THE SENATE
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

S.B. NO. 1166 S.D. 2

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

SECTION 1. The legislature finds that climate disasters, extreme weather attributable to climate change, and harms resulting from long-term changes to the climate system pose a threat to the health, safety, and security of all residents of, and visitors to, the State.

For residents, climate change risks include an increase in precipitation and intense tropical storms, hotter temperatures, rising sea level, and intensified drought. Accordingly, the State has a compelling state interest in protecting its citizens from climate disasters, extreme weather attributable to climate change, and harms resulting from long-term changes to the climate system. This protection includes affordable access to a functioning insurance market in the State.

The legislature further finds there is also a compelling state interest in preserving public resources for traditional public purposes, which does not include subsidizing the continued operation of the insurance market. The insurance

industry has been destabilized and harmed by the deception of people and entities who have engaged in misleading and deceptive practices about the connection between fossil fuel products and climate change. The State's insurance industry, particularly the property and casualty insurance sector, has been destabilized by large and frequent payouts to policyholders for a variety of events caused by or attributable to the deception of these responsible parties. This instability has led to increased nonrenewal rates and premiums on all islands and for multiple types of insurance policies. Between 2018 and 2023, insurance nonrenewal rates increased by ninety-one per cent in the county of Kauai, two hundred ninety-six per cent in the city and county of Honolulu, one hundred eighty-four per cent in the county of Maui, and seventy per cent in the county of Hawaii.

The legislature further finds that the area burned by wildfires in the State has increased fourfold. Most recently, the 2023 Maui wildfires, which were exacerbated by climate change, destroyed the town of Lahaina and killed at least one hundred two people. In the aftermath of this tragic and horrific event, insurance companies operating in Hawaii have already paid out over $2.3 billion across more than ten thousand

wildfire claims to fire victims, with another one billion dollars of additional insured losses yet to be paid. The scope and scale of damage has led to difficult settlement negotiations in which parties have tried to address how to meet the needs of fire victims, maintain a solvent market for insurance, and keep vital public utilities and educational institutions operating in the State's communities. Hawaii has a compelling state interest in protecting the integrity of these institutions as they seek to provide relief to harmed and impacted parties.

Climate change has also impacted the amount of water available in key watersheds across the islands. Ongoing drought has created water security issues that are exacerbated by the growing water demand, which may increase up to thirty-six per cent by the end of the century. For example, rainfall in the Nuuanu watershed is projected to decrease by as much as twenty-seven per cent, and both the Heeia and Na Wai Eha watershed are also experiencing decreases in rainfall, threatening groundwater supplies and drinking water availability.

At Hawaii's shorelines, sea level has risen ten inches on average compared to 1950, and the mean number of days that cause

high tide flooding in Honolulu has almost doubled from six to eleven days per year since the 1960s. Almost all the shorelines in Hawaii, approximately ninety-two per cent, are predicted to retreat between one and twenty-four meters by 2050. Researchers predict that shoreline retreat rates have doubled from the historical rate due to sea level rise.

Climate change is also causing more extreme temperatures in Hawaii. The average annual temperature in Hawaii in 2016 was about 1.7 degrees Fahrenheit warmer than the one hundred-year mean from 1917 to 2016. Similarly, global mean sea surface temperature has increased by about 1.8 degrees Fahrenheit over the past century and waters around Hawaii have followed this trend.

The legislature finds that for decades, certain people and entities have spread intentional lies, misinformation and disinformation, and misrepresentations about the connection between climate change and fossil fuel products, as well as how climate change has caused injuries in the State. Continued lies, misinformation and disinformation, and misrepresentations by responsible parties pose a threat to the health, safety, and security of Hawaii's residents and visitors. These parties have

long known the dangers of fossil fuel products; however, they have continued to deny and lie for profit. Hiding, obfuscating, and denying information to consumers, elected officials, and regulators alike has harmed and continues to harm the State. Hawaii has a compelling interest in protecting consumers from lies and misleading information, while also encouraging factual and truthful information on how climate disasters and other harms can be attributed to the responsible parties who have spread falsehoods.

