

SECTION 1
THERE ARE NO VIDEOS RELATED TO THIS SECTION
Hawaii Common Law

A. Insurance Commissioner - Head of the Hawaii Division of Insurance. Insurance is regulated by state law, not federal. Makes rules and regulations necessary to enforce the state insurance code. The Commissioner is appointed by the Director of Commerce and Consumer Affairs with the approval of the Governor

1. Duties of the Commissioner

- a. Issues Certificates of Authority to domestic, foreign and alien insurers admitting them to do business in Hawaii
 - 1. All insurers need a Certificate of authority except for Re-insurers and Surplus Lines insurers (like Lloyds of London)
- b. Prepares and transmits annual report to governor and legislature
- c. Administers Hawaii insurance laws to protect the public
- d. Considers if rates are excessive, inadequate or unfairly discriminatory
 - 1. Does not make rates (insurers make their own rates)
 - a. Subject to the approval or disapproval of the Commissioner
- e. Issues administrative "orders" (such as cease and desist orders)
 - 1. Does not make laws (laws are passed by the legislature)
- f. Requires all insurers to file an annual report
- g. Has power to investigate the affairs of every person engaged in the business of insurance in Hawaii
 - 1. May require a person to appear and show cause why their license should not be suspended or revoked
 - 2. May present results of investigations to the public prosecutor

2. Hearings and Penalties

- a. May hold "administrative hearings" whenever necessary to protect the public
 - 1. Whenever the Commissioner has reason to believe that any person is engaged in any unfair trade practice, the Commissioner may issue and serve upon that person the charges and a notice of a hearing to be held within 15 days
 - a. Such person shall have the opportunity to appear and show cause why a cease and desist order should not be issued
 - 2. A hearing must be held within 30 days of a request from any person aggrieved by actions taken by the Commissioner
- b. May not revoke or suspend a license without first holding a hearing
- c. If, after a hearing, the commissioner finds a person guilty, he may issue a cease and desist order and levy monetary fines
 - 1. The Commissioner may prosecute an action in court to enforce any order or fine made pursuant to the insurance code. If the Commissioner believes that any person has



- violated the code, he may certify the facts of the violation to the public prosecutor
- a. Persons found guilty may be fined not less than \$100 nor more than \$10,000 per violation, or may be imprisoned for not more than 1 year, or both, in addition to license suspension or revocation
 - b. The Commissioner may not order a jail term, but the public prosecutor may request a court to do so under the state penal code
2. If a person is found guilty of unfair trade practices, which are considered to be major violations, the Commissioner may order one or more of the following penalties
 - a. A cease and desist order; and
 - b. A fine of not more than \$1,000 for each violation, not to exceed \$10,000, unless such person knew or should have known that they were in violation, in which case the fine is \$5,000 per violation, not to exceed \$50,000 in any 6 month period; and/or
 - c. License suspension or revocation
 3. If a person violates a cease and desist order, after notice and a hearing and upon order of the Commissioner, such person
 - a. May be fined not more than \$10,000 for each violation and/or be subject to license suspension or revocation
 4. Actions taken by the Commissioner are subject to judicial review (appeal)
- d. After a hearing and notification to the licensee, a license may be suspended, revoked, or refused renewal for one or more of the following:
 1. Obtaining a license through fraud or misrepresentation
 2. Misappropriation of money or forgery of another's name to an application
 3. Conviction of a felony (but not a misdemeanor)
 4. Showing of incompetence, being untrustworthy or financially irresponsible
 5. Commission of an unfair trade practice or cheating on a licensing exam
 6. Violating any rule, subpoena, or order of the Commissioner
 7. Intentionally misrepresenting the terms of an insurance contract
 8. Having a producer's license suspended or revoked in another state
 9. Failing to comply with a court order imposing a child support obligation
 10. Failing to pay state or federal income taxes
 11. Failure to re-pay a student loan
 - e. Upon appeal, the court may levy a fine of \$10,000 in lieu of the Commissioner's action if the court finds that the Commissioner imposed too severe a penalty after considering the facts found
 - f. Upon suspension or revocation, the Commissioner must also notify:
 1. The National Association of Insurance Commissioners (NAIC) and
 2. The Commissioner of each state where the licensee holds a nonresident license
 - g. The license of an insurance agency may be suspended or revoked if:
 1. A licensee of the agency violated state law and:
 - a. The agency knew or should have known of the violation and such violation was not reported nor was corrective action taken
3. Examination of Records
 - a. The Commissioner may take depositions and subpoena witnesses or documents
 - b. Persons subject to investigation must produce records
 - c. The Commissioner may examine (audit) insurers whenever prudent in order to enforce the state insurance code
 1. Domestic companies must be examined at least once every 3 years
 2. Producers must maintain all records for 5 years by "class" of business
 - a. Producer records may be examined whenever it is advisable

- d. The expenses of an examination must be paid by the party being examined

B. Definitions

1. Authorized Insurer

- a. Admitted to do business in this state
- b. Must obtain a Certificate of Authority from Commissioner
 1. Must have adequate legal reserves to pay claims
 2. Must file all rates and policy forms
 - a. Cannot be unfairly discriminatory
- c. Must be either a Stock, Mutual or Reciprocal company
 1. Stock companies are owned by shareholders
 - a. Issue non-participating policies
 2. Mutual companies are owned by policyholders
 - a. Issue participating policies
 1. Might pay dividends to policyholders
 2. Dividends may not be guaranteed
 3. Divisible surplus, if any, must be calculated once a year and may be apportioned to policyholders as dividends
 3. Reciprocal companies are not incorporated
 - a. Sell Property & Casualty only
 - b. Managed by an Attorney-in-Fact
 - c. Insureds exchange reciprocal agreements of Indemnity
 1. They insure each other

2. Unauthorized Insurers

- a. Non-admitted to do business in this State
- b. Have no Certificate-of-Authority
- c. Policies written by unauthorized insurers may be voided by the insured
 1. But may not be voided by the insurer
- d. If an unauthorized insurer does not pay a covered claim
 1. The producer who wrote the policy must pay 100% of the claim
- e. Illegal, except for:
 1. Surplus lines companies
 - a. Like Lloyds of London
 2. Re-Insurance companies
 - a. Insure smaller companies in the event of major claims
 1. Like earthquakes or hurricanes

3. Domestic Insurer

- a. Domiciled (incorporated) in Hawaii
- b. Must be examined every 3 years by the Commissioner

4. Foreign Insurer

- a. Domiciled in another state
- b. A California insurer doing business in HI is a foreign insurer



5. Alien Insurer

- a. Domiciled in another country
- b. A Canadian insurer doing business in HI is an alien insurer

6. All insurers (domestic, foreign or alien) need a Certificate of Authority in Hawaii

- a. Except surplus lines and re-insurance companies
- b. A Certificate of Authority is a license issued to an insurer by the Commissioner, admitting (or authorizing) the insurer to transact insurance in this state

7. Insurance defined

- a. A contract where one party agrees to pay another a specified amount upon the occurrence of a determinable event (a claim)
 - 1. Requires consideration, offer, acceptance and legal capacity of the parties

