

JAN 27 2016

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# A BILL FOR AN ACT

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 a new article to be appropriately designated  
3 and to read as follows:

4           "§431- Short title. This article shall be known and may  
5 be cited as the Hawaii Mandatory Catastrophe Reserve Act.

6           §431- Purpose. The purpose of this article is to require  
7 authorized property insurers to establish reserve funds out of  
8 premiums of policies covering risks located or resident in this  
9 State. The reserve fund shall be used to pay for losses  
10 resulting from catastrophes occurring in Hawaii.

11           §431- Definitions. As used in this article, unless the  
12 context shall otherwise require:

13           "Authorized reinsurance" shall mean reinsurance from a  
14 licensed, accredited, certified, or trusted reinsurer in this  
15 State.

16           "Catastrophe" means an event declared as a natural disaster  
17 by the governor and covering losses related to a natural event,  
18 such as a hurricane, an earthquake, or a flood.

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1 "Hawaii mandatory catastrophe reserve" means a separate  
2 contingent liability account.

3 "Hawaii subject premiums" means premiums related to  
4 property risks located or resident in this State with respect to  
5 the kinds of insurance specified in section 431:1-206 that are  
6 written on a direct basis.

7 "Property insurer" means an insurer licensed to transact  
8 property insurance as defined in section 431:1-206.

9 "Qualifying losses" means losses and loss adjustment  
10 expenses incurred, net of authorized reinsurance, which are  
11 directly attributable to a catastrophe in this State.

12 §431- Hawaii mandatory catastrophe reserve. Every  
13 authorized property insurer issuing a policy of insurance or  
14 contract of reinsurance covering losses resulting from a  
15 catastrophe for property risks located or resident in this State  
16 shall establish a Hawaii mandatory catastrophe reserve, which  
17 shall be used to fund the payment of claims resulting from  
18 qualifying losses.

19 §431- Annual contribution to the Hawaii mandatory  
20 catastrophe reserve. (a) No later than June 30 of every year,  
21 every property insurer that covers losses resulting from a  
22 catastrophe shall fund its mandatory catastrophe reserve for the

1 previous calendar year in an amount no less than eighty per cent  
2 of the aggregate catastrophe load included in the premium of  
3 policies covering property risks located or resident in this  
4 State with respect to the kinds of insurance specified in  
5 section 431:1-206. The reserve liability so established shall  
6 be net of any authorized reinsurance ceded and federal, state,  
7 and local tax incurred on such reserves.

8 (b) Notwithstanding subsection (a), an insurer need not  
9 fund its Hawaii mandatory catastrophe reserve with respect to  
10 assumed reinsurance premiums in excess of loss reinsurance  
11 contracts or treaties.

12 §431- Accumulation of the Hawaii mandatory catastrophe  
13 reserve. The Hawaii mandatory catastrophe reserve may have a  
14 rolling term of ten years. At the end of the tenth year, the  
15 first year's contribution, to the extent it is not used to fund  
16 catastrophe losses, shall be taken into income, and the  
17 following year's contribution shall be added to the reserve.

18 §431- Transfers from the Hawaii mandatory catastrophe  
19 reserve. (a) A property insurer shall release its Hawaii  
20 mandatory catastrophe reserve when it incurs losses resulting  
21 from a catastrophe for property risks located or resident in  
22 this State. Within thirty days of releasing the funds from the

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1 Hawaii mandatory catastrophe reserve, a property insurer shall  
2 provide the commissioner with written notice of such release.  
3 The notice shall be in a form specified by the commissioner and  
4 show the amount and calculation of the release and the  
5 catastrophe that necessitated the release.

6 (b) A property insurer shall return to the Hawaii  
7 mandatory catastrophe reserve any reserves transferred from the  
8 Hawaii mandatory catastrophe reserve that are not expended to  
9 pay losses resulting from a catastrophe.

10 (c) A property insurer shall not retain any investment  
11 income or interest earned from the Hawaii mandatory catastrophe  
12 reserve. Any investment income or interest earned from the  
13 Hawaii mandatory catastrophe reserve shall be used by the  
14 property insurer to reduce Hawaii policyholders' premiums.

