
A BILL FOR AN ACT

RELATING TO PROPERTY DAMAGES.

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

1 SECTION 1. Section 663-8.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [+] §663-8.8 [] Limitation on aggregate liability;] Covered
4 catastrophic wildfires; limitations on claims of damage to
5 property; electric utilities. (a) For claims alleging the loss
6 of or damage to real or personal property from a covered
7 catastrophic wildfire, damages shall be limited to the actual
8 damages suffered by the claimant. Punitive damages shall be
9 prohibited.

10 [+] (b) The aggregate liability of an electric utility,
11 including its affiliates, collectively, for qualifying damages
12 arising from a covered catastrophic wildfire shall not exceed
13 [the least of the maximum payable amount authorized by the
14 rules, adopted pursuant to section 269-27.9, for either the set
15 period of time in which the covered catastrophic wildfire began
16 or per event, as determined by the commission, or for the
17 remainder of the maximum payable amount to the extent that the



1 ~~electric utility has already paid qualifying damages for the~~
2 ~~same time period or event.] \$1,000,000,000 per occurrence.~~
3 Claims for damages to insured property in excess of the coverage
4 limit shall not be subject to the limitation under this
5 subsection.

6 [+] (c) An electric utility that seeks to assert the
7 limitation on aggregate liability set forth in subsection [+] (a)
8 (b) shall:

- 9 (1) Have a wildfire mitigation plan[, as defined in
10 ~~section 269-27.9,~~] that is approved by the public
11 utilities commission and shall have sought and
12 received a determination from the public utilities
13 commission that the wildfire mitigation plan is being
14 implemented on the timeline approved by the public
15 utilities commission; and
- 16 (2) Be in full compliance with any conditions and
17 reporting requirements established by the public
18 utilities commission by rule [pursuant to subsection
19 ~~269-27.9(e).~~] to ensure compliance with the wildfire
20 mitigation plan.



1 [+e] (d) All civil actions arising out of a catastrophic
2 wildfire shall be brought in the circuit in which the
3 catastrophic wildfire occurred. The court shall adopt
4 procedures to equitably apply the limit set forth in
5 subsection [+a] (b) to all applicable filed civil claims, and
6 notwithstanding any law to the contrary, joint and several
7 liability shall not apply to qualifying damages, even as to any
8 amount of qualifying damages in excess of the aggregate
9 liability of an electric utility; provided that [in]:

10 (1) Notwithstanding anything in section 663-10 or any
11 other applicable statute, actions for claims for
12 qualifying damages shall be filed by the insurer as a
13 subrogation claim, unless the insurer expressly waives
14 its authority to file the claim or the contract with
15 the policyholder does not authorize the insurer to
16 file such claims. If an insurer files a claim under
17 this paragraph, the policyholder shall file all claims
18 with respect to the insured property with the insurer
19 and shall be barred from filing a separate claim
20 against the electric utility, except a plaintiff may
21 file a claim against the electric utility for damages



1 to the insured property in excess of the coverage
2 limit in the policy. Nothing in this paragraph shall
3 prohibit a person from filing an action for claims for
4 actual damages under subsection (a) not covered by an
5 insurance policy, which shall not be subject to the
6 limitation under subsection (b);

7 (2) In any action to recover from a person or an entity in
8 connection with a covered catastrophic wildfire, the
9 person or entity may claim, in defense, apportionment
10 of fault to any other person, entity, electric
11 utility, or electric cooperative, even as to those who
12 are not a party to the action[.]; and

13 (3) Notwithstanding section 657-7, all actions for claims
14 for qualifying damages shall be filed within one year
15 after the covered catastrophic wildfire and not after.

16 The exceptions to the abolition of joint and several liability
17 set forth in section 663-10.9 shall not apply to any suit,
18 claim, arbitration, or other civil action arising out of a
19 covered catastrophic wildfire. All settlements or judgments for
20 claims for qualifying damages shall be subject to approval by
21 the court. The court shall not approve any settlement or



1 judgment that would cause the aggregate liability of an electric
2 utilities utility to exceed the aggregate liability limit
3 [prescribed by the commission if the utility is entitled to
4 invoke the limitation] under subsection [(a).] (b). No
5 liability allocable to the electric utility that is not payable
6 because of the aggregate liability limit shall be shifted, in
7 any manner, to any other alleged tortfeasor or obligor.