C. Licensing

1. Persons required to be licensed as Producers (Agents)

- a. Any “person” who solicits, sells or negotiates policies of insurance for risks residing, located or to be performed in this state
 - 1. The word “person” is broadly defined, meaning individual producers (agents) and business entities (agencies)
 - 2. A business entity licensed as a producer must designate an individually licensed producer to be responsible for the entity’s compliance with HI insurance laws
- b. A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is properly licensed for that line of authority
- c. An officer or employee of an insurer or of a producer who does not receive any commission is exempt from licensing
 - 1. A producer’s license is not required to process group enrollments if no commission is paid, although
 - 2. Any person who makes “binders” of coverage must be licensed
- d. Individual producers must be at least age 18, pass the required exam(s) and pay non-refundable fees
 - 1. Persons licensed in another state who move to Hawaii do not have to take the HI exam if they apply for licensing within 90 days of the date they terminated their license in their previous state
- e. A producer’s license must include
 - 1. Their name, address, id #, date of issuance, expiration date and one or more lines of authority
 - 2. Lines of authority include life, health, property, casualty, variable products, personal lines and credit insurance
- f. Appointments
 - 1. Producers may not act as an agent of an insurer unless the appointing insurer files an appointment with the Commissioner within 15 days of the date their first application is submitted
 - 2. Producers may be appointed by more than one insurer
 - a. There is no limit on the number of appointments a producer may have
 - 3. An appointment is not a condition to licensure. However, a licensed producer may not

- represent an insurer without an appointment
- 4. Selling insurance without an appointment is a violation of state law
- 5. Producers may have direct appointments from an insurer or may receive commissions from another producer under a producer-to-producer appointment
- g. Place of Business
 - 1. Must be accessible to the public
 - 2. Licensees must promptly notify the Commissioner of any change of address within 30 days
- h. Temporary Licenses
 - 1. Granted without examination to the:
 - a. Surviving spouse, designee or court-appointed personal representative of a
 - 1. Deceased or disabled licensee, or a
 - 2. Licensee temporarily on active military service
 - 2. Issued for a maximum of 6 months (180 days)
- i. Non-resident licensees
 - 1. May not reside in Hawaii
 - 2. Must be properly licensed in their home state
 - 3. Need not take the Hawaii exam
 - 4. Must sign a “Consent to Service of Process” form
 - a. Appointing the Hawaii Commissioner as the non-resident’s attorney to receive subpoenas within Hawaii
 - 1. The non-resident must appear in Hawaii to respond
 - 5. Licensees may only have one resident license
 - a. In their home state
 - b. But may have up to 49 non-resident licenses
- j. Denial, Suspension or Revocation of Licenses
 - 1. The Commissioner may deny, revoke or suspend a license for:
 - a. Willful violation of insurance laws
 - b. Licensee obtained license through fraud
 - c. Misappropriation of funds held as a Trustee or Fiduciary
 - 1. Commingling producer/customer funds is prohibited
 - d. Material misrepresentation
 - e. Unfair trade practices or fraud
 - 2. Licenses may not be denied, suspended or revoked
 - a. Without a hearing, if requested
 - b. Hearings must be held within 30 days
 - 3. Suspensions may not exceed one year
 - 4. Revocations are permanent, although the Commissioner may re-instate the license if:
 - a. The cause no longer exists
 - b. Any fines have been paid
 - 1. Minimum fine is \$100 and the maximum fine is \$10,000
 - 5. Commissioner may not order a jail term
 - a. Although the public prosecutor may prosecute certain violations which could result in imprisonment up to 1 year
 - 6. Orders of the Commissioner are subject to
 - a. Judicial review (appeal)
- k. Reporting of Actions
 - 1. A producer must report to the Commissioner any civil or administrative action taken against them in any jurisdiction within 30 days of the final disposition of the matter; and
 - 2. Any criminal prosecution being taken against them in any jurisdiction within 30 days of arraignment



1. The Commissioner may issue “limited” licenses, without exam, to sell
 1. Travel accident and baggage insurance;
 2. Credit insurance; or
 3. Travel insurance through vending machines
 4. A producer’s license is **not needed** to sell pre-paid legal insurance
2. Continuing Education and License Renewal
 - a. Producers must complete continuing education (CE) to renew their license
 - b. Producers licensed for L&H **or** P&C must complete
 1. A minimum of 20 hours of CE, 3 of which must be in HI law
 - c. Producers licensed for both L&H **and** P&C must complete
 1. A minimum of 30 hours of CE with at least
 - a. 12 hours related to L&H, 2 of which must be in HI law, and
 - b. 18 hours related to P&C, 2 of which must be in HI law
 - d. Licenses must be renewed (extended) every 2 years
 - e. Non-Resident agents must satisfy the CE requirements of their home state
 - f. Licenses must maintain their own CE records for 4 years
 - g. Excess CE hours may not be carried over

D. Marketing Practices

1. Unfair Competition and Deceptive Practices
 - a. Coercion - using any business practice that results in an unreasonable restraint of trade
 1. A lender refuses to approve a loan for a customer UNLESS they agree to buy insurance on the subject of the loan from them
 - a. A lender may require insurance as a condition to a loan, but the customer may purchase it wherever they choose
 - b. Misrepresentation - includes any statement or comparison that misrepresents the:
 1. Benefits or terms of any policy of insurance
 2. Dividends to be received or paid in the past
 - a. Past dividends may be stated, if accurate
 - b. Future dividends may be illustrated, but not guaranteed
 1. You cannot project future dividends on nonparticipating policies, since only “participating” policies issued by mutual insurers may pay future dividends. Dividends paid by mutual insurers are not taxable, but the interest earned under the “interest” dividend option is
 2. Dividends may be apportioned from the insurer’s accumulated divisible surplus (profits)
 3. Financial condition of an insurer or the legal reserve system
 - a. The purpose of insurance is protection, not investment
 - b. You can never refer to a policy as a “security”
 4. True nature of a policy
 - a. Life insurance may not be sold as a retirement plan unless the client understands that it is life insurance
 5. Implications involved when cashing in or borrowing on an existing life insurance policy in order to purchase a new policy
 - a. Replacement of life insurance is legal if all rules are followed
 - b. Replacement to the detriment of your client is illegal (twisting)
 1. See the Life insurance law and regulations section regarding replacement

6. Misrepresentation also includes making any false statements on a new application regarding an applicant for the purpose of obtaining a commission
7. Misrepresentation **DOES NOT include** making written comparisons of policies, which **FACTUALLY** disclose relevant features by which a client may make an informed decision
 - a. Showing your client a comparison that shows your policy is better than a competitors is not misrepresentation as long as your comparison is based on facts
8. Producers may not use the existence of the State Guaranty Association in their sales presentation as an inducement to purchase
 - a. The Guaranty Association covers the pending claims and unearned premiums of an insolvent insurance company
 - b. It consists of all authorized insurers doing business in this state – variable products are not covered by the association
 - c. Authorized insurers are subject to assessments proportionately
- c. Unfair Discrimination - includes making:
 1. Distinctions between individuals of the same “class” in rates, dividends, benefits or any other terms of a policy
 - a. Two 30-year-old males with the same health, hobbies and occupations may not be charged different rates because they are different in race, national origin or religion
 - b. Distinctions between individuals or properties in neighborhoods within a city presenting essentially the same hazard on rates or benefits payable under any policy of insurance
 1. Two dwellings located in different parts of the same city present essentially the same hazard (same fire department) so rates and policy benefits must be the same
 - c. Distinctions based solely on marital status or sex (gender) UNLESS such classification is for the purpose of insuring family units or is justified by actuarial statistics
 - d. Reductions in benefits in health insurance policies by adding an impairment rider (exclusion) UNLESS such rider only excludes health conditions which were indicated on the original application
 - e. Distinctions solely on the basis of blindness or any other specified physical disability UNLESS such classification is based on risk of loss that is different from others
 1. A blind applicant for life insurance cannot be charged a rate higher than a sighted person UNLESS they have a hazardous avocation (hobby) or occupation
 2. A physically handicapped applicant for auto insurance must be charged the same rate as any other non-handicapped applicant with the same driving record if both have drivers licenses
 - d. Defamation - any oral or written statement that is false or maliciously critical as to the financial condition of any insurer or producer which is calculated to injure their reputation
 1. You cannot state an insurer or producer is having financial difficulty UNLESS it is true
 - e. Rebating - paying any inducement (such as a return of a part of the commission) to a client as an inducement to purchase UNLESS stated in a policy
 1. Dividends are not considered rebates since it is stated in the policy that the client might receive one
 2. Commission paid to an insurance agency of which the producer is a partner is not considered a rebate
 3. Rebating (any amount) is a violation
 4. The rebate need not be monetary - could be anything of value



