

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
INSURANCE COMPANY INSOLVENCY**

Sec. -1 Title. This chapter shall be known and may be cited as the Hawaii Insurance Guaranty Association Act.

Sec. -2 Purpose. The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

Sec. -3 Scope. This chapter shall apply to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

Sec. -4 Construction. This chapter shall be liberally construed to effect the purpose under section -2 which shall constitute an aid and guide to interpretation.

Sec. -5 Definitions. As used in this chapter:

- (1) “Association” means the Hawaii Insurance Guaranty Association created under section -6.
- (2) “Commissioner” means the insurance commissioner of this State.
- (3) “Covered claim” means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this chapter and (A) the claimant or insured is a resident of this State at the time of the insured event or (B) the property from which the claim arises is permanently located in this State. “Covered claim” does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.
- (4) “Insolvent insurer” means (A) an insurer authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (B) determined to be insolvent by a court of competent jurisdiction.
- (5) “Member insurer” means any person who (A) writes any kind of insurance to which this chapter applies under section -3, including the exchange of reciprocal or inter-insurance contracts, and (B) is licensed to transact insurance in this State.
- (6) “Net direct written premiums” means direct gross premiums written in this State on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to

policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or re-insurers.

- (7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

Sec. -6 Creation of association. There is created a nonprofit unincorporated legal entity to be known as the Hawaii Insurance Guaranty Association. All insurers defined as member insurers in section -5(5) shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its function under a plan of operation established and approved under section -9 and shall exercise its powers through a board of directors established under section -7.

Sec. -7 Board of directors. (a) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after the effective date of this chapter, the commissioner may appoint the initial members of the board of directors.

(b) In approving selections to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Sec. -8 Powers and duties of association. (a) The association shall:

- (1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.
- (2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.
- (3) Assess insurers amounts necessary to pay the obligations of the association under subsection (a) (1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency,

and the cost of examinations under section -13, and other expenses authorized by this chapter. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

- (4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases, and judgments may be properly contested.
- (5) Notify such persons as the commissioner directs under section -10 (b) (1).
- (6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.
- (7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.
- (b) The association may:
 - (1) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.
 - (2) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation.
 - (3) Sue or be sued.
 - (4) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.
 - (5) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

- (6) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

Sec. -9 Plan of operation.

- (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.
- (2) If the association fails to submit a suitable plan of operation within ninety days following the effective date of this chapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, promulgate, pursuant to chapter 91, such rules as are necessary to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
- (b) All member insurers shall comply with the plan of operation.
- (c) The plan of operation shall:
- (1) Establish the procedures whereby all the powers and duties of the association under section -8 will be performed.
- (2) Establish procedures for handling assets of the association.
- (3) Establish the amount and method of reimbursing members of the board of directors under section -7.
- (4) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another State by the receiver or liquidator.
- (5) Establish regular places and times for meetings of the board of directors.
- (6) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.
- (7) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
- (8) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.
- (9) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (d) The plan of operation may provide that any or all powers and duties of the association, except those under section -8(a) (3) and (b) (2),

are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

Sec. -10 Powers and duties of the commissioner. (a) The commissioner shall:

- (1) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency.
- (2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner may:

- (1) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. The notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.
- (2) Suspend or revoke after notice and hearing, the certificate of authority to transact insurance in this State of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five per cent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.
- (3) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(c) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a circuit court.

Sec. -11 Effect of paid claims. (a) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured's

to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(c) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

Sec. -12 Nonduplication of recovery. (a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. -13 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

- (1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with paragraph (3). The commissioner shall notify the board of directors when the examination is completed. The request

for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

- (3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.
- (5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
- (6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the association, and submit the report to the commissioner.

Sec. -14 Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

Sec. -15 Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions except taxes levied on real or personal property.

Sec. -16 Recognition of assessment in rates. The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Sec. -17 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter.

Sec. -18 Stay of proceedings; reopening of default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this State shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. As to any covered claims arising

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from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits.”

SECTION 2. This Act shall take effect upon its approval.

(Approved May 25, 1971.)