

ACT 255

S.B. NO. 2839

A Bill for an Act Relating to Insurance Rating Organizations.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section 431:14-101.5 to read as follows:

“§431:14-101.5 Definitions. As used in this article, unless the context otherwise requires:

“Developed losses” means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss (including loss adjustment expense) payments.

“Expenses” means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

“Loss trending” means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

“Prospective loss costs” means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

“Rate” means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.

“Supplementary rating information” includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

“Supporting information” means:

- (1) The experience and judgment of the filer and the experience or data of other insurers, rating organizations, or advisory organizations relied on by the filer;
- (2) The interpretation of any other data relied upon by the filer; and
- (3) Descriptions of methods used in making the rates, and any other information required by the commissioner to be filed.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section 431:14-104.5 to read as follows:

“§431:14-104.5 Loss cost filings. When required by the commissioner, the rating organization or advisory organization shall file for approval all prospective loss costs, and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this State. The filings shall be subject to section 431:14-104 and section 431:14-106 and other provisions of article 14 relating to filings made by insurers.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section 431:14-107.1 to read as follows:

“§431:14-107.1 Rating and advisory organizations, permitted activity. In addition to other activities not expressly prohibited by this article, rating organization and advisory organizations are authorized, on behalf of their members and subscribers, to:

- (1) Develop statistical plans including territorial and class definitions;
- (2) Collect statistical data from members, subscribers, or any other source;
- (3) Prepare and distribute prospective loss costs;
- (4) Prepare and distribute factors, calculations or formulas pertaining to classification, territory, increased limits, and other variables;
- (5) Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expenses provisions, profit provisions, or minimum premiums;
- (6) Distribute information that is required or directed to be filed with the commissioner;
- (7) Conduct research and on-site inspections in order to prepare classifications of public fire defenses;
- (8) Consult with public officials regarding public fire protection as it would affect members, subscribers, and others;
- (9) Conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses;
- (10) Prepare policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;
- (11) Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;
- (12) Collect, compile, and distribute past and current prices of individual insurers and publish that information;
- (13) File final rates, at the direction of the commissioner, for residual market mechanisms; and

- (14) Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.”

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section 431:14-107.2 to read as follows:

“**§431:14-107.2 Insurers and organizations, prohibited activity.** (a) Except as permitted in this article, no insurer, rating organization, or advisory organization shall:

(1) Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market; or

(2) Engage in a boycott, on a concerted basis, of an insurance market.

(b) No insurer shall agree with any other insurer or with a rating organization or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to develop statistical plans permitted by section 431:14-107.5. The fact that two or more insurers, whether or not members or subscribers of a rating organization or advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections, or similar materials is not sufficient in itself to support a finding that an agreement exists. Two or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this article as if they constituted a single insurer.

(c) No insurer, rating organization, or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.”

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section 431:14-107.3 to read as follows:

“**§431:14-107.3 Rating or advisory organizations, prohibited activity.** Except as specifically permitted under this article or any rule adopted thereunder, no rating or advisory organization shall compile or distribute recommendations relating to rates that include expenses (other than loss adjustment expenses) or profit.”

SECTION 6. Section 431:14-101, Hawaii Revised Statutes, is amended to read as follows:

“**§431:14-101 Purpose.** The purpose of this article is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and rate-making related activities and in other matters within the scope of this article. Nothing in this part is intended to:

(1) Prohibit or discourage reasonable competition; or

(2) Prohibit or encourage except to the extent necessary to accomplish the aforementioned purposes, uniformity in insurance rates, rating systems, rating plans, or practices.

This article shall be liberally interpreted to carry into effect the provisions of this section.”

SECTION 7. Section 431:14-102, Hawaii Revised Statutes, is amended to read as follows:

- “§431:14-102 Scope. (a) This article shall apply to[:
- (1) All] all classes, types, or forms of general casualty insurance as defined in section 431:1-209, surety insurance as defined in section 431:1-210, motor vehicle insurance, and workers’ compensation and employers’ liability insurance, on risks or operations in this State[.
 - (2) All], and all classes, types or forms of property insurance as defined in section 431:1-206, and marine and transportation insurance as defined in section 431:1-207, on risks located in this State. Inland marine insurance shall be deemed to include insurance now or hereafter defined as inland marine insurance by:
 - [(A)] (1) Statute, or by interpretation thereof[, or];
 - [(B)] (2) Ruling of the commissioner, if not defined or interpreted[,];
or
 - [(C)] (3) By general custom of the business. In this article, the terms inland marine insurance and marine insurance are used in their generally accepted trade meanings.
- (b) This article shall not apply to:
- (1) Reinsurance, other than joint reinsurance to the extent stated in section 431:14-112;
 - (2) Disability insurance;
 - (3) [With respect to insurance described in subsection (a)(1), insurance] Insurance against loss or damage to aircraft or against liability, other than workers’ compensation and employers’ liability, arising out of the ownership, maintenance or use of aircraft;
 - (4) [With respect to insurance described in subsection (a)(2):
 - (A)] Insurance of vessels or craft, their cargoes, marine builder’s risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; and
 - [(B)] (5) Insurance of hulls of aircraft, including their accessories and equipment, or against liability arising out of the ownership, maintenance or use of aircraft.”