- a. Playoff tickets given to a client as an inducement to purchase insurance is rebating
 - f. Unfair Claims Practices - committing, either willfully or with such frequency as to indicate a general business practice, any of the following:
 1. Misrepresenting policy provisions or coverage at issue
 2. Failing to acknowledge and act promptly on claims communications
 - a. Promptly means no more than 15 working days
 3. Refusing to pay a claim without conducting a reasonable investigation
 4. Failing to settle claims where liability has become clear, compelling insureds to file lawsuits by offering less than would be reasonably expected or making known to claimants the practice of appealing arbitration awards
 - a. Covered claims must be paid within 30 calendar days
 5. Attempting to settle on the basis of an application which was altered
 6. Failing to state which section of the policy the payment or denial of a claim is based upon
 7. Delaying investigations by requiring claimants to submit both a preliminary claim report and proof of loss, both of which contain the same information
 8. Failing to affirm or deny coverage within a reasonable time after receipt of proof of loss
 9. Failing to provide a claimant with necessary claims forms in a timely manner
 10. It is not an unfair claims practice to
 - a. Require proof of loss to be filed
 1. Proof of loss is necessary as evidence a claim actually occurred
 - b. Deny a claim after conducting a reasonable investigation
 1. Some claims may not be covered such as one that occurred before the effective date of the policy
 - g. False Advertising
 1. An insurer cannot advertise that their producer has knowledge or skills
 - a. UNLESS they actually do
 - h. High Pressure Sale Tactics
 1. An insurer may not engage in sales tactics based upon threats, fear or intimidation
2. Reporting and Accounting for Premiums
 - a. All premiums belonging to insurers and all unearned premiums belonging to clients received by a producer must be held in a fiduciary capacity
 1. A “fiduciary” is someone who the client has trust in (a Trustee)
 - a. Insurance producers and bankers are “fiduciaries”
 - b. Fiduciary duties of insurance producers include:
 1. Treatment of all premiums as trust funds, segregated from the producer’s personal funds (no commingling)
 2. Misappropriation of customer funds is known as “embezzlement”
 3. A licensee, upon receipt of premiums from insureds or return premiums from insurers shall promptly remit the funds to the person so entitled, or deposit such funds in a
 - a. Hawaii federally insured separate trust account
 1. Any interest earned in a trust account belongs to the producer, but only with the prior written consent of the insurer
 2. Trust accounts may not be used as a personal asset or as collateral for a loan to a producer

3. Return premiums must be returned within 30 days to the person so entitled
3. Sharing Commissions
 - a. Commissions may only be paid to properly licensed “persons”
 - b. Insurers and producers may compensate
 1. Individual resident producers
 2. Non-resident producers
 3. Business entities of which the producer is a member
 - a. Sharing commissions is legal if
 1. Both parties are licensed for the same class of insurance
 4. Producers may also pay referral fees to unlicensed “referrers” for leads
 - a. As long as the person who referred the business had no involvement with the sale, solicitation, or negotiation of insurance
 5. Employees of insurers or producers who receive commissions
 - a. Must be licensed as producers
 6. Persons who made “binders” of coverage must be properly licensed
 7. A licensed producer who is appointed by another producer
 - a. May receive commissions from either the producer or the insurer
 8. Renewal or deferred commissions on old business may be paid as long
 - a. As the producer was licensed at the time of the sale
 4. Record Keeping
 - a. Records must be organized by:
 1. Class of Business
 - a. Life, Health, Property or Casualty are “Classes”
 - b. Must be kept available and open to the inspection of the Commissioner for
 2. 5 years after the date of the transaction
 5. Controlled Business - includes insurance written upon a producer's own life, person, family members, property, or those of his employer or the producer's business or employees
 - a. Producers cannot get a license principally to write controlled business
 - b. The Commissioner will not renew a producer’s license if
 1. During either of the last 2 years, the total amount of premiums on controlled business exceeded the total amount of premiums on all other business; or
 2. During the 12 month period following license renewal, the total amount of premiums on controlled business will exceed the total amount of premiums on all other business
 - a. A producer may have up to 50% of his premiums in controlled business as long as the other 50% is not
 - c. Insurance a producer sells to his spouse **would be** considered to be controlled business
 6. Premiums
 - a. The stated premium must be inclusive of all
 1. Service fees



2. Service charges and
3. Commissions
- b. But not the
 1. General Excise Tax
 - a. Insurers pay a premium tax in HI instead of the General Excise Tax

E. Life & Health Guaranty Association

1. Protects clients of insolvent (bankrupt) insurers
2. All authorized Life and Health insurers must participate
3. Funded by proportionate assessments on member companies
 - a. Based on the size of company
 1. A company writing 5% of the total life premiums in this state
 - a. Would have to pay 5% of the claims of an insolvent insurer
4. Does not cover variable products, re-insurance or surplus lines
5. Coverage, with respect to any one person, is a maximum of
 - a. \$ 300,000 for Life insurance death benefits
 - b. \$ 100,000 for cash or annuity values
 - c. \$ 100,000 for Accident and Health benefits
6. Coverage cannot exceed policy limits
7. In no event will the association be liable for more than
 - a. \$300,000 total with respect to anyone life
8. Insurers and producers may not publish any advertisement or make any statement
 - a. That uses the existence of the Guaranty Association for the purpose of selling or inducing the purchase of any form of insurance covered by the association

F. Property & Casualty (liability) Guaranty Association

1. Purpose
 - a. To pay covered claims of insolvent (bankrupt) insurers
 - b. To assist in the detection and prevention of insurer insolvency
 - c. To access the cost of such protection among member insurers based upon their proportionate size
 - d. All authorized P&C insurers must become members of the association
2. The P&C Guaranty Association does not cover
 - a. Title Insurance
 - b. Ocean Marine, or
 - c. Surplus lines
3. Coverage provided
 - a. Claims up to the policy limit of the insolvent insurer or
 1. \$300,000 maximum
 - b. Claims of insolvent workers compensation insurers are covered
 1. Without limit
 - c. Claims for unearned premiums owed by insolvent insurers are covered
 1. Up to a maximum of \$10,000 per policy

HAWAII COMMON LAW

Key Facts

- You CANNOT lose your license for submitting business to a "non-admitted" company (such as a surplus lines insurer).
- With your "resident" Hawaii Producer's license, you can sell in Hawaii ONLY (you would need a "nonresident" license to sell in other states).
- All insurers (except for surplus lines and reinsurance carriers) need a CERTIFICATE OF AUTHORITY from the Hawaii Insurance Commissioner in order to sell here (regardless of reciprocal agreements between states).
- It is NOT an unfair claims practice to require an insured to submit Proof of Loss before paying a claim.
- Rebating is returning part of your commission to a client as an inducement to buy and IS an unfair trade practice.
- Commingling of a client's funds with your own is a breach of FIDUCIARY duty.
- A producer acts in a FIDUCIARY or "Trustee" capacity when handling premiums.
- The misappropriation of customer funds is known as "embezzlement".
- The Commissioner's job is to administer insurance laws to protect the public.
- The purpose of insurance is protection. Insurance MAY NOT be referred to as a security (stock) or an investment or a retirement plan.
- It is considered misrepresentation when a producer gives a client false information in connection with a new application.
- If the Commissioner suspects a producer of using unfair or deceptive practices, he may ask the Producer to appear and show cause why their license should not be revoked.
- Defamation is being falsely or maliciously critical of the financial condition of any insurance company or producer.
- The Commissioner must hold a hearing within 30 days of a request from any person aggrieved by the Commissioner's actions.



