

ACT 232

H.B. NO. 1919

A Bill for an Act Relating to the Insurance Code.

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 to article 2 to be appropriately designated and to read as follows:

“§431:2- Reimbursement and compensation of examiners; source of funds; disposition of receipts. (a) All moneys necessary for the compensation and reimbursement of independent contractor examiners and insurance division staff examiners for actual travel expenses, reasonable living expenses, and per diem expenses, at customary rates approved by the commissioner shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) Each authorized insurer shall deposit at a time determined by the commissioner the sum of \$200 with the commissioner for deposit into the state general fund.

(c) All moneys, fees, and other payments received by the commissioner under this part shall be deposited to the credit of the state general fund.

(d) This section shall take effect upon the termination of the insurance examiners revolving fund on June 30, 2000.”

SECTION 2. Section 431:19-107, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-107 Financial statements and other reports. (a) Each captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and audited by an independent certified public accountant on or before the last day of the sixth month following the end of the company’s fiscal year.

(b) In addition, each association captive and risk retention captive shall file with the commissioner an annual statement on or before March 1 each year, [in accordance with statutory accounting practices,] using the National Association of Insurance Commissioners’ annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31[, in general form and content as approved by the National Association of Insurance Commissioners, verified by oaths of at least two of the insurer’s principal officers. Each risk retention group captive shall file with the National Association of Insurance Commissioners, on or before March 1 of each year, a copy of its annual convention blank along with any additional filings as prescribed by the commissioner for the preceding year]. The annual statement shall be prepared in accordance

with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. The reported information shall be verified by oaths of at least two of the insurer's principal officers. Each risk retention group shall also comply with section 431:3-302.

(c) The statements required to be filed in subsections (a) and (b) shall include, but not be limited to, actuarially appropriate reserves for:

- (1) Known claims and expenses associated therewith;
- (2) Claims incurred but not reported and expenses associated therewith;
- (3) Unearned premiums; and
- (4) Bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited statements. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(d) The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, summary loss reports and quarterly financial statements.

(e) The commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents required by subsections (a) and (b). The fine shall be not more than \$500 per day past the due date."

SECTION 3. Section 431:19-116, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each pure captive insurance company licensed to do business in this State shall pay to the director of finance through the commissioner a tax of .25 per cent on gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March [15] 1 of each year.

(b) Each association captive insurance company licensed to do business in this State and each risk retention captive insurance company chartered in this State shall pay a tax of one per cent on gross premiums for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March [15] 1 of each year.”

SECTION 4. Act 190, Session Laws of Hawaii 1994, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on [July 1,] June 21, 1994 [and shall¹ be repealed]; provided that on June 30, [1996; provided that any statutory or session law material in this Act in existence on June 30, 1994, shall be reenacted on July 1, 1996 in the same form in which it existed on June 30, 1994.] 2000, sections 1 through 5 of this Act and section 431:2-307, Hawaii Revised Statutes, shall be repealed, and sections 431:3-302, 431:5-307, 431:19-107, and 431:19-115, Hawaii Revised Statutes, are reenacted in the form in which they read on June 20, 1994."

SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 5 to be appropriately designated and to read as follows:

“PART IV. RULES

§431:5-A Rules. The commissioner may adopt rules under chapter 91 implementing this article.”

SECTION 6. Section 431:2-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any order of the commissioner, the commissioner may issue a cease and desist order to enforce compliance with this code or any order of the commissioner, or bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any act in furtherance thereof. The commissioner shall have the discretion to include in a cease and desist order or request in an action brought in any court an assessment of a monetary penalty against any person who violates this code or who has violated an order of the commissioner.”

2. By amending subsection (f) to read:

“(f) The attorney general, corporation counsels, and county prosecuting attorneys, shall on behalf of the commissioner, bring an action in forfeiture against an insurer who violates any order or notice of such order issued by the commissioner. The notice shall be given to the insurer of the commissioner’s intention to proceed under such order against the person who does not comply with the order issued. The order may contain this notice of intention to seek a forfeiture if the order is disobeyed. The forfeiture shall be in an amount that the court considers just, but may not exceed an amount of \$10,000 for each day that the violation continues after the commencement of the action until judgment is rendered. No forfeiture may be imposed under this subsection if at the time the forfeiture action is commenced, the [person] insurer was in compliance with the order, or if the violation of the order occurred during the order suspension period. If, after a judgment is rendered, the [person] insurer still does not comply with the order, the commissioner may commence a new action [or] of forfeiture, and may continue commencing actions in forfeiture until the [person] insurer complies. All proceeds from actions of forfeiture will be paid to the director of finance and paid into the general fund.”

