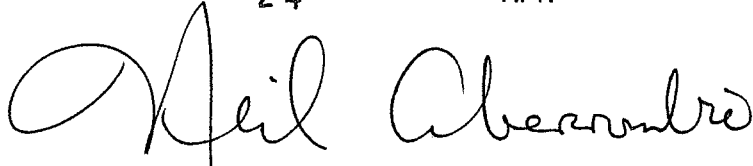
11       SECTION 15. In codifying the new sections added to part  
12 III of article 8 of chapter 431, Hawaii Revised Statutes, by  
13 section 1 of this Act, the revisor of statutes shall substitute  
14 appropriate section numbers for the letters used in designating  
15 and referring to the new sections in this Act.

16       SECTION 16. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18       SECTION 17. This Act shall take effect on July 1, 2012;  
19 provided that sections 6, 13, and 14 shall take effect  
20 retroactive to January 1, 2012.

S.B. NO. 2768  
S.D. 1

APPROVED this 24 day of APR, 2012

  
GOVERNOR OF THE STATE OF HAWAII