

ACT 28

S.B. NO. 2490-78

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431-678, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 431-678 Priority of claims for compensation. (a) Compensation actually owing to employees other than officers of an insurer, for services rendered within three months prior to the commencement of a proceeding against the insurer under sections 431-651 to 431-686, but not exceeding \$300 for each such employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the insurance commissioner may be paid as soon as practicable after the proceeding has been commenced; except, that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of the administration.

(b) Such priority shall be in lieu of any other similar priority which may be authorized by law as to the wages or compensation of the employees.

(c) The priorities of distribution of a liquidation proceeding shall be in the following order:

- (1) Expenses of administration.
- (2) Compensation of employees as provided in subsections (a) and (b) of this section.
- (3) Federal, State, and local taxes.
- (4) Claims arising out of and within the coverage of insurance policies issued by the insurer being liquidated for losses incurred, including:
 - (i) Third party claims and claims for unearned premiums.
 - (ii) Claims presented by the Hawaii Insurance Guaranty Association which represent "covered claims" as defined in section 431D-5(3) and which have been paid by such association.
 - (iii) Claims similar to those described in part (ii) of this subsection as presented by similar guaranty associations of other states.
- (5) All other claims."

SECTION 2. Chapter 431D, Hawaii Revised Statutes, is amended by amending† a new section to be designated as section 431D-8.1 and read as follows:

"Sec. 431D- Disbursement of assets following final determination of insolvency and order of liquidation. (a) Within 120 days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this State, the receiver shall make applications to the court for approval of a proposal to disburse assets out of such insurer's marshalled assets from time to time as such assets become available to the Hawaii Insurance Guaranty Association. (The Hawaii Insurance Guaranty Association and any entity or person performing a similar function in other states shall in this section be referred to collectively as the "associations".)

(b) Such proposal shall at least include provisions for:

†So in original.

- (1) reserving amounts for the payment of claims falling within the priorities established in section 431.678 as now or hereafter amended;
- (2) disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;
- (3) equitable allocation of disbursements to each of the associations entitled thereto;
- (4) the securing by the receiver, from each of the associations entitled to disbursements pursuant to this section, of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section 431.678 hereafter amended in accordance with such priorities. No bond shall be required of any such association; and
- (5) a full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matters as the court may direct.

(c) The receiver's proposal shall provide for the disbursements to the association in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

(d) Notice of such application shall be given to the associations in and to the commissioners or directors of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, at least 30 days prior to submission of such application to the court."

SECTION 3. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.*

SECTION 4. This Act shall take effect upon its approval.

(Approved April 17, 1978.)

*Edited accordingly.