8 [(d)] (e) A court may consolidate cases arising from a
9 covered catastrophic wildfire. Any circuit court that is not
10 the consolidating court shall transfer any civil case to
11 facilitate the consolidation.

12 [(e)] No later than twenty days prior to the convening of
13 each regular session, the commission shall study and submit a
14 report to the legislature that includes:

15 (1) An assessment of whether the factors considered
16 pursuant to section 269-27.9 (b) adequately balance the
17 solvency interests of electric utilities with the
18 compensation owed in the previous year to catastrophic
19 wildfire victims, or whether additional factors should
20 be considered; and

1 (2) Any other findings and recommendations, including any
2 necessary proposed legislation.]

3 (f) The director of Hawaii emergency management shall
4 determine whether a wildfire is a covered catastrophic wildfire
5 and shall certify that a wildfire is a covered catastrophic
6 wildfire no later than days after extinguishment of the
7 wildfire. The director's determination shall be final and not
8 subject to appeal.

9 [+f)] (g) For the purposes of this section:
10 "Catastrophic wildfire" means a wildfire occurring in the
11 State on or after the effective date of this Act that
12 substantially damages or destroys more than [five]:

13 (1) Five hundred commercial structures or residential
14 structures [~~designed for habitation~~]; or[, for]
15 (2) For an electric cooperative, [~~a wildfire that~~
16 ~~substantially damages or destroys more than~~] fifty
17 commercial structures or residential structures
18 [~~designed for habitation~~].

19 "Covered catastrophic wildfire" means a catastrophic
20 wildfire that may have been caused, or whose severity may have
21 been increased, by an electric utility's facilities or actions.



1 ~~"Electric utility"~~ means a public utility that exists for
2 the furnishing of electrical power, including an electric
3 cooperative.]

4 "Electric cooperative" [is] means an electric utility that
5 ~~has the same meaning as in~~ meets the definition of electric
6 cooperative under section 269-31(c).

7 "Electric utility" means a public utility that exists for
8 the furnishing of electrical power, including an electric
9 cooperative.

10 "Public utility" has the same meaning as in section 269-1.

11 "Qualifying damages" means economic damages arising out of
12 the loss of or damage to real or personal property, covered by a
13 property insurance policy, from a covered catastrophic
14 wildfire~~[.]~~, but does not exceed the coverage limit established
15 within the property insurance policy for that real or personal
16 property. "Qualifying damages" does not include claims for
17 physical bodily harm or emotional harm.

18 "Wildfire mitigation plan" means the plan that each
19 electric utility shall file with the public utilities
20 commission, that shall be periodically updated at a frequency
21 determined by the public utilities commission, and that sets



1 forth the electric utility's practices to protect public safety
2 and reduce risk to customers from wildfires and to promote the
3 resilience of the electric system to wildfire damage, pursuant
4 to requirements established by the public utilities commission."

5 SECTION 2. Section 663-10, Hawaii Revised Statutes, is
6 amended to read as follows:

7 **"§663-10 Collateral sources; protection for liens and**
8 **rights of subrogation.** (a) In any civil action in tort, the
9 court, before any judgment or stipulation to dismiss the action
10 is approved, shall determine the validity of any claim of a lien
11 against the amount of the judgment or settlement by any person
12 who files timely notice of the claim to the court or to the
13 parties in the action. The judgment entered, or the order
14 subsequent to settlement, shall include a statement of the
15 amounts, if any, due and owing to any person determined by the
16 court to be a holder of a valid lien and to be paid to the
17 lienholder out of the amount of the corresponding special
18 damages recovered by the judgment or settlement. In determining
19 the payment due the lienholder, the court shall deduct from the
20 payment a reasonable sum for the costs and fees incurred by the
21 party who brought the civil action in tort. As used in this



1 section, lien means a lien arising out of a claim for payments
2 made or indemnified from collateral sources, including health
3 insurance or benefits, for costs and expenses arising out of the
4 injury which is the subject of the civil action in tort. If
5 there is a settlement before suit is filed or there is no civil
6 action pending, then any party may petition a court of competent
7 jurisdiction for a determination of the validity and amount of
8 any claim of a lien.