The legislature further finds and declares that:

(1) Individuals and entities involved in the production of fossil fuel products have engaged in a decades-long project to protect their bottom lines with a coordinated effort to deceive the public about the reality of the climate crisis;

(2) Documents unveiled by investigative journalists and cited in current litigation brought by the city and county of Honolulu and the county of Maui demonstrate that those parties were aware of the potentially catastrophic impact of their products from as early as the 1950s. Even though research conducted by their

own scientists affirmed the impacts of their business, these parties outright denied that climate change was real, spread disinformation to cast doubt on the science, and fought regulatory action against fossil fuel and fossil fuel products;

(3) By the 1970s and 1980s, the scientific community understood that increasing carbon dioxide concentration in the atmosphere would contribute to global warming, and that the heightened carbon dioxide emissions were attributable to fossil fuels. These facts were supported by several fossil fuel industry scientists from different companies such as Exxon and Shell, who presented these findings to their management with warnings that the "present trend of fossil fuel consumption will cause dramatic environmental effects before the year 2050";

(4) Despite having internal knowledge that increased carbon dioxide concentrations due to fossil-fuel combustion posed a considerable threat, responsible parties launched a campaign to undermine climate science and stopped funding major climate research and

launched campaigns to discredit climate science and delay actions perceived as contrary to their business interests by:

(A) Developing public relations strategies that were contradictory to their scientific knowledge and insights;

(B) Engaging in public communications campaigns to promote doubt and downplay the threats of climate change; and

(C) Funding individuals, organizations, and research aimed at discrediting the growing body of publicly available climate science;

(5) From 1970 to 2020, the oil and gas industry made nearly $2.8 billion a day and one trillion dollars a year in profit;

(6) Responsible parties currently advertise "green" efforts to the public that mask the lack of real investment in resiliency and energy-source transition and the continued prioritization of the extraction, refinement, and distribution of fossil fuel products;

(7) A December 2022 report by a congressional oversight committee revealed internal documents from fossil fuel industry senior leaders that explicitly reject taking accountability for the greenhouse gas emissions associated with their products; and

(8) By conduct and impact, these responsible parties have intentionally obfuscated the truth about climate change and outright deceived the public to continue dependence on fossil fuel products.

The legislature finds that responsible parties must be held accountable for their deception to those harmed by climate disasters, extreme weather attributable to climate change, and long-term changes to the climate system. The legislature further finds that the intentional lies, misinformation, disinformation, and misrepresentations by responsible parties about the connection between their fossil fuel products was primarily commercial activity.

The legislature finds that insurance companies operating in the State are well positioned to redress the harm that responsible parties have caused through their deception. By exercising their individual and subrogation rights against

responsible parties, private parties and the Hawaii property insurance association have the ability to shift the costs of climate disasters, extreme weather attributable to climate change, and other harms resulting from long-term changes to the climate system onto the responsible parties rather than policyholders and taxpayers in the State.

It is the intent of the State to provide a judicial forum for the efficient, just, and equitable resolution of claims under this Act. State courts are the appropriate venue to hear these claims and provide appropriate relief. The legislature further declares that the harms related or attributable to climate change should not be deemed acts of God, unforeseeable, or otherwise classified as a force majeure event eligible for litigation limitations or defenses, except as otherwise explicitly and unambiguously provided.

Accordingly, the purpose of this Act is to:

(1) Provide a new, specific cause of action for insurers to seek damages against a responsible party for harms resulting from climate disasters, extreme weather attributable to climate change, and long-term changes in the climate system; and

(2) Provide a new, specific cause of action for any person other than an officer or employee of a state or local governmental entity to bring a civil action against a responsible party for harms resulting from climate disasters, weather attributable to climate change, and long-term changes in the climate system; and

(3) Require insurance rates to account for any proceeds from subrogation or civil claims against a responsible party.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 13 to be appropriately designated and to read as follows:

"**§431:13- Civil liability of responsible parties.** (a) Any person, other than an officer or employee of a state or local governmental entity, may bring a civil action against a responsible party pursuant to this section if the following conditions are met:

(1) The injured party has sustained damages of not less than $10,000 as a result of a climate disaster or extreme weather or other event attributable to climate change; provided that multiple plaintiffs may

aggregate their claims with a common injury and connection to a climate disaster or extreme weather or other events attributable to climate change to reach this amount in controversy threshold, regardless of association in a class action;

(2) During any time since the year , the responsible party did business in the State, was registered to do business in the State, was appointed an agent of the State or otherwise had sufficient contacts with the State to give the State jurisdiction over the responsible party; and

(3) Notwithstanding any other applicable statute of limitations, the action is filed within three years of the date that the injury was or should have been discovered.