15 (d) Any transfer of reserves from the Hawaii mandatory  
16 catastrophe reserve that is not expended to pay losses resulting  
17 from a catastrophe for property risks located or resident in  
18 this State requires the property insurer to provide written  
19 notice and an explanation of the transfer. Upon the request of  
20 a property insurer, the commissioner may approve funds for  
21 transfer from the Hawaii mandatory catastrophe reserve:

22 (1) To mitigate the potential impairment of the property

1 insurer;

2 (2) When the property insurer no longer has exposure for  
3 losses resulting from a catastrophe; or

4 (3) Where the release of funds would be in the best  
5 interests of the property insurer, its policyholders,  
6 or this State.

7 §431- Reporting requirements. (a) For a domestic  
8 insurer, the Hawaii mandatory catastrophe reserve shall be shown  
9 as a write-in liability item on the quarterly and annual  
10 statements.

11 (b) For an insurer other than a domestic insurer, the  
12 Hawaii mandatory catastrophe reserve shall be shown as a write-  
13 in liability item on the Hawaii supplement to the property  
14 annual statement.

15 §431- Administration. The commissioner may adopt rules  
16 and procedures to effectuate this article."

17 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
18 amended by adding to article 10E a new part to be appropriately  
19 designated and to read as follows:

20 "PART . COVERAGES.

21 §431:10E- Notice requirement. Thirteen months prior to  
22 discontinuation of writing property insurance coverage, an

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1 insurer shall file an affidavit with the commissioner stating  
2 the reasons for the discontinuation.

3 §431:10E- Extended coverage. Authorization of the  
4 commissioner is required for insurers seeking to provide  
5 standard extended coverage endorsements for residential  
6 property, including coverage of hurricane risks."

7 SECTION 3. Section 431:2D-107, Hawaii Revised Statutes, is  
8 amended by amending subsection (g) to read as follows:

9 "(g) (1) Except as provided in subsections (h) and (i), an  
10 insurance compliance self-evaluative audit is  
11 privileged information and is not discoverable or  
12 admissible as evidence in any legal action in any  
13 civil, criminal, or administrative proceeding. The  
14 privilege created herein is a matter of substantive  
15 law of this State and is not merely a procedural  
16 matter governing civil or criminal procedures in the  
17 courts of this State;

18 (2) If any company, person, or entity performs or directs  
19 the performance of an insurance compliance audit, an  
20 officer, employee, or agent involved with the  
21 insurance audit, or any consultant who is hired for  
22 the purpose of performing the insurance compliance

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1           audit may not be examined in any civil, criminal, or  
2           administrative proceeding as to the insurance  
3           compliance audit or any insurance compliance self-  
4           evaluative audit document, as defined in this section.

5           This subsection does not apply if the privilege set  
6           forth in subsection (g) (1) [~~of this section~~] is  
7           determined under subsection (h) or (i) not to apply;

8           (3) A company may voluntarily submit, in connection with  
9           examinations conducted under this article, an  
10          insurance compliance self-evaluative audit document to  
11          the commissioner or the commissioner's designee, as a  
12          confidential document under this section without  
13          waiving the privilege set forth in this section to  
14          which the company would otherwise be entitled;  
15          provided, however, that the provisions in this section  
16          permitting the commissioner to make confidential  
17          documents public pursuant to this section and access  
18          to the National Association of Insurance Commissioners  
19          shall not apply to the insurance compliance self-  
20          evaluative audit document under other provisions of  
21          applicable law, any such report furnished to the  
22          commissioner shall not be provided to any other

1 persons or [~~+~~entities~~+~~] and shall be accorded the  
2 same confidentiality and other protections as provided  
3 above for voluntarily submitted documents. Any use of  
4 an insurance compliance self-evaluative audit document  
5 [~~furnished as a result of the~~] shall be limited to  
6 determining whether or not any disclosed defects in an  
7 insurer's policies and procedures or inappropriate  
8 treatment of customers has been remedied or that an  
9 appropriate [~~plan for their~~] remedy is in place.

10 A company's insurance compliance self-evaluative  
11 audit document submitted to the commissioner shall  
12 remain subject to all applicable statutory or common  
13 law privileges including, but not limited to, the work  
14 product doctrine, attorney-client privilege, or the  
15 subsequent remedial measures exclusion.

16 Any compliance self-evaluative audit document so  
17 submitted and in the possession of the commissioner  
18 shall remain the property of the company and shall not  
19 be subject to any disclosure or production under  
20 chapter [~~92+~~] 92F;

- 21 (4) Disclosure of an insurance compliance self-evaluative  
22 audit document to a governmental agency, whether



1           voluntary or pursuant to compulsion of law, shall not  
2           constitute a waiver of the privilege set forth in  
3           subsection (g) (1) with respect to any other persons or  
4           any other governmental agencies."