SECTION 7. Section 431:2-209, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, void or obsolete filings relating to rates, foreign or alien insurers’ annual statements and valuation reports, cards, and expired bonds. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations [of insurers], reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings

and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner's possession."

2. By amending subsection (f)² to read:

"(f)² The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deemed prudent:

- (1) Complaints and investigation reports;
- (2) Working papers of examination reports;
- (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing said information[.];
- (4) Any documents or information received from the national association of insurance commissioners or insurance departments of other states, territories, and commonwealths that are confidential in other jurisdictions. The commissioner shall be authorized to share information, including otherwise confidential information with the national association of insurance commissioners or insurance departments of other states, territories, and commonwealths so long as the statutes or regulations of the other jurisdictions permit them to maintain the same level of confidentiality as required under Hawaii law."

SECTION 8. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

"(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the insurance division a verified written report of examination under oath. Upon receipt of the verified report, the insurance division shall transmit the report to the insurer or person examined, together with a notice that shall afford the insurer or person examined a reasonable opportunity for not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order to:

- (1) Adopt the examination report as filed, or with modifications or corrections. If the examination report reveals that the insurer or person is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the insurer or person to take any action the commissioner considers necessary and appropriate to cure the violation;
- (2) Reject the examination report with directions to the examiners to reopen the examination for the purpose of obtaining additional data, documentation, or information, and refile pursuant to subsection (a);
or
- (3) Call for an investigatory hearing with no less than twenty days notice to the insurer or person for purposes of obtaining additional documentation, data, information, or testimony.

(d) Orders shall be issued and hearings conducted as follows:

- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner work-

papers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders[;], except that for examinations of general agents, subagents, solicitors, adjusters, or surplus lines brokers, serving the copy of the adopted report and related orders by certified-return receipt requested mail will satisfy the service requirement and no affidavits shall be required; and

- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer[.] or person. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection (c)(1):
 - (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;
 - (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and
 - (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency."

SECTION 9. Section 431:2-306, Hawaii Revised Statutes, is amended to read as follows:

"§431:2-306 Examination expense. (a) Examinations of:

- (1) Any insurer[.];
- (2) Any person subject to examination under section 431:2-303(2)[.]; or
- (3) Any insurance guaranty fund established pursuant to article 16 [of this code];

shall be at the expense of the insurer, person or guaranty fund examined. Examination expenses shall include fees, mileage, and expenses incurred as to witnesses or any other person, as defined in article 1, subject to an examination by the commissioner.

(b) The insurer, person, or guaranty fund examined and liable therefor shall pay to the commissioner's examiners upon presentation of an itemized statement,

their actual travel expenses, their reasonable living expense allowance, and their per diem compensation at a reasonable rate approved by the commissioner, incurred on account of the examination. All payments collected by the commissioner shall be remitted to the general fund of the State, or to the insurance examiner's revolving fund if independent contractor examiners were employed for the examination. The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(c) The commissioner may assess all examination costs of any person subject to examination under section 431:2-303(1) and article 16 when there is a premium trust fund shortage due to substantial noncompliance with section 431:9-230. The commissioner, subject to chapter 91, shall adopt rules to carry out the purposes of this subsection. The rules shall include criteria for the levying of examination assessment costs and specific criteria for appealing assessment costs levied by the commissioner. This subsection shall be repealed on June 30, 1997."

SECTION 10. Section 431:2-307, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may appoint staff examiners, not subject to chapters 76 and 77, and contract with independent contractor examiners, who shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer[.], general agent, subagent, solicitor, adjuster, and agency. The commissioner may also appoint administrative support personnel, not subject to chapters 76 and 77, who shall assist and support the examiners. The commissioner may pay the salaries of the staff examiners and administrative support personnel from the insurance examiners revolving fund.”

SECTION 11. Section 431:3-301, Hawaii Revised Statutes, is -amended by amending subsection (a) to read as follows:

“(a) Annually on or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, the following documents [are required to] shall be filed with the commissioner:

(1) By each insurer:

- (A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, shall be filed using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner. The annual statement shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals. The reported information shall be verified by oaths of at least two of the insurer's principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer shall relate only to its transactions and affairs in the United States;
- (B) The tax statement provided for by section 431:7-201; and
- (C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;

- (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3) The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
- (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance that it is transacting; and
- (4) By each alien insurer, a certificate from the proper public official as to any deposit made or held as compliance with this code.”

