

ACT 117

H.B. NO. 403

A Bill for an Act Relating to Claims Against the State.

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

SECTION 1. Section 41D-3, Hawaii Revised Statutes, is amended to read as follows:

**“[[§41D-3]] Adjustment of claims against the State.** [(a) All tort claims against the State or its agencies or employees arising under chapter 662, except those within the purview of section 41D-8, shall be reviewed by the attorney general to determine:

- (1) Whether the tort claim is one for which the State is or may be liable under chapter 662; and
- (2) Whether the attorney general should defend employees of the State against whom a claim has been made, consistent with section 662-16.

(b) Upon the attorney general’s affirmative determination under subsection (a), the] (a) The attorney general may review any claim. The attorney general may refer [the claim] claims to the comptroller for informal resolution.

[(c)] (b) All claims against the State that are within the purview of section 41D-8 shall be reviewed in the first instance by the comptroller for informal resolution as provided in this section.

[(d) If the] (c) The comptroller [succeeds in negotiating the settlement of a claim that is] may compromise or settle a claim within the purview of section 41D-8 for an amount not exceeding the applicable medical-rehabilitative limit

established in section 431:10C-308 [that applies to the claim], and the comptroller may pay the claim without [further] review by the attorney general.

[(e) If the] (d) The comptroller[, through the comptroller's claims adjusting staff, succeeds in negotiating the settlement of a tort claim that is] may compromise or settle a tort claim not within the purview of section 41D-8[,] for \$10,000 or less without the necessity of court approval, and the comptroller may pay the claim [pursuant to chapter 662].

[(f)] (e) Upon referral by the comptroller, the attorney general, in the attorney general's discretion, shall make determinations of whether a claim would or would not be within the purview of section 41D-8 for purposes of subsections (c) and (d) [and (e)].

[(g)] (f) If the tort claim cannot be resolved informally as set forth in subsections (c) and (d) [or (e)], the comptroller promptly shall [refer the claim back to the attorney general for resolution in the manner described in chapter 662.] inform the attorney general.

[(h)] (g) All of the efforts of the comptroller or the comptroller's delegate under this section shall be "compromise negotiations" within the meaning of [the]<sup>1</sup> rule 408, Hawaii Rules of Evidence, as set forth in section 626-1.

[(i)] (h) Claims compromised or settled [and approved] under [subsections (d) and (e)] this section shall be paid from the state risk management revolving fund [described in section 41D-4]."

SECTION 2. Section 41D-4, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§41D-4]]~~ **State risk management revolving fund.** (a) The state risk management revolving fund is created and shall be funded in amounts reasonable necessary to:

- (1) Carry out the responsibilities of the comptroller established in section 41D-2;
- (2) Pay claims to state agencies for losses to property of the State caused by fire or other casualty, including the cost to repair or replace buildings and other structures, replace damaged contents, and to provide alternate structures while damaged structures are being repaired or replaced;
- (3) Pay claims against the State under sections ~~662-11~~, 41D-3, and 41D-8; and
- (4) Pay for losses to the State incurred by the dishonesty, nonfeasance, or misfeasance of any officer or employee of the State or for any losses to the State through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, or any other fraudulent or dishonest act committed by one or more of the employees of the State acting directly or in collusion with others.

(b) In addition to any appropriation the legislature shall make to the state risk management revolving fund, the comptroller may apportion to, and collect from, state agencies those amounts of money that, in the discretion of the comptroller, reflect benefits received by the agencies under this chapter. The comptroller may consider the relevant risk and loss experience of the agencies in making apportionments and assessments. Funds so collected shall be deposited to the state risk management revolving fund.

(c) The comptroller may establish deductibles for the state agencies for certain perils or classes of property losses and may:

- (1) Assess the agencies for losses incurred in the amount of the deductible, or

(2) Reduce the payment from the state risk management revolving fund to cover the casualty loss by the amount of the deductible.

(d) The comptroller may establish a formula for refunds to the state agencies based upon the agencies' risk and loss experience.

[(e) The comptroller shall draw warrants on the state risk management revolving fund for the payment of losses approved by the comptroller.

(f) Money in the state risk management revolving fund not expended within the fiscal year or years shall not lapse, but money shall be retained in the fund for use in subsequent years.

(g) [e] Money in the state risk management revolving fund shall be expended only for the purposes delineated in subsection (a) and only upon the authority of the comptroller, who is given discretion when to permit expenditures from the fund. [In no event shall funds be expended for the use or benefit of any private person on account of the person's claim against the State.] Money in the state risk management revolving fund shall not be garnished, attached, or otherwise subjected to legal compulsion to pay actual or alleged obligations of the State, any state agency, or any state employee.

(f) The comptroller shall prepare, for each fiscal year, a report of all claims arbitrated, compromised, or settled for \$10,000 or less paid from the state risk management revolving fund. The report shall be submitted to the legislature twenty days prior to the commencement of the regular session next succeeding the year for which the report is made."

SECTION 3. Section 662-11, Hawaii Revised Statutes, is amended to read as follows:

**"§662-11 Compromise.** (a) The attorney general[, with the approval of the court,] may arbitrate, compromise, or settle any claim cognizable under this chapter[, after commencement of an action thereon; provided that the attorney general may arbitrate, compromise, or settle claims for \$10,000 or less without the necessity of court approval or the commencement of an action. The attorney general shall prepare, for each fiscal year, a report of all claims arbitrated, compromised, or settled for \$10,000 or less. The report shall be submitted to the legislature twenty days prior to the commencement of the regular session next succeeding the year for which the report is made].

(b) Claims arbitrated, compromised, or settled by the attorney general for \$10,000 or less shall be paid from the state risk management revolving fund. Claims arbitrated, compromised, or settled by the attorney general for more than \$10,000 shall be paid only after funds are appropriated by the legislature for the payment of those claims."

SECTION 4. This Act does not and shall not be construed to change the extent of the State's sovereign immunity.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 15, 1990.)

**Note**

1. So in original.