5           SECTION 4. Section 431:3-306.5, Hawaii Revised Statutes,  
6 is amended by amending subsection (a) to read as follows:

7           "(a) Upon written request of the commissioner by certified  
8 mail, an insurer writing the peril of residential hurricane  
9 coverage in this State shall within thirty days after receipt of  
10 the request, make accessible to the commissioner or  
11 commissioner's designee information verifying that the insurer  
12 has the financial assets and ability to cover its hurricane  
13 insurance exposure. The information to be made accessible shall  
14 include:

- 15           (1) The aggregate amount of hurricane coverage premiums  
16           and aggregate limits of coverage by type of coverage,  
17           which shall be compiled on a quarterly basis;
- 18           (2) The probable maximum loss associated with the above  
19           aggregate limits, assuming the occurrence of a  
20           hurricane of a severity unlikely to occur more  
21           frequently than once every one hundred years, as that

1           loss is estimated in a report prepared by a recognized  
2           hurricane modeling company;

3           (3) All financial information relating to the insurer's  
4           capital base and reinsurance program for hurricane  
5           losses, such as:

6           (A) Information describing the reinsurance program in  
7           place as of the date notice was received;

8           (B) The names and financial ratings of each  
9           reinsurer;

10          (C) Aggregate limits of reinsurance coverage  
11          available; [~~and~~]

12          (D) Reinstatement provisions; [~~and~~] or

13          (E) The insurer's Hawaii mandatory catastrophe  
14          reserve; and

15          (4) Any other related information the commissioner may  
16          require to evaluate the adequacy of the program."

17          SECTION 5. Section 431:7-201 is amended by amending  
18          subsections (a), (b), and (c) to read as follows:

19               "(a) Each authorized insurer shall electronically file  
20               with the commissioner annually, on or before March 1 in each  
21               year, a statement signed by a duly authorized person on its  
22               behalf, setting forth the total business transacted, and the

1 amount of gross premiums reported by the insurer, pursuant to  
2 section 431:7-202, during the year ending on the preceding  
3 December 31, from all risks or property resident, situated, or  
4 located within this State, together with such other information  
5 as may be required by the commissioner to determine the  
6 taxability of premiums. The term "gross premiums" as used in  
7 this part shall not include consideration paid for annuities.

8 (b) Each authorized insurer shall electronically file with  
9 the commissioner monthly, on or before the twentieth day of the  
10 calendar month following the month in which the taxes accrue, a  
11 statement signed by a duly authorized person on its behalf,  
12 setting forth the total business transacted and the amount of  
13 gross premiums reported by the insurer, pursuant to section  
14 431:7-202, during the month from all risks or property resident,  
15 situated, or located within this State, together with other  
16 information as may be required by the commissioner to determine  
17 the taxability of premiums.

18 (c) Any insurer failing or refusing to electronically file  
19 the annual tax statement on or before March 1, or the monthly  
20 statement on or before the twentieth day of the calendar month  
21 following the month in which the taxes accrue, shall be liable

1 for a fine in an amount not less than \$100 and not more than  
2 \$500 for each day of delinquency."

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

5 "(f) The taxes imposed by subsections (a), (b), (c), and  
6 (d) shall be paid monthly. The monthly tax shall be due and  
7 payable by electronic payment via the Automated Clearing House  
8 debit or credit payment system on or before the twentieth day of  
9 the calendar month following the month in which it accrues,  
10 coinciding with the filing of the statement provided for in  
11 section 431:7-201.

12 In addition to the monthly tax and monthly tax statement,  
13 the annual tax shall be due and payable by electronic payment  
14 via the Automated Clearing House debit or credit payment system  
15 on or before March 1 coinciding with the filing of the statement  
16 provided for in section 431:7-201.

17 In this subsection, "Automated Clearing House debit or  
18 credit payment system" means the network for the interbank  
19 clearing of electronic payments for participating depository  
20 financial institutions.

