

A Bill for an Act Relating to the Patients' Compensation fund.

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

SECTION 1. Section 431-693, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) All rates shall be made in accordance with the following provisions:
- (1) Due consideration shall be given to past and prospective loss experience within and outside this State, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide and those specially applicable to this State, and to all other relevant factors within and outside this State; including, without limitation of the foregoing, that in the case of workers’ compensation insurance, due consideration shall be given to investment income earned or realized by insurers, including investment income earned from unearned premium and loss reserve funds.
 - (2) 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 such 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.
 - (3) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
 - (4) Rates shall not be excessive, inadequate, or unfairly discriminatory.
 - (5) No insurer authorized to do business in this State shall issue any policy which 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 method or means, other than common majority ownership of such risks, or except where [a]:
 - (A) A common stock ownership in and management control of such risks are held by the same person, corporation, or firm[, or except where permitted];
 - (B) Permitted or authorized by filings in existence as of January 1, 1957 under sections 431-691 to 431-707, as such filings may be amended from time to time[, or except where otherwise];
 - (C) Health care providers, as defined in section 671-1 who could have joined the patients’ compensation fund as it existed in

chapter 671, part III, prior to the effective date of this Act, join together in one or more groups of related or unrelated health care providers; or

(D) Otherwise expressly provided by law.”

SECTION 2. Section 435C-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan shall, pursuant to the provisions of this chapter and the plan of operation with respect to medical malpractice insurance, have the power on behalf of its members:

- (1) To issue, or to cause to be issued policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation but not to exceed \$100,000 for each claimant under one policy in any one year[, with any amount due on a judgment, arbitration award, or settlement in excess of \$100,000 to be paid from the patients’ compensation fund created by section 671-31];
- (2) To appoint service companies to underwrite such insurance and to adjust and pay losses with respect thereto;
- (3) To assume reinsurance from its members; and
- (4) To cede reinsurance.”

SECTION 3. Section 431-457, Hawaii Revised Statutes, is repealed.

SECTION 4. Part III, chapter 671, Hawaii Revised Statutes, is repealed.

SECTION 5. This Act does not affect rights and duties that matured, liabilities that were incurred, and proceedings that were begun, before its effective date. The director of commerce and consumer affairs shall continue to administer the patients’ compensation fund until the moneys in the fund are exhausted and to make payments for claims following a judgment, award, or settlement against a health care provider who was a participant in the fund at the time the medical tort or alleged medical tort occurred in the same manner as provided for in part III of chapter 671, Hawaii Revised Statutes, before its repeal.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved May 31, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.