- Stating that a producer has knowledge he or she really doesn't have is false advertising.
- Producers may pay referral fees (not commissions) to unlicensed "referrers" for leads as long as the person who referred the business had no involvement with the sale, solicitation or negotiation.
- The stated premium must include all service fees, service charges and commissions, but not the General Excise Tax.
- Producers must keep insurance records by "Class" of insurance for at least 5 years.
- A producer who illegally writes a policy with an unauthorized insurer who refuses to pay a covered claim is liable to the insured for the full amount (100%) of the claim.
- All authorized insurers must join a state Guaranty Association.
- The Commissioner determines the time and place for a hearing.
- You do not need a license to sell pre-paid legal insurance.
- Controlled business is insurance sold to yourself, your family members or employees. You cannot get a license to principally sell "controlled" business. If the total amount of premiums on controlled business exceeds the total amount on all other business, a violation has occurred (50/50 rule).
- Fair discrimination is the opposite (example: insurers charge higher rates for life insurance for older applicants since they can prove they present higher risk).
- Coercion is the refusal of a financial institution to approve a loan UNLESS the client agrees to insurance from them (unfair trade practice).
- All returned premiums received by producers from insurers who decline to write a new application must be returned to the applicant within 30 days.
- It is an unfair trade practice to make projections of future dividends to policyholders that buy nonparticipating policies (only mutual participating policies pay dividends and they are never guaranteed).
- The Commissioner has the power to examine and investigate every "person" engaged in the business of insurance in this state (a "person" could be an individual producer, a business entity producer or agency, or an insurance company).
- The Commissioner has the power to issue "orders" (such as cease and desist orders).
- The maximum fines for unknowingly violating the rules concerning Unfair Trade Practices are \$1,000 per violation, not to exceed a total fine of \$10,000.
- In addition to the above fines, the Commissioner may also revoke or suspend a license or a Certificate of Authority or direct a claim to be paid.
- Failure of the insurer to send out required claim forms to be completed as proof of loss is an Unfair Claims Settlement Practice.

- The Commissioner does not make laws or pass statutes, the legislature does.
- A final action of the Commissioner at a hearing is subject to appeal (judicial review).
- Illegal surplus lines policies may be voided by the insured, the policy holder or their representative, but not the insurer who wrote the policy.
- When the Commissioner revokes a license, both the licensee and the NAIC (National Association of Insurance Commissioners) must be notified.
- Insurers or producers must notify the Commissioner of a new appointment within 15 days of the time their first application is submitted.
- Producers may appoint other producers.
- A producer may have an unlimited number of appointments.
- A producer may represent any number of principals (insurers or other producers).
- Salaried persons who DO NOT solicit, sell or negotiate insurance or receive commissions need not be licensed, including company officers and employees of producers.
- An agency employee may not make a “binder” of coverage unless they are licensed as a producer.
- Producers represent the insurer, not the insured, under the Doctrine of Agency.
- To obtain a resident producer's license, you must be at least 18, live in this state, pay non-refundable fees and pass the appropriate licensing examination.
- To obtain a business entity producer's license, the agency must designate at least one individually licensed producer who is responsible for compliance with Hawaii laws. Not all agency owners and officers need to be licensed, ONLY those who solicit, sell or negotiate insurance.
- A producer's license must be renewed (extended) every 2 years, subject to satisfying the HI continuing education (CE) requirements.
- Licensee's must notify the commissioner, in writing, of any change of address within 30 days.
- No producer may represent an insurer unless APPOINTED by that insurer.
- Domestic insurers (domiciled in Hawaii) must be audited (examined) by the Commissioner at least once every 3 years.
- No person may pay a commission to an unlicensed producer and no person may accept a commission unless properly licensed for that “class” of insurance.
- Failure to respond within 15 working days to claims communications is considered to be an Unfair Claims Settlement Practice.



- Rebating is any type of inducement to buy or renew insurance, which is not specified in the policy.
- A producer's license CANNOT be revoked without a hearing and administrative "order".
- When denying a claim, the insurer must show the claimant which section of the policy they are basing their denial upon.
- Having an appointment is not a condition to licensure, but a producer cannot represent an insurer without an appointment.
- A producer may be appointed by more than 1 insurer.
- Producers who reside in other states may apply for a Hawaii nonresident producer's license, without examination, subject to providing a "Consent to Service of Process Form" which allows subpoenas to be served on the Hawaii Commissioner.
- Producers may hold a resident license in only one state, but they can hold as many as 49 nonresident licenses.
- A resident license allows producers to write insurance on risks that reside here, are located here or are performed here.
- The purpose of the state Guaranty Association is to protect the customers of insolvent insurers.
- A new resident who previously held a like license in a former state is exempt from the HI exam as long as they apply for licensing within 90 days of the date they terminated their previous license.
- Applicants for "limited licenses", such as Travel Accident & Baggage, are exempt from examination.
- An applicant who held a producer's license in this state within the last 2 years is exempt from examination.
- It is unlawful for an insurer to engage in a marketing program that utilizes high pressure sales tactics that rely on threats, fear or intimidation.
- Producers using "trade names" (assumed business names) must register such name with the Commissioner prior to use (a license will be issued in the assumed name).
- Foreign insurers are domiciled in another state, domestic in this state and alien in another country (all need Certificates of Authority in Hawaii).
- The Commissioner may examine an authorized insurer's financial records whenever prudent in order to enforce the state insurance code.
- The failure of a producer to file a change of address with the Commissioner within 30 days may result in license suspension, revocation and/or a fine (minimum \$100/maximum \$10,000 per violation).
- The Commissioner may examine a producer's records "whenever it is advisable".
- Producers licensed in L&H or P&C must complete 20 hours of CE every 2 years, of which 3 hours

must be related to HI insurance rules and laws.