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

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

8 Any insurer failing or refusing to pay the required taxes  
9 above stated when due and payable shall be liable for a fine of  
10 \$500 or ten per cent of the tax due, whichever is greater; plus  
11 interest at a rate of twelve per cent per annum on the  
12 delinquent taxes. The taxes may be collected by distraint, or  
13 the taxes, fine, and interest may be recovered by an action to  
14 be instituted by the commissioner in the name of this State, in  
15 any court of competent jurisdiction. The commissioner may  
16 suspend the certificate of authority of the delinquent insurer  
17 until the taxes, fine, and interest, should any be imposed, are  
18 fully paid."

19 SECTION 7. Section 431:10-104, Hawaii Revised Statutes, is  
20 amended to read as follows:

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1           "§431:10-104 General readability requirements. In addition  
2 to any other requirements of law, no contract shall be delivered  
3 or issued for delivery in this State unless:

4           (1) The text is in plain language, achieving a minimum  
5 score of forty on the Flesch reading ease test or an  
6 equivalent score on any other comparable test  
7 prescribed by the commissioner under section 431:10-  
8 105(a);

9           (2) The contract is printed, except for specification  
10 pages, schedules, and tables, in not less than ten  
11 point type, one point leaded;

12           (3) The style, arrangement, and general appearance of the  
13 contract [~~gives~~] give no undue prominence to any  
14 endorsements, riders, or other portions of the text;  
15 [~~and~~]

16           (4) A table of contents or index of principal sections is  
17 provided with the contract when the text consists of  
18 more than three thousand words printed on three or  
19 less pages or when the text has more than three pages  
20 regardless of the total number of printed words[-];  
21 and

1       (5) For any short-term health insurance policies that  
2       impose preexisting conditions provisions, any policy,  
3       application, or sales brochure shall disclose in a  
4       conspicuous manner in not less than fourteen point  
5       bold face type the following statement:

6               "THIS POLICY EXCLUDES COVERAGE FOR CONDITIONS FOR  
7       WHICH MEDICAL ADVICE, DIAGNOSIS, CARE, OR TREATMENT  
8       WAS RECOMMENDED OR RECEIVED DURING THE [insert  
9       exclusion period] IMMEDIATELY PRECEDING THE EFFECTIVE  
10       DATE OF COVERAGE."

11       SECTION 8. Section 431:10A-206.5, Hawaii Revised Statutes,  
12 is amended by amending subsection (a) to read as follows:

13       "(a) All accident and health or sickness insurance  
14 policies issued in this State[7] which provide coverage for the  
15 children of the insured shall provide coverage for child health  
16 supervision services from the moment of birth through age five  
17 years. These services shall be exempt from any deductible  
18 provisions, and immunizations shall be exempt from any copayment  
19 provisions, which may be in force in these policies or  
20 contracts."

21       SECTION 9. Section 431:10A-206.5, Hawaii Revised Statutes,  
22 is amended by amending subsection (e) to read as follows:

1           "(e) For the purposes of this section, "child health  
2 supervision services" means physician-delivered, physician-  
3 supervised, physician assistant-delivered, or nurse-delivered  
4 services as defined by section 457-2 ("registered nurse") which  
5 shall include as the minimum benefit coverage for services  
6 delivered at intervals and scope stated in this section."

7           SECTION 10. Section 431:13-108, Hawaii Revised Statutes,  
8 is amended by amending subsection (c) to read as follows:

9           "(c) If a claim is contested or denied or requires more  
10 time for review by an entity, the entity shall notify the  
11 [~~health care provider~~] person filing a claim in writing or  
12 electronically not more than fifteen calendar days after  
13 receiving a claim filed in writing, or not more than seven  
14 calendar days after receiving a claim filed electronically, as  
15 appropriate. The notice shall identify the contested portion of  
16 the claim and the specific reason for contesting or denying the  
17 claim, and may request additional information; provided that a  
18 notice shall not be required if the entity provides a  
19 reimbursement report containing the information, at least  
20 monthly, to the health care provider."

21           SECTION 11. Section 431:19-304, Hawaii Revised Statutes,  
22 is amended to read as follows:



1            "[+]§431:19-304[+]    Qualification of sponsors.    A sponsor  
2 of a sponsored captive insurance company shall be an insurer  
3 licensed under laws of any state, a reinsurer authorized or  
4 approved under the laws of any state, a captive insurance  
5 company formed or licensed under this article, or any other  
6 person, company, or organization approved by the commissioner in  
7 the exercise of the commissioner's discretion, after finding  
8 that the approval of that person, company, or organization as a  
9 sponsor is not inconsistent with the purposes of this article.  
10 A risk retention group shall not be [~~either~~] a sponsor [~~or a~~  
11 ~~participant~~] of a sponsored captive insurance company."