(b) The Hawaii property insurance association or any private insurer may bring a civil action against a responsible party on its own behalf or on behalf of one or more of its policyholders when the conditions described in subsection (a) are met.

(c) Any civil action against a responsible party that meets the conditions described in subsection (a) may be brought in any of the following applicable counties:

(1) The county in which all or a substantial part of the events giving rise to the action occurred;

(2) The county of residence for an individual defendant who is a natural person;

(3) The county of the principal office in the State of any one of the defendants that is not a natural person; or

(4) The county of residence for a plaintiff who is a natural person residing in the State.

(d) All responsible parties in any civil action that is filed pursuant to this section shall be jointly, severally, and strictly liable to a plaintiff for damages found to have been caused by a climate disaster or extreme weather or other event attributable to climate change.

(e) The connection of damages with a climate disaster, extreme weather or other event attributable to climate change, or harm resulting from long-term changes in the climate system shall be deemed an injury-in-fact for any person who is harmed by the event. Any person who suffers an injury-in-fact under

this subsection shall have standing to bring a civil action pursuant to this section.

(f) Notwithstanding any other law to the contrary, the following shall not be considered a defense under this section:

(1) A defendant's ignorance or mistake of law;

(2) A defendant's belief that the requirements under this section are unconstitutional;

(3) A defendant's reliance on a court decision that has been overruled on appeal or by a subsequent court, even if the court decision had not been overruled at the time the defendant engaged in the conduct giving rise to the action brought under this section;

(4) A defendant's reliance on a state or federal court decision that is not binding on the court in which the action has been brought;

(5) Nonmutual issue preclusion or nonmutual claim preclusion;

(6) A claim that the enforcement of this section or the imposition of civil liability against the defendant will violate a constitutional right of a third party;

(7) A defendant's assertion that this section proscribes conduct that is separately prohibited by any other law of the State;

(8) A claim that the defendant's fossil fuel products were not misused, or were not intended to be misused, in an unlawful manner;

(9) A defendant's assertion that state or federal laws relating to fossil fuel products and a responsible party's operations displace, abrogate, or supersede the actions authorized by this section, the authority of the courts of the State to provide a forum for the action, or the authority of the courts of the State to provide a remedy to plaintiffs;

(10) A defendant's assertion that a choice-of-law or choice-of-forum clause governs the action, regardless of whether the clause applies to a plaintiff on the basis of consumer transactions;

(11) A defendant's assertion that the plaintiff assumed a risk of harm through the use of their products; and

(12) A defendant's assertion that the forum is inconvenient, if the jurisdictional requirements of this section are satisfied.

(g) No civil or administrative enforcement action pursuant to this section shall be brought by the State or any of its political subdivisions or officers or employees thereof.

(h) Notwithstanding any other law, the State, a state official, or a public prosecutor shall not intervene in a civil action brought pursuant to this section. However, this subsection shall not prohibit the State, a state official, or a public prosecutor from filing an amicus curiae brief in the action.

(i) If a plaintiff prevails in an action brought pursuant to this section, the court shall award all of the following:

(1) The full extent of noneconomic, compensatory, and punitive damages allowable;

(2) Compensatory damages in an amount of not less than the fair market value of recovering, recouping, rebuilding, or remediating the value of lost, damaged, and destroyed property; and

(3) Compensatory damages in an amount not less than the cost of the natural person's injuries, including medical care, mental and behavioral health care, past and present pain and suffering, or emotional distress.

(j) Notwithstanding any other law, a court shall not award attorneys' fees or costs to a defendant in an action brought pursuant to this section, unless the plaintiff was represented by counsel in the action and plaintiff's counsel is found by the court or the Hawaii State Bar Association to be in violation of applicable rules of professional conduct or rules of civil procedure.