- Producers licensed in both L&H **and** P&C must complete 30 hours of CE every 2 years, 12 hours related to L&H (2 of which must be law) and 18 related to P&C (2 of which must be law).
- All licensees must be “appointed” by either an insurer or a producer to sell insurance.
- Types of insurers that may be formed in this state include stock, mutual and reciprocal insurers.
- Mutual insurers may apportion (distribute) their dividends based upon their “divisible” surplus.
- A producer must be licensed for each “class” of insurance they solicit, sell or negotiate.
- It is an Unfair Claims Settlement Practice to misrepresent policy coverages or provisions.
- The spouse of a deceased or disabled producer may obtain a temporary license from the Commissioner for up to 6 months (180 days), without exam.
- The designee of a producer who enters active service in the armed forces of the USA may obtain a temporary license for up to 180 days, without exam.
- A producer’s license may be suspended or revoked for selling insurance principally to themselves or their family members (controlled business).
- Producers may share commissions with an insurance agency they are affiliated with, other resident producers and non-resident producers, but not with the Commissioner.
- The Commissioner may not order a producer to jail, although the public prosecutor may seek criminal penalties for certain violations, including imprisonment for up to 1 year.
- A California based insurer who has a Certificate of Authority in HI may pay commissions to HI producers.
- A producer’s license may be suspended or revoked if the producer is found guilty of a felony, but not for a misdemeanor.
- Insurance is defined as a “contract whereby one party agrees to indemnify another”.
- An insurance company employee who works at the home office who does not sell, solicit or negotiate insurance or receive commissions does not need to be licensed as a producer.
- A producer cannot modify an insurance contract (policy).
- If, during either of the last 2 years, a producer’s premiums on controlled business exceeded 50% of his total premiums, he is violation of the controlled insurance law.
- Premiums collected from writing a policy on your spouse are considered to be from controlled business.
- Producers must keep their own records relating to continuing education for 4 years.



- Charging different rates for individuals of the same “class” is unfair discrimination.
- Nonresident producers do not have to spend 2 weeks in Hawaii every calendar year.
- A producer’s license belongs to the state and must be returned upon expiration or termination.
- A producer who guarantees that a mutual insurer will pay a dividend is guilty of misrepresentation.
- A mutual insurer cannot state that their policies are similar to shares of stock.
- A producer’s license is good indefinitely if all requirements are satisfied, including CE.
- A producer whose license has been suspended may receive commissions on business he sold while his license was in effect.
- The Commissioner may not refuse to issue a license based on rumors or hearsay.
- The Commissioner may refuse to issue a producer’s license if he feels that the applicant is obtaining the license only to write controlled business.
- A producer who misappropriates money belonging to a customer may be guilty of embezzlement.
- Granting special favors as an inducement to a sale is known as rebating.

HAWAII COMMON LAW

Practice Exam

1. As an insurance producer, you represent:
 - A. Insurers
 - B. Insureds
 - C. The public
 - D. The state

2. All are duties of the Commissioner, EXCEPT:
 - A. Examine domestic insurers
 - B. Issue Cease and Desist orders
 - C. Protect the public
 - D. Examine insureds

3. Domestic insurers must be audited (examined) by the Commissioner:
 - A. Every 3 years
 - B. Every month
 - C. Every 6 months
 - D. Each year by December 31st

4. All of the following are requirements for obtaining a resident producer's license EXCEPT:
 - A. Completion of pre-license training
 - B. Attaining age 18 and domiciled in Hawaii
 - C. Being competent and trustworthy
 - D. Passing the exam and paying non-refundable fees

5. In authorizing an insurer to transact business in Hawaii, the Commissioner is:
 - A. Approving that company
 - B. Setting rates for that company's products
 - C. Allowing that company to legally do business in this state
 - D. Designing products for that company to sell in Hawaii



6. The insurer must notify the Commissioner of a producer's appointment within ____ days of receiving their first application:
- A. 5
 - B. 10
 - C. 15
 - D. 20
7. To obtain a Hawaii producer's license as a nonresident, you must:
- A. Have a similar license in your home state
 - B. Be licensed in all states
 - C. Have a part-time residence in Hawaii
 - D. Have attained the professional designation of either CLU or CPCU
8. A producer who is found guilty of a single unintentional violation of Unfair Trade Practice Regulations may be fined up to:
- A. \$1,000
 - B. \$5,000
 - C. \$10,000
 - D. \$25,000
9. All of the following are considered to be misuses of Trustee funds EXCEPT:
- A. Remitting a return premium to an insured 60 days after the producer received it from the insurer
 - B. Reflecting a premium received as a business asset on the producer's financial statement
 - C. Collecting interest on customer balances held in a producer's trust account, with their permission
 - D. Commingling customer accounts with your own personal funds
10. Which of the following would be considered to be a rebate:
- A. Basing group insurance rates on claims experience
 - B. Paying dividends out of accumulated divisible surplus as stated in the policy
 - C. Offering to give part of the commission to a customer as an inducement to buy
 - D. Sharing the commission with another licensed producer
11. Of \$100,000 in premiums producer Smith wrote over the past year, \$60,000 came from sales to Smith's family members. This is:
- A. Coercion
 - B. Rebating
 - C. A violation of the "controlled" business regulations
 - D. Perfectly legal

12. Which of the following would not be considered an Unfair Claims Settlement Practice:
- A. Failure to respond promptly to claims communications
 - B. Offering a claimant a much lower settlement than they are later able to win in court
 - C. Refusing to pay a claim after conducting a proper investigation
 - D. Requiring a claimant to submit to arbitration
13. Insurers must respond to claims communications:
- A. Within 10 days
 - B. Within 15 working days
 - C. Within 30 days
 - D. Within 45 working days
14. If a producer or insurer is found to have violated an insurance law, the Commissioner may do all of the following EXCEPT:
- A. Notify the public prosecutor
 - B. Impose a monetary fine
 - C. Revoke the violator's license
 - D. Impose time in jail
15. Which of the following is considered to be rebating:
- A. Retrospective rating plans
 - B. Lower rates for safe drivers
 - C. Offering Super Bowl tickets as an inducement to a sale
 - D. Dividends, as stated in the policy
16. All are true regarding producer appointments EXCEPT:
- A. A producer must be appointed at the time business is placed with an insurer
 - B. A producer may be appointed with multiple insurers
 - C. Company's may appoint individuals, partnerships or corporations
 - D. A producer must hold at least one appointment
17. All are true regarding a producer's license EXCEPT:
- A. Licenses must be renewed every 2 years
 - B. Licensees must inform the Commissioner of an address change within 30 days
 - C. Producers must satisfy CE requirements in order to renew their license
 - D. A producer may continue to sell for up to 12 months on an expired license
18. Which type of insurer may pay dividends to policyholders:
- A. Stock
 - B. Mutual
 - C. Fraternal
 - D. Reciprocal



19. No foreign insurer shall transact insurance in this state without a:
- A. Producer's license
 - B. Surplus lines license
 - C. Nonresident license
 - D. Certificate of Authority
20. If, after a hearing, the Commissioner finds that an insurer knew or reasonably should have known they were in violation of Unfair Trade Practices Regulations, he may issue a Cease and Desist order and impose a maximum total fine of:
- A. \$1,000
 - B. \$5,000
 - C. \$10,000
 - D. \$50,000
21. An example of Defamation, which is an Unfair Trade Practice, is:
- A. Misstating the financial condition of an insurer or producer
 - B. A producer uses a trade name that implies he is an insurer
 - C. Sharing commissions with someone who is not licensed
 - D. Paying part of your commission back to the client as an inducement
22. All are true about "foreign" insurance companies EXCEPT:
- A. They are domiciled in another state
 - B. They need a Certificate of Authority in their home state
 - C. They do not need a Certificate of Authority in Hawaii
 - D. They may pay commissions to Hawaii producers
23. All are true about the State Guaranty Association EXCEPT:
- A. It covers title and ocean marine insurance
 - B. It assists in the detection of insurer insolvencies
 - C. It pays covered claims of insolvent companies
 - D. All authorized insurers must participate
24. To which of the following could a producer pay part of her commission without violating any insurance regulations:
- A. A relative who bought insurance from her
 - B. An employee who bought insurance from her
 - C. A partnership of which the producer is a member
 - D. Any client who buys insurance from her
25. Which of the following is not one of the duties of the Commissioner:
- A. Enforcing provisions of the insurance code
 - B. Examining and licensing individual producers and agencies
 - C. Making rates
 - D. Holding hearings and issuing administrative "orders"