12            SECTION 12.    Section 431:19-305, Hawaii Revised Statutes,  
13 is amended by amending subsection (a) to read as follows:

14            "(a)    Associations, corporations, limited liability  
15 companies, partnerships, trusts, risk retention groups, and  
16 other business entities may be participants in any sponsored  
17 captive insurance company formed or licensed under this  
18 chapter."

19            SECTION 13.    Section 431M-4, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21            "(b)    Mental illness benefits.

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- 1           (1) Covered benefits for mental health services set forth  
2           in this subsection shall be limited to coverage for  
3           diagnosis and treatment of mental disorders. All  
4           mental health services shall be provided under an  
5           individualized treatment plan approved by a physician,  
6           psychologist, licensed clinical social worker,  
7           marriage and family therapist, licensed mental health  
8           counselor, [~~or~~] advanced practice registered nurse, or  
9           licensed dietitian, and must be reasonably expected to  
10          improve the patient's condition. An individualized  
11          treatment plan approved by a licensed clinical social  
12          worker, marriage and family therapist, licensed mental  
13          health counselor, [~~or~~] an advanced practice registered  
14          nurse, or a licensed dietitian for a patient already  
15          under the care or treatment of a physician or  
16          psychologist shall be done in consultation with the  
17          physician or psychologist;
- 18          (2) In-hospital and nonhospital residential mental health  
19          services as a covered benefit under this chapter shall  
20          be provided in a hospital or a nonhospital residential  
21          facility. The services to be covered shall include

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- 1           those services required for licensure and  
2           accreditation;
- 3           (3) Mental health partial hospitalization as a covered  
4           benefit under this chapter shall be provided by a  
5           hospital or a mental health outpatient facility. The  
6           services to be covered under this paragraph shall  
7           include those services required for licensure and  
8           accreditation; and
- 9           (4) Mental health outpatient services shall be a covered  
10          benefit under this chapter."

11          SECTION 14. Section 431P-10, Hawaii Revised Statutes, is  
12          amended by amending subsection (b) to read as follows:

13          "(b) [~~Upon the authorization~~] Authorization of the  
14          commissioner[~~7~~] is required for insurers [~~may~~] seeking to  
15          provide standard extended coverage endorsements for residential  
16          property, including coverage of hurricane risks, subject to the  
17          fund's program for incentives and credits; provided that in the  
18          absence of such authorization, no other policy of residential  
19          property insurance or endorsement to a policy of residential  
20          property insurance on eligible residential property located in  
21          this State shall be issued to provide insurance for damages or  
22          losses caused by a covered event if such coverage is less than

1 that offered by the fund. If standard extended coverage  
2 endorsements on commercial property are no longer being offered  
3 by the fund, any standard extended coverage endorsements on  
4 commercial property offered by an insurer shall qualify as a  
5 comparable coverage under section 431P-5(b)(8)(A). Standard  
6 extended coverage endorsements on residential property which  
7 include coverage for hurricane losses offered by an insurer  
8 shall qualify as a comparable coverage under section 431P-  
9 5(b)(8)(A)."

10 SECTION 15. Section 431R-5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~§~~431R-5~~]~~ Violations; penalties. (a) The insurance  
13 commissioner may assess a fine of up to \$10,000 for each  
14 violation by a pharmacy benefit manager or prescription drug  
15 benefit plan provider who is in violation of section 431R-2 or  
16 431R-3. In addition, the insurance commissioner may order the  
17 pharmacy benefit manager to take specific affirmative corrective  
18 action or make restitution.

19 (b) Failure of a pharmacy benefit manager to comply with a  
20 previously agreed upon contractual retail pharmacy network  
21 agreement pursuant to section 431R-2 or 431R-3 shall be an

1 unfair or deceptive act or practice as provided in section  
2 431:13-102.

3 (c) A pharmacy benefit manager or prescription drug  
4 benefit plan provider may appeal any decision made by the  
5 insurance commissioner in accordance with chapter 91.

6 (d) Every person and its officers, employees, and  
7 representatives subject to investigation or examination by the  
8 commissioner under this chapter shall produce and make freely  
9 accessible to the commissioner the accounts, records, documents,  
10 and files in the person's possession or control relating to the  
11 subject of the investigation or examination, and shall otherwise  
12 facilitate the investigation or examination.