9 (b) Where an entity licensed under chapter 432 or 432D
10 possesses a lien or potential lien under this section:

11 (1) The person whose settlement or judgment is subject to
12 the lien or potential lien shall submit timely notice
13 of a third-party claim, third-party recovery of
14 damages, and related information to allow the
15 lienholder or potential lienholder to determine the
16 extent of reimbursement required. A refusal to submit
17 timely notice shall constitute a waiver by that person
18 of section 431:13-103(a)(10). An entity shall be
19 entitled to reimbursement of any benefits erroneously
20 paid due to untimely notice of a third-party claim;



1 (2) A reimbursement dispute shall be subject to binding
2 arbitration in lieu of court proceedings if the party
3 receiving recovery and the lienholder agree to submit
4 the dispute to binding arbitration, and the process
5 used shall be as agreed to by the parties in their
6 binding arbitration agreement; and
7 (3) In any proceeding under this section to determine the
8 validity and amount of reimbursement, the court or
9 arbitrator shall allow a lienholder or person claiming
10 a lien sufficient time and opportunity for discovery
11 and investigation.

12 For purposes of this subsection:

13 "Third-party claim" means any tort claim for monetary
14 recovery or damages that the individual has against any person,
15 entity, or insurer, other than the entity licensed under chapter
16 432 or 432D.

17 "Timely notice of a third-party claim" means a reasonable
18 time after any written claim or demand for damages, settlement
19 recovery, or insurance proceeds is made by or on behalf of the
20 person.



1 (c) Nothing in this section shall limit the right of a
2 lienholder that is a property and casualty insurer to pursue a
3 separate subrogation claim against an alleged tortfeasor,
4 including an electric utility in the case of a catastrophic
5 wildfire under section 663-8.8."

6 SECTION 3. Section 269-27.9, Hawaii Revised Statutes, is
7 repealed.

8 ["~~§269-27.9~~ ~~Determination of limitation on liability.~~"]

9 (a) ~~The commission shall initiate a proceeding for the adoption~~
10 ~~of rules pursuant to chapter 91 to establish the maximum amount~~
11 ~~each electric utility may pay to resolve claims arising from any~~
12 ~~covered catastrophic wildfires, as defined in section 663~~
13 ~~for set periods of time established by rules in accordance with~~
14 ~~this section. The commission shall have sole discretion to~~
15 ~~establish the maximum payable amounts and applicable periods of~~
16 ~~time. The rules adopted by the commission under this section~~
17 ~~shall have the force and effect of law.~~

18 (b) ~~The commission shall adopt rules as soon as is~~
19 ~~practicable. The rules shall authorize the maximum payable~~
20 ~~amount each electric utility may pay to resolve qualifying~~
21 ~~damages arising from any covered catastrophic wildfires, as~~



1 those terms are defined in section 663, that occur within a
2 set period of time, or per event, as determined by the
3 commission, without harming ratepayers or materially impacting
4 each electric utility's ability to provide adequate and safe
5 service consistent with the public interest. In adopting rules
6 to establish the maximum payable amount, the commission shall
7 consider, at a minimum:

8 (1) Whether the maximum payable amount shall be delineated
9 by the qualifying damages arising from covered
10 catastrophic wildfires that occur:

11 (A) Within a set period of time that is determined by
12 the commission; or

13 (B) Per event;

14 (2) Different approaches to establishing the maximum
15 payable amount, such as a flat dollar limit for the
16 set period of time, or per event; one based upon a
17 percentage of the electric utility's market
18 capitalization or rate base; or hybrid approaches,
19 including examining frameworks adopted or considered
20 in other wildfire-prone states and their
21 effectiveness;





- 1 (9) Requirements to maintain or improve the quality of
2 service to the electric utility's customers;
- 3 (10) Requirements to improve the management of the electric
4 utility doing business in the State;
- 5 (11) Requirements to meet state policy goals for clean
6 energy and climate;
- 7 (12) Requirements to implement wildfire mitigation plans
8 and improve safety;
- 9 (13) Requirements to improve interconnection costs and
10 timeliness; and
- 11 (14) The restriction or reduction of compensation packages
12 and bonuses to officers and employees of the electric
13 utility.
- 14 (c) The rules adopted pursuant to this section shall also
15 include:
- 16 (1) Conditions to ensure that the establishment of the
17 maximum payable amount is consistent with the public
18 interest;
- 19 (2) Annual reporting requirements for compliance with any
20 conditions established; and



8 (d) Notwithstanding any other law to the contrary, the
9 rules adopted under this section shall be presented to, and
10 subject to the approval of, the governor. If the governor
11 approves the rules, the governor shall sign the rules, and the
12 rules shall be adopted as provided in section 91-3. If the
13 governor does not approve the rules, the governor may return the
14 rules to the commission with the governor's reasons for
15 disapproval. The governor shall have twenty-one days to
16 consider the rules after the rules are presented to the
17 governor, and if the rules are neither signed nor returned by
18 the governor within that time, the rules shall be adopted as if
19 the governor had signed them.