26. Which type of government is primarily concerned with regulating insurance:
- A. State
 - B. Federal
 - C. County
 - D. City
27. Which of the following correctly defines an "alien" insurer doing business in Hawaii:
- A. One formed under the laws of another country
 - B. One formed under the laws of another state
 - C. One formed under the laws of the State of Hawaii
 - D. One formed under the laws of another country, but holding a Certificate of Authority in Hawaii
28. A producer who procures a license for the principal purpose of obtaining insurance for herself, her family members or employees is violating the regulations concerning:
- A. Exclusive business
 - B. Controlled business
 - C. Coerced business
 - D. Captive business
29. Which is not prohibited under Unfair Trade Practice Regulations:
- A. Misleading or false statements about dividends previously paid out
 - B. False statements about the financial condition of an insurer
 - C. Readjusting group premiums based on loss or expense experience
 - D. Discriminating between individuals of the same class
30. How many principals may a producer represent:
- A. One
 - B. Five
 - C. Ten
 - D. Unlimited
31. Conditions for a corporate insurance agency seeking a Hawaii producer's license include:
- A. All agency principals selling insurance to have an individual license
 - B. All salaried employees to be licensed
 - C. The agency must be domestic to Hawaii
 - D. The agency must sell all lines of insurance
32. All of the following are true regarding a producer's license EXCEPT:
- A. It is issued for 1 year
 - B. It is the property of the state
 - C. It stays in effect indefinitely if all requirements are met
 - D. Licensees must satisfy CE requirements in order to renew it



33. You represent a large California based insurer who does business in all 50 states. All of the following are true EXCEPT:
- A. You must obtain a producer's license in all 50 states
 - B. The insurer must obtain a Certificate of Authority in all 50 states
 - C. You must obtain a producer's license only in the states you sell in
 - D. The insurer would be considered a "foreign" insurer in Hawaii
34. After a hearing, the Commissioner may levy all of the following penalties on a producer who violated an Unfair Trade Practice Regulation EXCEPT:
- A. 6 months in jail
 - B. \$500 fine
 - C. Cease and desist order
 - D. License suspension or revocation
35. An insurer that is domiciled in another state may do business in Hawaii if:
- A. They register as a domestic company in Hawaii
 - B. They obtain a Certificate of Authority in Hawaii
 - C. They are granted an exemption by the Insurance Commissioner
 - D. They do business in all other states
36. The purpose of insurance regulation is to:
- A. Protect the insurance buying public
 - B. Protect insurance companies
 - C. Protect insurance producers
 - D. Achieve uniformity with the regulations of other states
37. Which of the following is a producer Trustee duty:
- A. Selling insurance
 - B. Making a commission
 - C. Handling premiums
 - D. Signing an application
38. All of the following are violations of Hawaii insurance law EXCEPT:
- A. Commingling premiums of clients with your own personal funds
 - B. Selling insurance with a nonresident license
 - C. Paying or sharing a commission with someone whom is not licensed
 - D. Returning part of the commission to the customer as an inducement

39. All of the following are penalties that the Commissioner may levy when a producer fails to report a change of address within 30 days EXCEPT:
- A. License suspension
 - B. Fine of up to \$10,000
 - C. License revocation
 - D. Fine of up to \$15,000
40. Clark's credit union refused his application for a loan unless he agreed to purchase credit life from them. This is an example of:
- A. Defamation
 - B. Unfair discrimination
 - C. Misrepresentation
 - D. Coercion
41. You need a producer's license to sell all EXCEPT:
- A. Life Insurance
 - B. Pre-Paid Legal Insurance
 - C. Property and Casualty
 - D. Health Insurance
42. All of the following can void a policy written by an unauthorized insurer EXCEPT:
- A. The insured
 - B. The policy holder
 - C. The insurer
 - D. A representative of the policy holder
43. A producer's statement that the policy they are selling is similar to shares of stock is:
- A. Misrepresentation
 - B. Twisting
 - C. Defamation
 - D. Coercion
44. Under Hawaii's Unfair Claims Practices regulations, when denying a claim an insurer must do all of the following EXCEPT:
- A. Indicate to the claimant which section of the policy they are relying upon
 - B. Respond to claims communications within 15 working days
 - C. Conduct a reasonable investigation
 - D. Pay a claim that occurs after the grace period has ended



45. Under Hawaii's Unfair Claims Practices regulations, all would be considered violations EXCEPT:
- A. Failing to settle when liability is clear
 - B. Offering claimants lower settlements than they could win in court
 - C. Requiring claimants to submit proof of loss
 - D. Attempting to base settlements on altered applications
46. If a producer writes a policy with an unauthorized insurer who refuses to pay a covered claim, the producer must pay ____% of the claim:
- A. 25%
 - B. 50%
 - C. 75%
 - D. 100%
47. The Commissioner may examine (audit) an authorized insurer:
- A. Every 3 years
 - B. Every 5 years
 - C. Every 7 years
 - D. Whenever prudent to enforce the insurance code
48. A client may challenge the validity of a consumer investigative report under the:
- A. Consumer Protection Act of 1974
 - B. Fair Credit Reporting Act
 - C. Employees Retirement Income Security Act
 - D. Consolidated Omnibus Budget Reconciliation Act
49. All of the following are included in the premium EXCEPT:
- A. Service charges
 - B. Service fees
 - C. Commissions
 - D. General Excise Tax
50. All are true about temporary licenses EXCEPT:
- A. They are issued for 180 days
 - B. They may be issued to new producers while they are in training
 - C. They may be issued to the spouse of a producer who died or becomes disabled
 - D. They may be issued to the designee of a producer who enters active services in the armed forces of the USA
51. An insurer or producer may not compensate a(n):
- A. Unlicensed producer
 - B. Nonresident producer
 - C. Insurance agency
 - D. Referrer

52. A marketing program that relies on threats, fear or intimidation is known as:
- A. Cold lead prospecting
 - B. Defamation
 - C. High pressure sales tactics
 - D. Coercion
53. All of the following are true regarding a producer's records EXCEPT:
- A. They must be kept by class of insurance
 - B. The Commissioner may examine them whenever it is advisable
 - C. They must be kept for 5 years
 - D. The Commissioner must pay all costs related to an examination
54. A producer with a L&H or a P&C license must earn ____ hours of CE every 2 years, 3 of which must be related to HI law:
- A. 10
 - B. 15
 - C. 20
 - D. 24
55. Types of insurers that may be formed in this state include which of the following:
- A. Foreign, alien and domestic
 - B. Stock, mutual and reciprocal
 - C. Admitted and non-admitted
 - D. Authorized and unauthorized
56. Which of the following is considered to be an Unfair Claims Settlement Practice:
- A. Misrepresenting policy provisions
 - B. Failing to respond to a claims communication with 24 hours
 - C. The denial of a claim after conducting a reasonable investigation
 - D. Failing to pay a covered claim within 48 hours
57. A California based insurer cannot pay a commission to a Hawaii producer unless the producer is licensed:
- A. In both California and Hawaii
 - B. In Hawaii
 - C. In all states
 - D. In all states where the insurer does business
58. A producer's license may be suspended or revoked for all of the following EXCEPT:
- A. Failure to comply with a court order imposing a child support obligation
 - B. Failure to pay state or federal income tax
 - C. Failure to re-pay a student loan
 - D. Conviction of a misdemeanor



