

ACT 284

S.B. NO. 8

A Bill for an Act Relating to Insurance.

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

SECTION 1. The legislature finds that the recent Kilauea volcano eruption and lava flows have caused a serious problem for residents of certain areas of the Big Island. The actual and potential losses caused by the volcanic activity has also resulted in the unavailability of basic property insurance for persons having insurable interests in properties in the vicinity which has caused great personal suffering and financial hardship and has contributed to uncertainty in the community. The legislature finds it is in the interest of the State to foster stability for people adversely affected by major natural disasters, and this purpose will be served by making basic property insurance available to such persons.

The purpose of this Act is to create an entity which will provide appropriately priced basic property insurance for owners and occupants of property in high risk areas for major natural disasters. This extraordinary action is being taken to provide limited relief to meet the unique and pressing needs of these persons who are currently unable to obtain any property insurance. It is not the intent of this Act, however, to provide insurance coverage for large-scale development, nor is it the intent to provide coverage when a lava flow or attendant loss is imminent. Moreover, it is not the intent of this Act to encourage further development in such high risk areas. To the contrary, the legislature believes that appropriate state and county agencies should modify their land use policies and take action to discourage new development in high risk areas for volcanic activity or other major natural disaster, and should further undertake actions to require and provide adequate fire protection in any developed areas.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE
HAWAII PROPERTY INSURANCE ASSOCIATION**

§431: -101 Purpose. The purpose of this article is to establish the Hawaii Property Insurance Association to:

- (1) Assure stability in the property insurance market for property located in the State;
- (2) Assure the availability of basic property insurance as defined by this article; and
- (3) Provide for the equitable distribution among member insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the authorized insurers.

§431: -102 Definitions. As used in the article:

“Association” means the Hawaii Property Insurance Association created under section 431: -103.

“Basic property insurance” means insurance against direct loss to real or tangible personal property from perils insured under the standard fire policy and extended coverage endorsement.

“Member insurer” means any person who is authorized to transact property or casualty insurance in this State and is not engaged only in writing motor vehicle insurance under section 431:10C-106.

“Net direct written premiums” means the premiums taxable pursuant to section 431:7-202(a) for policies of property and casualty insurance.

§431: -103 Creation of association. (a) There is created a nonprofit unincorporated legal entity to be known as the Hawaii Property Insurance Association. All insurers included in the definition of member insurer in section 431: -102 shall be and remain members of the plan as a condition of their authority to transact the business of insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 431: -106 and shall exercise its powers through a board of directors established under section 431: -104.

(b) Each member insurer shall participate in the writings, expenses, profits, and losses of the association in the proportion that its net direct written premiums during the preceding calendar year bear to the net direct written premiums for all member insurers for the preceding calendar year.

§431: -104 Board of directors. (a) The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Nine voting members selected by the member insurers subject to the approval of the commissioner;
- (2) One nonvoting member appointed by the commissioner to represent insurance agents; and
- (3) Two nonvoting members appointed by the commissioner to represent the public.

(b) The commissioner shall appoint the initial members of the board of directors. Thereafter, the commissioner shall consider whether all member insurers are fairly represented in approving selections to the board.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

§431: -105 Powers and duties of the association. (a) The association shall:

- (1) Formulate and administer a plan of operation to insure persons having an insurable interest in real or tangible personal property in the area designated by the commissioner;

- (2) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while processing applications and servicing policies on behalf of the association; and
 - (3) Collect and maintain statistical information and other information required by the commissioner.
- (b) The association may:
- (1) Add additional insurance coverages with the approval of the commissioner, including coverage for commercial risks up to the limits of coverage for residential risks as set forth in the plan of operation;
 - (2) Employ or retain persons as are necessary to perform the duties of the association;
 - (3) Contract with a member insurer to perform the duties of the association subject to the approval of the commissioner;
 - (4) Sue or be sued;
 - (5) Borrow funds necessary to effectuate the purposes of this article in accord with the plan of operation;
 - (6) If approved by the commissioner, assess member insurers amounts necessary to cover extraordinary losses incurred by the association. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business;
 - (7) Devise a method to give credit to member insurers for homeowners and fire insurance policies individually underwritten on risks located in the area designated for coverage by the association;
 - (8) Negotiate and become a party to contracts as are necessary to carry out the purposes of this article; and
 - (9) Perform all other acts as are necessary or proper to effectuate the purpose of this article.