(k) Damages awarded pursuant to this section may be offset by any of the following:

(1) Payments made to a harmed party pursuant to a contract of insurance. In addition to an action brought pursuant to this section, an insurer may bring a subrogation action against a responsible party for recovery of payments made to insureds harmed by the responsible party pursuant to a contract of insurance, regardless of whether the insured has been made whole; or

(2) Evidence that a plaintiff fully recovered from a public body for their alleged injuries.

(l) For the purposes of this section:

"Climate disaster" means an event that meets any of the following qualifications and is determined by impact attribution science or extreme event attribution science to be substantially more probable or materially intensified by climate change from a responsible party's fossil fuel products:

(1) A natural catastrophe, including a hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or, regardless of cause, a fire, flood, or explosion, that, in the determination of the President of the United States, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, to supplement the efforts and available resources of states, local governments, and disaster relief

organizations in alleviating the damage, loss, hardship, or suffering caused by the catastrophe;

(2) A catastrophic incident that is a natural or manmade incident that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, national morale, or government functions. A catastrophic incident could result in sustained national impacts over a prolonged period of time, almost immediately exceeds resources normally available to local, state, tribal, and private sector authorities in the impacted area, and significantly interrupts governmental operations and emergency services to such an extent that national security could be threatened. A catastrophic incident does not include an event linked to terrorism;

(3) An event that qualifies or would have qualified as a climate disaster according to the National Centers for Environmental Information's billion-dollar weather and climate disasters program and data list, as it existed in December 2024;

(4) A state of emergency or local state of emergency as defined in section 127A-2; or

(5) An event or occurrence linked to extreme weather or other events attributable to climate change for which losses in the aggregate across insurance carriers in the State exceed one hundred million dollars.

"Extreme event attribution science" means research aimed at understanding how human-induced changes in the global climate system affect the probability, severity, and other characteristics of extreme weather events, such as wildfires and flooding by determining the likelihood of a particular event happening today compared to how it might have unfolded without the human-caused increase in concentration of greenhouse gases in the atmosphere.

"Extreme weather or other event attributable to climate change" means weather, climate, or environmental conditions, including temperature, precipitation, drought, flooding, or wildfires, that are consistent with impacts or events that are attributable to climate change and in which the intensity, magnitude, location, timing, or extent of the event are shown by peer-reviewed studies or assessments using peer-reviewed

methods, to be attributable in part to climate change. These events include those that extreme event attribution science determines were made more likely or severe by climate change.

"Fossil fuel product" includes crude petroleum oil and all other hydrocarbons, regardless of gravity, produced at the wellhead in liquid form by ordinary production methods; natural, manufactured, mixed, and byproduct hydrocarbon gas; refined crude oil; crude tops; topped crude; processed crude; processed crude petroleum; residue from crude petroleum; cracking stock; uncracked fuel oil; fuel oil; treated crude oil; residuum; gas oil; casinghead gasoline; natural-gas gasoline; kerosene; benzine; wash oil; waste oil; blended gasoline; lubricating oil; and blends or mixtures of oil with one or more liquid products or byproducts derived from oil or gas.

"Impact attribution science" means research aimed at understanding how global climate change affects human and natural systems, including localized physical impacts, such as floods, droughts, and sea level rise, and the corresponding effects on infrastructure, public health, ecosystems, agriculture, and economies.

"Responsible party" means a firm, corporation, company, partnership, society, joint stock company, or any other entity or association that engaged in misleading and deceptive practices, including lies, or the provision of misinformation or disinformation about the connection between its fossil fuel products and climate change and extreme weather or other events attributable to climate change. "Responsible party" does not include the federal government, tribal governments, the State, a political subdivision of the federal, tribal, or state government, or an employee of the federal, tribal, or state government on the basis of acts or omissions in the course of official duties."

SECTION 3. Section 431:14-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Rates shall be made in accordance with the following provisions:

(1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(2) Due consideration shall be given to:

(A) Past and prospective loss experience within and outside this State; provided that if the claim

does not exceed the selected deductible amount pursuant to section 386-100, and the employer reimburses the insurer for the amount, the claims shall not be calculated in the employer's experience rating or risk category;

(B) The conflagration and catastrophe hazards, if any;

(C) Any proceeds recovered by the insurer through any legal actions, including subrogation claims and direct actions filed pursuant to section 431:13- ;

[~~(C)~~] (D) A reasonable margin for underwriting profit and contingencies;

[~~(D)~~] (E) Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

[~~(E)~~] (F) Past and prospective expenses both country-wide and those specially applicable to this State;

[~~(F)~~] (G) Investment income from unearned premium and loss reserve funds; and

[~~(G)~~] (H) All other relevant factors within and outside this State.