59. Mr. "R" is a corporate officer who works at the insurer's home office. If he does not sell insurance and does not receive commissions:
- A. He does not need a producer's license
 - B. He must be licensed since he works for an insurer
 - C. He must hold nonresident licenses in all states the insurer does business in
 - D. He must be licensed only in the state that the insurer is domiciled in
60. All of the following are duties of a producer EXCEPT:
- A. Soliciting insurance contracts
 - B. Negotiating insurance contracts
 - C. Selling insurance contracts
 - D. Modifying insurance contracts

HAWAII COMMON LAW

Practice Exam Answers & Rationales

1. **A** Under the Doctrine of Agency, producers (agents) represent the insurer(s) or producer(s) who appoint them. Insurers and producers are responsible for the acts of their agents as long as they stay within the scope of their authority, which is usually stated in their agent's contract.
2. **D** Although the Commissioner has very broad powers, he does not have the power to examine insureds (clients).
3. **A** A domestic insurer is domiciled (incorporated) in this state and must be examined (audited) by the Commissioner at least once every 3 years to determine their solvency. Foreign insurers are domiciled in another state and alien insurers are domiciled in another country.
4. **A** Hawaii does not have a specific pre-license training requirement, meaning that passing the examination with a minimum score of 75% is adequate proof of competency.
5. **C** When the Commissioner issues an insurer a Certificate of Authority, he is allowing them to legally transact insurance in this state, although the Commissioner does not necessarily "approve" that company. However, insurers set their own rates and design their own policy forms, subject to the approval or disapproval of the Commissioner.
6. **C** Although obtaining an appointment from an insurer is not a requirement of licensing, producers may not sell insurance on behalf of an insurer without an appointment. Insurers must send the Commissioner an appointment within 15 days of receiving a producer's first application.
7. **A** Although you can have only one resident license, you may have as many as 49 nonresident licenses, which are based upon reciprocal agreements between states. Producers licensed in other states may obtain a Hawaii non-resident license by completing the proper application, paying the proper fees and appointing the Hawaii Commissioner as their attorney to receive service of process (subpoenas) on their behalf. No Hawaii exam is required.
8. **A** Note that the question is asking about a single unintentional violation, which can lead to a fine of up to \$1,000 per violation, not to exceed \$10,000. However, if the producer knew or should have known that they were in violation of the Unfair Trade Practices Regulations, the fine may be \$5,000 per violation, not to exceed \$50,000 in 6 months.
9. **C** Producers must act in a "fiduciary" capacity, as Trustee, when handling premiums on behalf of customers or insurers, meaning that unless they remit the funds to the person so entitled promptly, they must deposit them in a separate federally insured bank account in Hawaii. However, as long as the customer and/or the insurer consent, any interest earned in the producer's trust account belongs to the producer. Remember, monies due customers or insurers cannot be commingled with the producer's own funds. Return premiums must be returned to the customer within 30



days.

10. **C** Rebating is an Unfair Trade Practice and usually consists of returning part of the commission to the customer as an inducement to the sale, although giving anything of value, such as tickets to a sporting event, as an inducement could also be considered to be rebating.
11. **C** A producer may only have 50% of his premiums related to “controlled” business, which is defined as business written by the producer to insure himself, his family members, his employees and others under his control. Since 60% of Smith’s premiums were related to controlled business, he is in violation of the state insurance code.
12. **C** Claims may be denied as long as the insurer conducts a proper investigation to determine whether or not coverage applies.
13. **B** Insurers must respond to claims communications within 15 working days and must pay covered claims within 30 days.
14. **D** Although the Commissioner may not impose jail time, he may turn the matter over to the public prosecutor. For most violations of the insurance code, the Commissioner may level a fine of not less than \$100, nor more than \$10,000 per violation, in addition to license suspension or revocation. However, fines for violating Unfair Trade Practice Regulations may be substantially higher.
15. **C** Giving anything of value as an inducement to a sale is considered to be rebating.
16. **A** A producer may submit an application to an insurer for underwriting consideration and if they accept it, they must appoint the producer as their representative within 15 days from the date the application was submitted.
17. **D** A producer who allows their license to expire may, within 24 months from the due date of the renewal fee, reinstate that license without re-taking the exam. However, producers may not solicit, sell or negotiate insurance during the time their license is expired.
18. **B** Mutual insurers may pay (apportion) dividends to their policy holders out of their “divisible” surplus (profits). However, dividends may not be guaranteed.
19. **D** All insurers, whether they are domestic, foreign or alien, must obtain a Certificate of Authority from the Commissioner, with the exception of re-insurance and surplus lines insurers.
20. **D** If a producer knew, or should have known, that their activities were in violation of the Unfair Trade Practices Regulations, they may be fined up to \$5,000 per violation, not to exceed \$50,000 for all violations within a 6 month period.
21. **A** While all of the answers shown are violations, defamation is specifically defined as misstating the financial condition of an insurer or producer in order to damage their reputation.
22. **C** Although foreign insurers are domiciled in another state, they need a Certificate of Authority in every state where they transact insurance. In other words, if a foreign insurer does business in all 50 states, they would need 50 Certificates of Authority. Remember, insurance is regulated by state law, not federal.

23. **A** The state Guaranty Association's purpose is to protect the customers of insolvent (bankrupt) insurers up to specified limits. Although all authorized insurers must become members of the association as a condition of their Certificate of Authority, insurers who sell only title insurance and ocean marine insurance are exempt.
24. **C** Individual producers often join together with other producers to form a business entity in the form of a partnership. The partnership will then obtain a business entity (or agency) license and do business under an assumed business name, which must be filed with the Commissioner. Commissions generated by the various business partners are deposited in a joint partnership account, from which expenses and commissions are paid according to the partnership agreement or contract.
25. **C** Although the Commissioner has the power to determine if rates are too high, too low or unfairly discriminatory, insurers make their own rates, which are subject to the approval or disapproval of the Commissioner.
26. **A** Insurance is regulated by state law, not federal. The federal government only gets involved in insurance regulation when the states fail to address the issue.
27. **D** Although response 'A' is correct as far as it goes, response 'D' is a better answer. Alien insurers are domiciled in another country, but must hold a Certificate of Authority in Hawaii in order to transact business here.
28. **B** A producer cannot obtain a license "principally" to write controlled business, which is insurance sold to cover themselves, their family members or others they control. However, producers may write some controlled business as long as the percentage of premiums they collect on controlled business does not exceed the percentage of premiums they collect on other business. In other words, up to 50% of a producer's premiums may be related to controlled business.
29. **C** Misrepresenting dividends, defamation and unfair discrimination are all Unfair Trade Practices. However, readjusting group insurance premiums based on prior loss or expense experience is not considered to be unfair.
30. **D** Under the Doctrine of Agency, a producer (or agent) acts on behalf of his or her principal, which is the insurer(s) they represent. Since an independent agent (or producer) may have any number of insurer appointments in HI, they may represent an unlimited number of principals. A principal is responsible for the acts of their agents as long as they stay within the scope of their contractual authority. Remember, a producer may be appointed by another producer as well.
31. **A** Although insurance agencies are required to obtain a business entity license and designate an individually licensed producer to ensure that the agency is in compliance with state laws, the agency need not be domiciled (incorporated) in HI and need not sell all lines of insurance. While salaried employees need not be licensed unless they "bind" insurance coverage, agency principals (owners) must have individual licenses if they solicit, sell or negotiate insurance.
32. **A** Producer licenses must be renewed (extended) every 2 years. If all requirements are satisfied, including continuing education, a producer's license may be extended indefinitely. However, since the license is actually the property of the state, a producer must return it to the Commissioner upon expiration or termination.
33. **A** Although insurers are required to have Certificates of Authority in all states where they transact



insurance, producers need only be licensed in the states where they solicit, sell or negotiate insurance.

