

**ACT 143**

H.B. NO. 3040

A Bill for an Act Relating to Hawaii Property Insurance Association.

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

SECTION 1. Chapter 431, Article 21, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

**"§431:21- Default in payment of assessments.** In the event any member insurer fails to pay any assessment by the association when due, the association shall report the default in writing to the commissioner no later than five days after the default and may bring a civil action in circuit court to enforce payment."

SECTION 2. Section 431:21-103, Hawaii Revised Statutes, is amended to read as follows:

**"[§431:21-103] Creation of association.** (a) There is created a non-profit unincorporated legal entity to be known as the Hawaii Property Insurance Association. All insurers included in the definition of member insurer in section 431:21-102 shall be and remain members of the [plan] association 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 431:21-106 and shall exercise its powers through a board of directors established under section 431:21-104.

(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."

SECTION 3. Section 431:21-104, Hawaii Revised Statutes, is amended to read as follows:

**"[§431:21-104] Board of directors.** (a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. 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] All member insurers [are] shall be fairly represented [in approving selections to] on the board.

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

SECTION 4. Section 431:21-105, Hawaii Revised Statutes, is amended to read as follows:

**"[§431:21-105] Powers and duties of the association.** (a) [The] In addition to any other requirements imposed by law, 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.

may: (b) [The] In addition to any other powers allowed by law, the association

- (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."

SECTION 5. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The plan of operation shall:

- (1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;
- (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[;] for the commissioner's information;
- (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."

SECTION 6. Section 421:21-113,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

"**[[§431:21-113]] 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] board of directors shall hold the hearing within thirty days after the [commissioner's] board of directors' receipt of the application for appeal unless postponed by mutual consent.

(b)<sup>1</sup> Any final action or order of the [commissioner under this article] board of directors shall be subject to judicial review by the circuit court of the first judicial circuit."

SECTION 7. Section 431:21-117, Hawaii Revised Statutes, is amended to read as follows:

"**[[§431:21-117]] Immunity[.] and limitation on liability.** 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. Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this article shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, without regard to whether that person or entity receives any benefits under this article, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any

application, denial of application, claim, loss, or other benefits provided by the association pursuant to this article. Nothing in this article shall be construed as authorizing any claim against the State whatsoever, nor shall this article be construed as authorizing any claim against the association in excess of any note, loan, liability, or other obligation incurred by the association."

SECTION 8. Section 3 of Act 284, Session Laws of Hawaii 1991, is amended to read as follows:

"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] to the department of commerce and consumer affairs to assist the Hawaii Property Insurance Association. The sum appropriated shall be expended by the [association, upon approval by the insurance commissioner,] department of commerce and consumer affairs for the purposes of this Act upon approval by the insurance commissioner of the association's plan of operation, 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. The insurance commissioner shall consider, among other things, when evaluating the association's plan of operation whether:

- (1) Member insurers are fairly represented on the board of directors;
- (2) The procedures for performance of the association's powers and duties as provided in this Act are reasonable and in conformity with the purposes of this Act and minimize inconvenience to policyholders;
- (3) The plan of operation is equitable to present and future members and to policyholders;
- (4) Costs are fairly and equitably allocated in conformity with this Act;
- (5) Procedures for establishing rates ensure that rates will not be excessive or inadequate;
- (6) The rate-setting procedures give consideration to prospective loss experience, expenses of administration, and other factors, including those demonstrated to be actuarially relevant to the risks involved; and
- (7) The standards in the plan of operation and the guidelines and procedures for establishing rates, inspections, underwriting standards, and investigation and payment of claims are based, in whole or in part, directly or indirectly, upon a person's race, creed, ethnic extraction, age, sex, marital status, or handicapping conditions."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 10. This Act is intended to have retrospective operation, and upon its approval, shall take effect on July 1, 1991, except section 3, which shall take effect upon approval of this Act.

(Approved June 4, 1992.)

#### Notes

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