13 (e) Every person and its officers, employees, and  
14 representatives subject to investigation or examination by the  
15 commissioner under this chapter shall issue a written response  
16 no later than fifteen working days after receiving a written  
17 inquiry from the commissioner regarding a claim or complaint.  
18 The response shall be more than an acknowledgment that the  
19 commissioner's communication has been received, and shall  
20 adequately address the concerns stated in the communication."

21 SECTION 16. Section 432:1-102, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:

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1           " (b) Article 2, article 2D, parts II and IV of article 3,  
2 article 6, part III of article 7, article 9A, article 13,  
3 article 14G, and article 15 of chapter 431, sections 431:3-301,  
4 431:3-302, 431:3-303, 431:3-304, 431:3-305, [~~and~~] 431:10-102,  
5 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2), and the  
6 powers granted by those provisions to the commissioner, shall  
7 apply to managed care plans, health maintenance organizations,  
8 or medical indemnity or hospital service associations that are  
9 owned or controlled by mutual benefit societies so long as the  
10 application in any particular case is in compliance with and is  
11 not preempted by applicable federal statutes and regulations."

12           SECTION 17. Section 432:1-602.5, Hawaii Revised Statutes,  
13 is amended by amending subsection (e) to read as follows:

14           "(e) For the purposes of this section, "child health  
15 supervision services" means physician-delivered, physician-  
16 supervised, physician assistant-delivered, or nurse-delivered  
17 services as defined by section 457-2 ("registered nurse") which  
18 shall include as the minimum benefit coverage for services  
19 delivered at intervals and scope stated in this section."

20           SECTION 18. Section 432:1-604.5, Hawaii Revised Statutes,  
21 is amended by amending subsection (d) to read as follows:

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1           "(d) For purposes of this section:

2           "Contraceptive services" means physician-delivered,  
3 physician-supervised, physician assistant-delivered, nurse  
4 practitioner-delivered, certified nurse midwife-delivered, [ex]  
5 nurse-delivered [~~medical services~~], or pharmacist-delivered  
6 medical services intended to promote the effective use of  
7 contraceptive supplies or devices to prevent unwanted pregnancy.

8           "Contraceptive supplies" means all Food and Drug  
9 Administration-approved contraceptive drugs or devices used to  
10 prevent unwanted pregnancy."

11           SECTION 19. Section 432D-14, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13           "(b) In addition to, or in lieu of, suspension or  
14 revocation of a certificate of authority pursuant to this  
15 section, the commissioner [~~after hearing,~~] may levy an  
16 administrative fine upon the health maintenance organization in  
17 an amount not less than \$500 and not more than \$50,000 pursuant  
18 to section 431:3-221."

19           SECTION 20. Section 432D-19, Hawaii Revised Statutes, is  
20 amended by amending subsection (d) to read as follows:

21           "(d) Article 2, article 2D, part IV of article 3, article  
22 6, part III of article 7, article 9A, article 13, article 14G,

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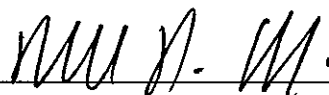
1 and article 15 of chapter 431, and sections 431:3-301, 431:3-  
 2 302, 431:3-303, 431:3-304, [~~and~~] 431:3-305, 431:10-225, and  
 3 431:10-226.5, and the powers granted by those provisions to the  
 4 commissioner shall apply to health maintenance organizations, so  
 5 long as the application in any particular case is in compliance  
 6 with and is not preempted by applicable federal statutes and  
 7 regulations."

8 SECTION 21. Section 431P-17, Hawaii Revised Statutes, is  
 9 repealed.

10 [~~"[§431P-17]—Additional notice requirement. Thirteen~~  
 11 ~~months prior to discontinuation of writing property insurance~~  
 12 ~~coverage, an insurer shall file an affidavit with the~~  
 13 ~~commissioner stating the reasons for the discontinuation."]~~

14 SECTION 22. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 23. This Act, upon its approval, shall take effect  
 17 on July 1, 2016.

