

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§431- Commissioner’s summary orders and supervision proceedings. (a)

If, upon examination or at any other time, the commissioner has reasonable cause to believe that any domestic insurer requires supervision because it is in such condition as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if the domestic insurer gives its consent, then the commissioner, upon the commissioner’s determination shall:

- (1) Notify the insurer of the commissioner’s determination; and
- (2) Furnish to the insurer a written list of the commissioner’s requirements to abate the commissioner’s determination.

(b) If the commissioner makes a determination to supervise an insurer subject to an order under subsection (a), the commissioner shall notify the insurer that it is under the supervision of the commissioner. During the period of supervision, the commissioner may appoint a supervisor to supervise the insurer. The order appointing a supervisor shall direct the supervisor to enforce orders issued under subsection (a) and also may require that the insurer shall not do any of the following things, during the period of supervision, without the prior written approval of the commissioner or the supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
- (2) Withdraw from any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company;
- (8) Enter into any new reinsurance contract or treaty; or
- (9) Write any new or renewal business.

(c) Any insurer subject to an order under this section shall comply with the requirements of the commissioner and, if placed under supervision, shall have sixty days from the date the supervision order is served within which to comply with the requirements of the commissioner. If the insurer fails to comply within the time specified, the commissioner may institute proceedings under section 431-653 or 431-655 to have a rehabilitator or liquidator appointed, or extend the period of supervision.

(d) Any insurer subject to an order under this section may request a hearing to review the order. The hearing shall be held as provided in section 431-60, but the request for a hearing shall not stay the effect of the order.

(e) If the commissioner issues an order under this section, the insurer, at any time, may waive a commissioner’s hearing and apply for immediate judicial relief by means of any remedy afforded by law without first exhausting administrative remedies. Subsequent to a hearing, any party to the proceedings whose interests are substantially affected shall be entitled to judicial review of any order issued by the commissioner.

(f) During the period of supervision the insurer may request the commissioner to review an action taken or proposed to be taken by the supervisor, specifying where the action complained of is believed not to be in the best interest of the insurer.

(g) If any person has violated any supervision order issued under this section which as to the person was then still in effect, the person shall be liable to

pay a civil penalty imposed by the circuit court of the first judicial circuit of this State not to exceed \$10,000 for each violation.

(h) The commissioner may apply for and any court of general jurisdiction may grant restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.

(i) If any person, subject to this section, including any officer, manager, trustee, owner, employee, or agent of the insurer, or any person:

- (1) With authority over or in charge of any segment of the insurer's affairs; or
- (2) Who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer;

knowingly violates any valid order of the commissioner issued under this section and, as a result of the violation, the net worth of the insurer is reduced or the insurer suffers loss it would not otherwise have suffered, the person shall become personally liable to the insurer for the amount of the reduction or loss. The commissioner or supervisor may bring an action on behalf of the insurer in the circuit court of the first judicial circuit of this State to recover the amount of the reduction or loss together with any costs.

§431- Court's seizure order. (a) The commissioner may file in the circuit court of the first judicial circuit of this State a petition alleging, with respect to a domestic insurer:

- (1) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under section 431-653 or 431-655;
- (2) That the interests of policyholders, creditors, or the public will be endangered by delay; and
- (3) The contents of an order deemed necessary by the commissioner.

(b) Upon a filing under subsection (a), the court may issue forthwith, ex parte and without a hearing, the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of the insurer, and of the premises occupied by it for transaction of its business, and until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the commissioner.

(c) The court shall specify in the order what its duration shall be, which shall be the time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court from time to time may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under section 431-653 or 431-655 after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under section 431-653 or 431-655 shall vacate the seizure order.

(d) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of the order for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held

privately in chambers and it shall be so held if the insurer proceeded against so requests.

(f) If, at any time after the issuance of an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given shall not stay the effect of any order previously issued by the court.

§431- Confidentiality of hearings. In all proceedings and judicial reviews thereof under sections 431- and 431- , all records of the insurer, other documents, and all files, court records, and papers of the insurance division of the department of commerce and consumer affairs, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the circuit court of the first judicial circuit of this State, after hearing arguments from the parties in chambers, orders otherwise, or unless the insurer requests that the matter be made public. Until the court order, all papers filed with the court shall be held in a confidential file."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 1, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.