(3) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which that experience is available.

(4) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(5) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in

hazards or expense provisions, or both. These standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. No risk classification may be based upon race, creed, national origin, or the religion of the insured.

(6) Manual, minimum, class rates, rating schedules, or rating plans shall be made and adopted, except in the case of:

(A) Special rates where manual, minimum, class rates, rating schedules, or rating plans are not applicable; and

(B) Specifically rated inland marine risks.

(7) No insurer authorized to do business in this State shall issue any policy that provides or makes available to any risks preferred rates based upon any grouping of persons, firms, or corporations by way of membership, license, franchise, contract, agreement, or any other means, other than common majority ownership of the risks, or except where:

(A) A common stock ownership in and management control of the risks are held by the same person, corporation, or firm;

(B) Permitted or authorized by filings in existence as of January 1, 1988, under the casualty rating law and the fire rating law, as these filings may be amended from time to time;

(C) Health care providers, as defined in section 671-1 that could have joined the patients' compensation fund as it existed in chapter 671, part III, prior to May 31, 1984, joined together with one or more groups of related or unrelated health care providers;

(D) Permitted under article 12; or

(E) Otherwise expressly provided by law."

SECTION 4. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The plan of operation shall:

(1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;

(2) Establish maximum limits of liability to be placed through the association;

(3) Establish reasonable underwriting standards for determining insurability of a risk [~~which~~] that are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;

(4) Establish a schedule of deductibles, if appropriate;

(5) Establish the commission to be paid to licensed producers;

(6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner[~~,~~]. Rates shall account

for any proceeds obtained by the association from any civil action or subrogation claim against a responsible party for claims paid for losses from climate disasters, extreme weather, or other event attributable to climate change pursuant to section 431:13- ; provided that, if the association does not exercise its subrogation and direct action rights, the association shall be required to submit a report to the insurance commissioner comparing the rates to be charged with the rates that would have been charged had the association fully recovered the losses from the responsible parties;

(7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines may include setting minimum conditions the property must meet before an inspection is required;

(8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner for the commissioner's information;

(9) Establish procedures for records to be kept of all financial transactions of the association, its producers, and its board of directors;

(10) Establish procedures by which applications will be received and serviced by the association;

(11) Establish guidelines for the investigation and payment of claims; and

(12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association."

SECTION 5. Nothing in this Act shall be construed to:

(1) Limit in any way the enforceability of existing laws concerning insurance, consumer protection, climate, environment, energy, or natural resources, by either the government or other private plaintiffs;

(2) Replace legally mandated disaster recovery funds, designated disaster recovery funds established via legislation or administrative rule, or contractually obligated or court ordered insurance claim payouts;

(3) Relieve the liability of an entity for damages resulting from climate change, as provided by any other law; or

(4) Preempt, displace, or restrict any rights or remedies of a person, the State, local government entities, or a tribal government pursuant to law relating to a past, present, or future allegation of any of the following:

(A) Deception concerning the effect of fossil fuels on climate change;

(B) Damage or injury resulting from the role of fossil fuels in contributing to climate change; and

(C) Failure to avoid damage or injury related to climate change, including claims for nuisance, trespass, design defect, negligence, failure to warn, or deceptive or unfair practices, or claims for injunctive, declaratory, monetary, or other relief.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2050.

S.B. NO. 1166 S.D. 2

Report Title:
HPIA; Property Insurance; Subrogation Claims; Property and Casualty Insurance Rate Regulation; Climate Change

Description:
Allows the Hawaii Property Insurance Association to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses resulting from climate disasters and extreme weather attributable to climate change. Establishes a new, specific cause of action that allows insurers and injured parties to file claims against a responsible party for damages resulting from climate disasters, extreme weather attributable to climate change, and other long-term changes in the climate system. Requires insurance rates to account for any proceeds from subrogation or civil claims against a responsible party. Effective 7/1/2050. (SD2)

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