§431: -106 Plan of operation. (a) The association shall submit to the commissioner a plan of operation and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendment shall become effective upon approval in writing by the commissioner. If the association fails to submit a suitable plan of operation or if at any time the association fails to submit suitable amendments to the plan, the commissioner shall adopt the rules necessary to carry out this article. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved in writing by the commissioner.

- (b) All member insurers shall comply with the plan of operation.
- (c) The plan of operation shall:
 - (1) Establish procedures for performance of all the powers and duties of the association under section 431: -105;
 - (2) Establish maximum limits of liability to be placed through the association;

- (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
- (4) Establish a schedule of deductibles, if appropriate;
- (5) Establish the commission to be paid to licensed agents;
- (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;
- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines for inspection may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its agents, and its board of directors;
- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association.

§431: -107 Designation of area. After consultation with representatives of the United States Geological Survey, the state department of defense, and the county in which the area is located, the commissioner shall designate the geographical area eligible for coverage through the association. Those properties in the designated area that meet the standards set forth in the plan of operation shall be provided insurance through the association.

§431: -108 Renewals of existing policies. Member insurers shall renew policies in existence on the effective date of this article on property situated in the area designated by the commissioner under section 431: -107. A member insurer may choose not to renew such a policy if the insured property does not meet the member insurer's underwriting criteria.

§431: -109 Insurance coverages available under plan. All properties qualifying for coverage under the plan of operation shall be eligible for the standard fire policy and extended coverage endorsement. The association shall provide additional coverages when directed by the commissioner or when approved by the commissioner.

§431: -110 Application; inspection. (a) Any person having an insurable interest in real or tangible personal property who has been unable to obtain basic property insurance from a licensed insurer may apply to the association for coverage.

(b) Within ten days of receiving an application, the association may conduct an inspection of the property to determine the condition of the property and decide if the property qualifies for coverage under the standards set forth in the plan of operation.

(c) The inspection of the property shall include, but need not be limited to, inspection of pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph may be taken as part of the inspection.

(d) Within ten days of the inspection, an inspection report shall be filed with the member insurer designated by the association. A copy of the completed inspection report shall be sent to the applicant upon request.

§431: -111 Duties and powers of the commissioner. (a) The commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner shall approve an assessment of member insurers by the association when the association is insolvent as defined in section 431:15-103(10).

(c) The commissioner may suspend or revoke after a hearing the certificate of authority of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. The fine shall not exceed five per cent of the unpaid assessment per month and shall not be less than \$100 per month.

§431: -112 Reports. (a) The association shall submit to the commissioner each year not later than one hundred twenty days after the association's fiscal year, a financial report in a form approved by the commissioner.

(b) The commissioner may require other reports from insurers concerning risks insured under the plan.

§431: -113 Appeals. (a) Any applicant or member insurer affected by a decision of the association shall have the right to appeal to the board of directors. A decision of the board of directors may be appealed to the commissioner in writing within thirty days after the decision. The application for appeal shall specify in what respects the person making the appeal was aggrieved and the grounds to be relied upon as a basis for the relief demanded. The commissioner shall hold the hearing within thirty days after the commissioner's receipt of the application for appeal unless postponed by mutual consent.

(b) Any final action or order of the commissioner under this article shall be subject to judicial review by the circuit court of the first judicial circuit.

§431: -114 Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this State.

§431: -115 Credits for assessments paid. A member insurer may offset against its premium tax liability to this State an assessment made with the commissioner's approval to the extent of twenty per cent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer should cease doing business in this State, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

§431: -116 Examination. For the purpose of ascertaining its condition, or compliance with this article, the commissioner, as often as the commissioner deems advisable, may examine the accounts, records, documents, and transactions of the association. The association shall pay the expenses of the examination in accordance with section 431:2-306(b).

§431: -117 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this article.

§431: -118 Status of association policies. All financial institutions shall consider a policy issued by the association to be the same as a similar policy issued by an insurer authorized to transact insurance in this State."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1991-1992, to cover expenses incurred in the operation of the Hawaii Property Insurance Association. The sum appropriated shall be expended by the association, upon approval by the insurance commissioner, only for the association's operational expenses and shall not be used to subsidize payments made on policies issued by the association under this Act.

SECTION 4. The Hawaii Property Insurance Association created by this Act shall submit a plan of operation to the commissioner for approval by August 15, 1991. The association shall commence accepting applications for insurance within thirty days of approval of the plan of operation.

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1991.

(Approved June 18, 1991.)