1 ~~If the rules are returned to the commission, the commission~~
2 ~~may start anew the rule making process set forth in subsection~~
3 ~~(b).~~

4 ~~(e) On or before the last day of the preceding set period~~
5 ~~of time established by the commission with respect to each~~
6 ~~electric utility, the commission shall adopt rules pursuant to~~
7 ~~subsection (b) and (c) for the next subsequent proposed period~~
8 ~~of time.~~

9 ~~(f) Notwithstanding any other law to the contrary, the~~
10 ~~supreme court shall have original jurisdiction over any petition~~
11 ~~to obtain a judicial determination as to the validity of the~~
12 ~~rules adopted under this section. The petition shall be filed~~
13 ~~with the clerk of the supreme court within thirty days of the~~
14 ~~filng of the rules with the lieutenant governor pursuant to~~
15 ~~section 91-4(b). After an action is filed pursuant to this~~
16 ~~paragraph, the supreme court shall give priority to the action~~
17 ~~over all other civil or administrative appeals or matters and~~
18 ~~shall render a final judgment and opinion as expeditiously as~~
19 ~~possible. No action challenging the validity of the rules may~~
20 ~~be brought except as provided in this subsection.~~



1 ~~In all collateral proceedings, including any civil action~~
2 ~~to recover damages for a covered catastrophic wildfire, the~~
3 ~~maximum payable amounts established by the rules shall be~~
4 ~~conclusive and not subject to judicial review. Nothing in this~~
5 ~~section or rules adopted under this section shall be construed~~
6 ~~to create any property interest or entitlement of any kind in~~
7 ~~the electric utility, and no claim by any party, whether~~
8 ~~sounding in law or equity, or under article I, section 20, of~~
9 ~~the Hawaii State Constitution, may be brought against the~~
10 ~~commission, its commissioners, officials, and employees, or the~~
11 ~~State relating to rulemaking under this section.~~

12 (g) For purposes of this section:

13 "Electric utility" includes an electric cooperative, as
14 defined in section 269-27.8(b).

15 "Wildfire mitigation plan" means the plan that each
16 electric utility shall file with the commission, and which shall
17 be periodically updated at a frequency determined by the
18 commission, that sets forth the utility's practices to protect
19 public safety and reduce risk to customers from wildfires and to
20 promote the resilience of the electric system to wildfire

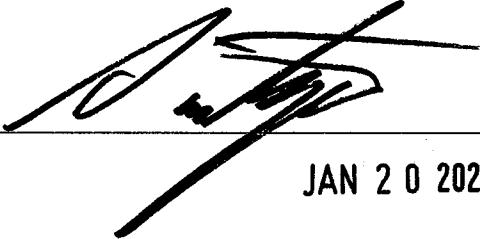


1 damage, pursuant to requirements established by the
2 commission."]

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: 

JAN 20 2026



H.B. NO. 1638

Report Title:

Covered Catastrophic Wildfires; Actual Damages; Aggregate Liability Limit; Electric Utilities; Economic Damages; Statute of Limitation; Right to Subrogation

Description:

Limits claims alleging property damage from covered catastrophic wildfires to actual damages. Amends the aggregate liability limit for qualifying damages from covered catastrophic wildfires to be \$1,000,000,000, rather than administratively established by the Public Utilities Commission, and makes the limit applicable only to property covered by a property insurance policy up to the coverage limit. Requires the Director of Emergency Management to determine whether a wildfire is a covered catastrophic wildfire. Specifies that claims subject to the limit must be filed within one year of the covered catastrophic wildfire. Clarifies that a property and casualty insurer's rights to subrogation are not limited in the context of an insured's recovery by judgment or settlement of a third-party tort claim.

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