SECTION 12. Section 431:3-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Foreign] In respect to quarterly filings, foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) shall be deemed in compliance with this section[.] and are not required to file such statements with this State. However, all other filings are required to be filed in accordance with this section.”

SECTION 13. Section 431:7-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:7-201 Annual tax statement.** Each authorized insurer shall file with the commissioner annually, on or before [March 16] March 1 in each year a statement signed by some duly authorized person on its behalf, setting forth the total business transacted, and the amount of gross premiums received by the insurer during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner in order to determine the taxability of premiums. The term gross premiums as used in this part shall not include consideration paid for annuities.”

SECTION 14. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The tax shall be due and payable on [March 15 succeeding] or before March 1 coinciding with the filing of the statement provided for in section 431:7-201. Any insurer failing or refusing to render the statement and to pay the required taxes above stated shall be liable to a penalty of \$25 for each day of delinquency; the taxes may be collected by distraint, and the penalty recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes and fine, should any be imposed, are fully paid.”

SECTION 15. Section 431:9-230, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The licensee [shall], upon receipt of the funds, shall either:
- (1) Remit the premiums (less commissions) and return premiums received or held by the licensee to the insurers or the persons entitled to such funds; or
 - (2) Maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company

situated in Hawaii, separate from the licensee's own funds or funds held by the licensee in any other capacity, in an amount at least equal to the premiums (net of commissions) and return premiums received by such licensee and unpaid to the insurers or persons entitled to such funds. Return premiums shall be returned within thirty days, unless directed otherwise in writing by the person entitled to the funds.

The licensee shall not be required to maintain a separate bank account or other account for the funds of each insurer or person entitled to such funds, if and so long as the funds held for the insurer or person entitled to such funds are reasonably ascertainable from the books of account and records of the licensee. Only such additional funds as may be reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with the premium funds. In the event the bank, savings and loan association, or financial services loan company account is an interest earning account, such licensee may not retain the interest earned on such funds to the licensee's own use or benefit without the prior written consent of the insurers or person¹ entitled to such funds. A premium trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 431:9-230, Hawaii Revised Statutes", or words of similar import."

SECTION 16. Section 431:9-239, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-239 Reinstatement or relicensing. The commissioner shall not reinstate the license of or relicense any licensee or former licensee as to whom a license has been suspended, revoked, or extension refused, until:

- (1) Any cause for the suspension, revocation, or refusal of such license is no longer existing[, or];
- (2) Any fine levied upon the licensee pursuant to section 431:9-238 and section 431:9-240 has been fully paid[.]; and
- (3) The commissioner is satisfied that such causes for the suspension, revocation, or refusal of such license will not reoccur in the future."

SECTION 17. Section 431:14-119, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-119 Publication of approved workers' compensation rate filings. The insurer or rating organization submitting the workers' compensation rate filing or [lost] loss cost filing shall publish a notice of the filing within [fifteen] seven days from the date of filing and notice of an approved filing in a newspaper of general circulation in this State in a form approved by the commissioner."

SECTION 18. Section 431:16-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each member insurer shall annually recoup the assessments paid in the preceding years by the insurer under this part. The recoupment shall be recovered by means of a surcharge on premiums charged for policies for all kinds of insurance, except life, title, surety, disability, credit mortgage guaranty, and ocean marine. Prior to recoupment, each member insurer shall submit its plan for recoupment to the commissioner[.] for approval. The surcharge shall be at a uniform percentage rate reasonably calculated to recoup the assessment paid by the member insurer. Any excess recovery by a member insurer shall be credited pro rata to that member

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insurer's policyholders' premiums in the succeeding year unless there has been a subsequent assessment, in which case the excess will be used to pay the amount of the subsequent assessment. If a member insurer fails to recoup the entire amount of its assessment in the first year under the procedure provided in this section, it may repeat the procedure in succeeding years until the full assessment is recouped."

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 20. This Act shall take effect upon its approval; provided that on June 30, 2000, the director of finance shall transfer to the credit of the state general fund all unexpended or unencumbered balances remaining in the insurance examiners revolving fund; and provided that sections 5 through 18 shall take effect on July 1, 1995.

(Approved June 29, 1995.)

Notes

1. So in original.
2. Subsection amended in 1993 by Act 205.
3. Edited pursuant to HRS §23G-16.5.