18  
 19 INTRODUCED BY:   
 20 BY REQUEST



# S .B. NO. 2854

**Report Title:**

Hawaii Mandatory Catastrophe Reserve Act; Catastrophe Insurance; Property Insurance; Premium Tax; Electronic Filing; Electronic Payments; Physician Assistant-delivered Services; Child Health Supervision; Accident and Health or Sickness; Claim Filer; Risk Retention; Captives; Mental Illness; Licensed Dietitians; Duty to Respond; Visual or Optometric Services Coverage; Licensed Physicians and Optometrists; Surgical or Emergency Services Coverage; Dentists; Mutual Benefit Societies; Contraceptive Services; Insurance

**Description:**

Makes various updates to title 24, Hawaii Revised Statutes, including: requiring property insurers to establish catastrophe reserve funds; requiring an insurer seeking to discontinue writing property coverage to file an affidavit; requiring the Insurance Commissioner's authorization for insurers providing residential property coverage; requiring insurers to file their premium tax statements electronically and to pay electronically; applying consumer protections to short-term health policies with preexisting conditions provisions; including physician assistant-delivered services under coverage for child health supervision for accident and health or sickness policies and for mutual benefit societies; requiring an entity to notify a claim filer under certain conditions; prohibiting a risk retention group from being a sponsor of and allowing it to be a participant in a sponsored captive insurance company; providing mental illness benefits coverage to licensed dietitians; requiring an entity's duty to respond to the Insurance Commissioner during an investigation or examination; providing visual or optometric services coverage for licensed physicians and optometrists and surgical or emergency services coverage for dentists under health plans of mutual benefit societies; providing coverage for pharmacist-delivered contraceptive services; and making other housekeeping and conforming amendments.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update title 24 of the Hawaii Revised Statutes (HRS), relating to insurance, by:

- (1) Adding a new article to chapter 431 to require authorized property insurers to establish reserve funds to pay for losses arising out of catastrophes occurring in Hawaii;
- (2) Adding a new part to article 10E of chapter 431 to require an insurer seeking to discontinue writing property coverage to file an affidavit with the commissioner stating the reasons for discontinuation thirteen months prior to discontinuation and to require the commissioner's authorization for insurers seeking to provide standard extended coverage endorsements for residential property;
- (3) Amending section 431:2D-107(g) to correct a sentence fragment error that does not conform to the National Conference of Insurance Legislators (NCOIL) Insurance Compliance Self-Evaluative Privilege Model Act, upon which section 431:2D-107(g) is based;
- (4) Amending section 431:3-306.5(a) to require an insurer writing residential hurricane coverage to make accessible to the commissioner financial information pertaining to its Hawaii mandatory catastrophe reserve to verify it has the financial assets and ability to cover its hurricane insurance exposure;

- (5) Amending sections 431:7-201(a) through (c) and 431:7-202(f) to require insurers to file their premium tax statements electronically and to make payments electronically;
- (6) Amending section 431:10-104 to apply consumer protections to short-term health insurance policies that contain preexisting conditions provisions;
- (7) Amending sections 431:10A-206.5(a) and (e) to include services delivered by a physician assistant under coverage for child health supervision for all accident and health or sickness insurance policies issued in this State under group and blanket disability insurance;
- (8) Amending section 431:13-108(c) to require an entity to notify the person filing a claim when the claim has been contested or denied or requires more time for the entity to review;
- (9) Amending sections 431:19-304 and 431:19-305(a) to prohibit a risk retention group (RRG) from being a sponsor of a sponsored captive insurance company and to allow an RRG to be a participant in a sponsored captive insurance company;
- (10) Amending section 431M-4(b) to cover mental illness benefits provided by licensed dietitians;
- (11) Amending section 431P-10(b) to maintain its uniformity with new section 431:10E-\_\_;
- (12) Amending section 431R-5 to require an entity to respond to the commissioner during an investigation or examination;

- (13) Amending section 432:1-102(b) to include sections 431:10-225, 431:10-226.5, and 431:10A-116(1) and (2) and to cover visual or optometric services provided by licensed physicians and optometrists, as well as surgical or emergency services provided by dentists, under health insurance plans of mutual benefit societies (MBSs);
- (14) Amending section 432:1-602.5(e) to include services delivered by a physician assistant under coverage for child health supervision for MBSs;
- (15) Amending section 432:1-604.5(d) to provide coverage for pharmacist-delivered contraceptive services;
- (16) Amending section 432D-14(b) to remove "after hearing";
- (17) Amending section 432D-19(d) to include sections 431:10-225 and 431:10-226.5; and
- (18) Repealing section 431P-17 to remove the redundancy of that section due to the notice requirement in new section 431:10E-\_\_.