SECTION 8. Section 431:14-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Rates shall be made in accordance with the following provisions:
- (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.
 - (2) Due consideration shall be given to:
 - (A) Past and prospective loss experience within and outside this State; provided that if the claim does not exceed the selected deductible amount pursuant to section 386-100, and the employer reimburses the insurer for the amount, such claims shall not be calculated in the employer’s experience rating or risk category;
 - (B) The conflagration and catastrophe hazards, if any;
 - (C) A reasonable margin for underwriting profit and contingencies;

- (D) Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
 - (E) Past and prospective expenses both country-wide and those specially applicable to this State;
 - (F) Investment income from unearned premium and loss reserve funds; and
 - (G) All other relevant factors within and outside this State.
- (3) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.
 - (4) 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.
 - (5) Risks may be grouped by classifications for the establishment 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. No risk classification may be based upon race, creed, national origin, or the religion of the insured.
 - (6) Manual, minimum, class rates, rating schedules, or rating plans shall be made and adopted, except in the case of:
 - (A) Special rates where manual, minimum, class rates, rating schedules, or rating plans are not applicable[.]; and
 - (B) Specifically rated inland marine risks.
 - (7) 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 common stock ownership in and management control of such risks are held by the same person, corporation or firm;
 - (B) Permitted or authorized by filings in existence as of January 1, 1988 under the casualty rating law and the fire rating law, as such filings may be amended from time to time;
 - (C) Health care providers, as defined in section 671-1 which could have joined the patient's compensation fund as it existed in chapter 671, part III, prior to May 31, 1984, joined together with one or more groups of related or unrelated health care providers;
 - (D) Permitted under article 12; or
 - (E) Otherwise expressly provided by law."

SECTION 9. Section 431:14-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:14-104 Rate filings. (a) Every insurer shall file in triplicate with the commissioner, except as to specific inland marine risks which by general custom of the business are not written according to manual rate or rating plans, every manual of classifications, rules, and rates, every rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income.

(b) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner’s education and training fund.

(c) At the same time as the filing of the rate, every insurer shall file all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The insurer may satisfy its obligation to file supplementary rating and supporting information by reference to material which has been approved by the commissioner. The information furnished in support of a filing may include or consist of a reference to:

- (1) The prospective loss cost filing made by a rating organization or an advisory organization and approved by the commissioner;
- (2) The experience or judgment of the insurer or information filed by the rating organization or advisory organization on behalf of the insurer as permitted by section 431:14-104.5;
- (3) Its interpretation of any statistical data upon which it relies;
- (4) The experience of other insurers, rating organizations, or advisory organizations; or
- (5) Any other relevant factors.

[(c)] (d) When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, the commissioner shall require the insurer to furnish additional information and, in the event, the waiting period shall commence as of the date the information is furnished. Until the requested information is provided, the filing shall not be deemed complete or filed nor available for use by the insurer. If the requested information is not provided within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use. [The information furnished in support of a filing may include:

- (1) The experience or judgment of the insurer or rating organization making the filing,
- (2) Its interpretation of any statistical data it relies upon,
- (3) The experience of other insurers or rating organizations, or
- (4) Any other relevant factors.

[(d)] (e) A filing and any supporting information shall be open to public inspection upon filing with the commissioner.

[(e)] (f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

[(f)] (g) An insurer may satisfy its obligation to make the filings by becoming a member of, or a subscriber to, a licensed rating organization which makes the filings, and by authorizing the commissioner to accept the filings on its behalf; provided that nothing] except for those lines of insurance for which the commissioner determines individual insurer rate filings shall be made. Nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(h) After reviewing an insurer’s filing, the commissioner may require that the insurer’s rates be based upon the insurer’s own loss and expense information.

If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by a rating organization or advisory organization. At the commissioner's request, each insurer utilizing the services of a rating organization or advisory organization must submit with its rate filing, a description of the rationale for that use, including the insurer's own information and method of utilizing of the rating or advisory organization's information.

[(g)] (i) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this article. The commissioner shall calculate the investment income and accuracy of loss reserves upon which filings are based, and the insurer shall provide the information necessary to make the calculation.

[(h)] (j) Subject to the exception specified in subsection [(i),] (k), each filing shall be on file for a waiting period of thirty days before the filing becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer, [or] rating organization, or advisory organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer, [or] rating organization, or advisory organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

[(i)] (k) The following rates shall become effective when filed:

- (1) Specific inland marine rates on risks specially rated by a rating organization; and
- (2) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order or rule of a public body, not covered by a previous filing.

The rates shall be deemed to meet the requirements of this article until the time the commissioner reviews the filing and so long as the filing remains in effect.