34. **A** If, after a hearing, the Commissioner finds that a producer has violated an Unfair Trade Practice regulation, he will issue a cease and desist order directing the producer to stop engaging in the unfair practice. In addition, the Commissioner can levy a fine for an intentional Unfair Trade Practice violation of up to \$5,000 per violation, not to exceed \$50,000 in any 6 month period, plus license suspension or revocation. Fines may be less if the producer did not know and reasonably could not have known that his practices were in violation. However, although certain violations of the insurance code may lead to imprisonment of up to 1 year upon conviction by the public prosecutor, the Commissioner may not order a producer to jail.
35. **B** An insurer that is domiciled (incorporated) in another state can transact business in this state if they obtain a Certificate of Authority from the HI Commissioner. For example, an insurer domiciled in California would be considered to be a foreign insurer in HI. Alien insurers are domiciled in other countries and domestic insurers are domiciled in this state. All are required to obtain a Certificate of Authority, admitting them to do business here.
36. **A** The main purpose of insurance regulation is to protect the public. Remember, although insurance is regulated by state law, not federal, state laws vary from state to state.
37. **C** Producers have a “fiduciary” or “trustee” responsibility when handling premiums on behalf of their customers and the insurers they represent. Unless premiums due insurers and return premiums due insureds are remitted promptly, they must be deposited in a federally insured trust account in this state and cannot be commingled with the producer’s own funds. Improper use of funds kept by a fiduciary or trustee may be considered to be embezzlement.
38. **B** It is not unlawful for a non-resident of HI to sell insurance here as long as they have a HI non-resident producer’s license, which may be issued without exam as long as the producer is properly licensed and in good standing in his or her home state.
39. **D** Although failing to report a change of address is a violation of the insurance code, it is not considered to be an Unfair Trade Practice or major violation. If, after a hearing, the Commissioner finds that a producer is guilty of violating the code, he may suspend or revoke their license and levy a monetary fine, subject to a minimum of \$100 and a maximum of \$10,000.
40. **D** While a credit union or bank may require that a debtor have insurance as a condition of a loan, they cannot require the debtor to buy the insurance from them or from a particular producer or insurer as a condition of loan approval. To do so would be considered to be an Unfair Trade Practice known as “coercion”.
41. **B** Pre-paid legal insurance is designed to pay certain legal fees incurred by an insured up to certain limits, such as the cost of preparing a will. It is often sold on a group basis and may be included as an employee benefit at work. No license is required for those who sell it.
42. **C** Except for surplus lines and re-insurance, insurers cannot legally transact insurance in this state without a Certificate of Authority. If they do, they must stand behind the policy they sold, meaning that they cannot “void” it. However, insurance policies that were sold illegally by an unauthorized insurer may be voided by the insured, the policy holder or their representative. To “void” coverage means to cancel it “flat”, meaning no coverage applies and all premiums must be refunded.

43. **A** Stating that buying an insurance policy is similar to buying shares of stock is considered to be misrepresentation, which is considered to be an Unfair Trade Practice.
44. **D** It is not a violation of Unfair Claims Practices regulations to deny a claim that occurred prior to the effective date of the policy or one that occurred after the policy lapsed (expired). Although coverage still applies during the grace period, which is the period of time allowed to pay premiums late, a policy will lapse at the end of the grace period and no coverage will apply.
45. **C** Insurance contracts offer “conditional” coverage, meaning that no coverage will apply unless the insured satisfies all of the claims conditions. Requiring proof of loss, which is evidence that a claim actually occurred, is not an Unfair Claims Practice.
46. **D** A producer who sells a policy on behalf of an unauthorized insurer who illegally issues it is liable for 100% of any claim the insured incurs if the insurer does not pay it. An unauthorized insurer is one that does not have a Certificate of Authority in this state.
47. **D** Although the Commissioner must examine (audit) a domestic insurer at least once every 3 years and every other authorized insurer at least once every 5 years, he may examine any insurer whenever prudent in order to protect the public. Most examinations (or audits) are conducted to determine the insurer’s solvency, meaning their ability to pay claims. The cost of such an examination must be paid by the insurer.
48. **B** The federal Fair Credit Reporting Act governs consumer investigative reports, such as credit reports, by requiring that proper notification be given and that inaccurate reports be corrected.
49. **D** All company expenses, including service fees, service charges and commissions must be included in the premium charged. However, since insurers pay a premium tax in lieu of Hawaii’s general excise tax, no general excise tax is included.
50. **B** The Commissioner may issue temporary insurance licenses, without exam, for up to 180 days to the surviving spouse of a producer who became disabled or dies, to the producer’s court appointed representative, or to the designee of a producer who enters active service in the armed forces of the United States.
51. **A** It is unlawful for an insurer or producer to compensate an unlicensed producer who solicits, sells or negotiates insurance on their behalf. However, producers may share commissions with other producers who have like licenses and with business entities (agencies) with which they have a contractual agreement or ownership position. Further, finder’s fees may be paid to unlicensed “referrers” for leads as long as they do not engage in solicitation, sales or negotiation.
52. **C** It is an Unfair Trade Practice for an insurer to engage in a marketing program that utilizes high pressure sales tactics that are based upon threats, fear or intimidation.
53. **D** The Commissioner may examine (audit) a producer’s records whenever it is advisable to protect the public. The cost of such examination must be paid by the party being examined. Producers must keep their records by “class” of insurance for 5 years from the date of the last transaction. Life, health, property or casualty are considered to be “classes” of insurance.
54. **C** Producers with either a L&H license **or** a P&C license must complete 20 hours of continuing education every 2 years, 3 of which must be related to HI law, in order to renew (extend) their



license.

- 55. **B** There are 3 main types of insurance companies: Stock, Mutual and Reciprocal. All 3 types may be formed in this state and may receive a Certificate of Authority from the Commissioner. Foreign, alien or domestic refers to where the insurer is domiciled. Authorized and unauthorized refers to their status as an admitted company.
- 56. **A** Misrepresenting policy provisions is an Unfair Claims Settlement Practice. However, insurers have up to 15 working days to respond to a claims communication and up to 30 calendar days to pay a covered claim. The denial of a claim after conducting a reasonable investigation is perfectly legal, since the investigation may indicate that no coverage applies.
- 57. **B** A California based insurer is considered to be an alien insurer in this state and must have a Certificate of Authority in HI. However, producers representing the alien insurer in HI need only be licensed in this state.
- 58. **D** After a hearing, the Commissioner may suspend or revoke a producer's license if they are convicted of a felony, but not for a misdemeanor.
- 59. **A** Insurer employees who do not solicit, sell or negotiate insurance are exempt from licensing as long as they do not receive commissions.
- 60. **D** Although a producer may modify an application for insurance with the written consent of the applicant, they cannot modify an insurance policy or contract. Remember, the contract is between the insured and the insurer, and may only be changed with the mutual consent of the parties. The producer is a party to the application, but not the policy, or contract.