**MEANS:**

Add a new article to chapter 431; add a new part to article 10E of chapter 431; amend sections: 431:2D-107(g), 431:3-306.5(a), 431:7-201(a) through (c), 431:7-202(f), 431:10-104, 431:10A-206.5(a) and (e), 431:13-108(c), 431:19-304, 431:19-305(a), 431M-4(b), 431P-10(b), 431R-5, 432:1-102(b), 432:1-602.5(e), 432:1-604.5(d), 432D-14(b), and 432D-19(d); and repeal section 431P-17, HRS.

**JUSTIFICATION:**

- (1) This bill adds a new article, to be known as the Hawaii Mandatory Catastrophe Reserve Act, to chapter 431 and amends section 431:3-306.5(a). Hawaii insureds pay annually for

catastrophe coverage as part of their property insurance premiums. However, catastrophes occur infrequently. This situation results in significant underwriting gains for insurers during the years in which no catastrophe occurs. Insurers should retain these underwriting gains in the event of future catastrophic losses. The Hawaii mandatory catastrophe reserve, created by this article and established by authorized property insurers that issue an insurance policy or reinsurance contract covering losses resulting from a catastrophe for property risks located or resident in this State, would be used to pay claims resulting from qualifying losses.

- (2) This bill adds a new part to article 10E of chapter 431 to apply part of section 431P-10(b) and section 431P-17 to property insurers. As a result of adding this new part to article 10E of chapter 431, the bill amends section 431P-10(b) and repeals section 431P-17.
- (3) This bill amends section 431:2D-107(g) to correct a sentence fragment error that was intended to comply with the NCOIL Insurance Compliance Self-Evaluative Privilege Model Act.
- (4) This bill amends sections 431:7-201(a) through (c) and 431:7-202(f) to reduce the administrative cost of processing the premium tax statement and checks that are due monthly. The premium tax collections would be deposited into the general fund faster and more efficiently.
- (5) This bill amends section 431:10-104 to benefit the public by requiring conspicuous disclosure of preexisting conditions provisions.

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- (6) This bill amends sections 431:10A-206.5(a) and (e) to maintain their uniformity with section 431:10A-115.5.
- (7) This bill amends section 431:13-108(c) to make clear that any person filing a claim is entitled to notice.
- (8) This bill amends sections 431:19-304 and 431:19-305(a) to add flexibility to captive laws of sponsored captive insurance companies by allowing an RRG to participate in a sponsored captive insurance company as a protected cell by establishing a separate account to fund the liability of the sponsored captive insurance company. The amendments also help sponsored captive insurance companies stay competitive with captives domiciled in other states. Captive domiciles such as Vermont, Delaware, Montana, and the District of Columbia allow an RRG to participate in a sponsored captive insurance company.
- (9) This bill amends section 431M-4(b) to cover mental illness benefits provided by licensed dietitians, as health plans currently exclude such coverage.
- (10) This bill amends section 431R-5 to maintain its uniformity with chapter 431.
- (11) This bill amends sections 432:1-102(b) and 432D-19(d) to add two consumer protections (delivery of policy and notice of cancellation or renewal) to all types of policies, including those of MBSSs and health maintenance organizations (HMOs). This would benefit members of MBSSs and HMOs. The bill also amends section 432:1-102(b) to maintain its uniformity with article 10A of chapter 431.

- (12) This bill amends section 432:1-602.5(e) to maintain its uniformity with article 10A of chapter 431 and chapter 432D.
- (13) This bill amends section 432:1-604.5(d) to maintain its uniformity with article 10A of chapter 431 and chapter 432D.
- (14) This bill amends section 432D-14(b) to maintain its uniformity with chapter 432 regarding suspension, revocation, or denial of a certificate of authority.

Impact on the public: This bill would make HRS title 24 provisions more understandable, technically correct, and consistent.

Impact on the department and other agencies: This bill would streamline the operations of the Insurance Division, improve its efficiency, and reduce confusion in implementing Hawaii's insurance laws.

GENERAL FUNDS: With respect to amending sections 431:7-201(a) through (c) and 431:7-202(f), electronic premium tax filings, which are directly deposited into the general fund, would provide better cash controls by eliminating the manual handling and processing of checks and would improve the cash flow from five days to two days.

OTHER FUNDS: Compliance resolution fund.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2016.