[(j)] (l) The commissioner, by written order, may suspend or modify the requirement of filing as to any class of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. The orders shall be made known to the affected insurers and rating organizations. The commissioner may make examinations as the commissioner may deem advisable to ascertain whether any rates affected by the order meet the standards set forth in section [431:14-103(a)(7).] 431:14-103(a)(1).

[(k)] (m) The commissioner may approve a rate on any specific risk in excess of that set by an applicable rate filing, provided the insured files with the commissioner a written application stating the insured's reasons for consenting to the excess rate. Upon approval by the commissioner, the rate shall be deemed effective retroactive to the date of the insured's application.

[(l)] (n) No insurer shall make or issue a contract or policy except in accordance with filings which are in effect for the insurer as provided in this article or in accordance with subsections [(j) or (k).] (l) or (m). This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required."

SECTION 10. Section 431:14-106, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If within the waiting period or any extension of the waiting period as provided in section [431:14-104(h)] 431:14-104(j) the commissioner finds that a filing does not meet the requirements of this article, the commissioner shall send to the insurer, [or] rating organization, or advisory organization which made the filing, written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating that the filing shall not become effective.

(b) If within thirty days:

- (1) After a specific inland marine rate on a risk specially rated by a rating organization subject to section [431:14-104(i)] 431:14-104(k) has become effective; or
- (2) After a special surety or guaranty filing subject to section [431:14-104(i)] 431:14-104(k) has become effective[.];

the commissioner finds that such filing does not meet the requirements of this article, the commissioner shall send to the insurer, [or] rating organization, or advisory organization, which made the filing written notice of disapproval of the filing specifying in what respects the filing fails to meet the requirements of this article and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice.”

SECTION 11. Section 431:14-107, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this State, may make application to the commissioner for license as a rating organization for such classes of insurance or subdivision or class of risk, or a part or combination thereof, as are specified in its application and shall file the following with the application:

- (1) A copy of its constitution, charter, its articles of organization, agreement [or], association, or [its certificate of] incorporation, and a copy of its bylaws, plan of operation, and any other rules and regulations governing the conduct of its business;
- (2) A list of its members and subscribers;
- (3) The name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting the rating organization may be served; [and]
- (4) A statement of its qualifications as a rating organization[.];
- (5) A biography of the ownership and management of the organization;
and
- (6) Any other relevant information and documents that the commissioner may require.

(b) If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of organization, agreement [or], association, or [certificate of] incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall issue a license specifying the classes of insurance or subdivision or class of risk, or part or combination thereof, for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with the commissioner. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for the license shall be \$37.50. Licenses issued pursuant to this section may be suspended or revoked by the commissioner after hearing upon notice, in the

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event the rating organization ceases to meet the requirements of subsections (a) and (b).

(c) Every rating organization shall notify the commissioner promptly of every material change in the documents or information filed pursuant to [items (1) through (3) of] subsection (a).”

SECTION 12. Section 431:14-113, Hawaii Revised Statutes, is amended to read as follows:

“**§431:14-113 Examination.** (a) The commissioner [shall at least once in five years, make or cause to be made an examination of each rating organization licensed in this State as provided in section 431:14-107, and the commissioner] may, as often as the commissioner may deem it expedient, make or cause to be made an examination of each rating organization referred to in section 431:14-107, each¹ advisory organization referred to in section 431:14-111 and of each group, association or other organization referred to in section 431:14-112. The reasonable costs of any such examination shall be paid by the rating organization, advisory organization, or group, association, or other organization examined upon presentation to it of a detailed account of such costs. The officer, manager, agents, and employees of the rating organization, advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of any state, pursuant to the laws of such state.

(b) [Reports on examination are not to be made public until the organization examined has had an opportunity to review the proposed report and to have a hearing thereon. Once filed with the commissioner, the report shall be available for public inspection and shall be admissible in evidence as a public record.] The commissioner shall furnish the organization examined a copy of the examination report not less than sixty days prior to the filing of the report for public inspection in the division. If the organization so requests in writing during the sixty-day period, the commissioner shall hold a hearing to consider the organization's objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made. If the organization does not request a hearing on the report, the examination report shall be filed at the end of sixty days.

(c) Once filed, the report shall be available for public inspection and shall be admissible as a public record, except that the commissioner or the commissioner's examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the division.”

SECTION 13. Section 431:14-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner [may], if the commissioner finds any person or organization has violated any provision of this article, may impose a penalty of not more than \$500 for each violation, but if the commissioner finds the violation to be wilful the commissioner may impose a penalty of not more than \$5,000 for each such violation. The penalties may be in addition to any other penalty provided by law. For purposes of this section, any insurer using a rate for which the insurer has failed to file the rate, supplementary rating information, underwriting rules or guides, or supporting information as required by this

article, shall have committed a separate violation for each day such failure to file continues.”

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 15. This Act shall take effect upon its approval.

(Approved June 25, 1990.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.