

## ACT 39

S.B. NO. 2723

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the

compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, [and] the special handling fund, section 415-128, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, [~~the insurance examiners' revolving fund, section 431:2-307, the motor vehicle insurance administration revolving fund, section 431:10C-115.5,~~] and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section [444-29, and the public broadcasting revolving fund, section 314-13.] 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to [~~chapters~~] chapter 76 [and 77], hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department [~~with the exception of costs related to the Hawaii public broadcasting authority~~]. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or
- (5) Any person subject to chapter 467B has complied with that chapter;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**"§36-27 Transfers from special funds for central service expenses.**

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
  - (2) School cafeteria special funds of the department of education;
  - (3) Special funds of the University of Hawaii;
  - (4) State educational facilities improvement special fund;
  - (5) Convention center capital and operations special fund under section 206X-10.5;
  - (6) Special funds established by section 206E-6;
  - (7) Housing loan program revenue bond special fund;
  - (8) Housing project bond special fund;
  - (9) Aloha Tower fund created by section 206J-17;
  - (10) Domestic violence prevention special fund under section 321-1.3;
  - (11) Spouse and child abuse special account under section 346-7.5;
  - (12) Spouse and child abuse special account under section 601-3.6;
  - (13) Funds of the employees' retirement system created by section 88-109;
  - (14) Unemployment compensation fund established under section 383-121;
  - (15) Hawaii hurricane relief fund established under chapter 431P;
  - (16) Hawaii health systems corporation special funds;
  - (17) Boiler and elevator safety revolving fund established under section 397-5.5;
  - (18) Tourism special fund established under section 201B-11;
  - (19) Department of commerce and consumer affairs' special funds;
  - (20) Compliance resolution fund established under section 26-9;
  - (21) Universal service fund established under chapter 269;
  - (22) Integrated tax information management systems special fund under section 231-3.2;
  - ~~[(23) Insurance regulation fund under section 431:2-215;~~
  - ~~[(24)] (23) Hawaii tobacco settlement special fund under section 328L-2;~~
  - ~~[(25)] (24) Emergency budget and reserve fund under section 328L-3;~~
  - ~~[(26)] (25) Probation services special fund under section 706-649;~~
  - ~~[(27)] (26) High technology special fund under section 206M-15.5;~~
  - ~~[(28)] (27) Public schools special fees and charges fund under section 302A-1130(f);~~
  - ~~[(29)] (28) Cigarette tax stamp enforcement special fund established by section 28-14;~~
  - ~~[(30)] (29) Cigarette tax stamp administrative special fund established by section 245-41.5; and~~
  - ~~[(31)] (30) Tobacco enforcement special fund established by section 28-15;~~
- shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;

- (2) Special out-of-school time instructional program fund under section 302A-1310;
  - (3) School cafeteria special funds of the department of education;
  - (4) Special funds of the University of Hawaii;
  - (5) State educational facilities improvement special fund;
  - (6) Special funds established by section 206E-6;
  - (7) Aloha Tower fund created by section 206J-17;
  - (8) Domestic violence prevention special fund under section 321-1.3;
  - (9) Spouse and child abuse special account under section 346-7.5;
  - (10) Spouse and child abuse special account under section 601-3.6;
  - (11) Funds of the employees' retirement system created by section 88-109;
  - (12) Unemployment compensation fund established under section 383-121;
  - (13) Hawaii hurricane relief fund established under chapter 431P;
  - (14) Convention center capital and operations special fund established under section 206X-10.5;
  - (15) Hawaii health systems corporation special funds;
  - (16) Tourism special fund established under section 201B-11;
  - (17) Compliance resolution fund established under section 26-9;
  - (18) Universal service fund established under chapter 269;
  - (19) Integrated tax information management systems special fund under section 231-3.2;
  - ~~[(20) Insurance regulation fund under section 431:2-215;~~
  - ~~[(21)] (20) Hawaii tobacco settlement special fund under section 328L-2;~~
  - ~~[(22)] (21) Emergency and budget reserve fund under section 328L-3;~~
  - ~~[(23)] (22) Probation services special fund under section 706-649;~~
  - ~~[(24)] (23) High technology special fund under section 206M-15.5;~~
  - ~~[(25)] (24) Public schools special fees and charges fund under section 302A-1130(f);~~
  - ~~[(26)] (25) Cigarette tax stamp enforcement special fund established by section 28-14;~~
  - ~~[(27)] (26) Cigarette tax stamp administrative special fund established by section 245-41.5; and~~
  - ~~[(28)] (27) Tobacco enforcement special fund established by section 28-15;~~
- shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 4. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The attorney general, corporation counsels, and county prosecuting attorneys, ~~[shall]~~ on behalf of the commissioner, shall 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 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 insurer still does not comply with the order, the commissioner may commence a new action of forfeiture, and may continue commencing actions in forfeiture until the insurer complies. All proceeds from actions of forfeiture ~~[will]~~ shall be paid to

the director of finance and paid into the [~~insurance regulation~~] compliance resolution fund.”

SECTION 5. Section 431:2-215, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-215 [~~Insurance regulation~~] Deposits to compliance resolution fund.** (a) [~~There is established a special fund to be designated as the insurance regulation fund.~~] All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner’s education and training fund (section 431:2-214), the patients’ compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee (section 431:10C-115), and the captive insurance administrative fund (section 431:19-101.8) to the extent provided by section 431:19-101.8(b), shall be deposited into the [~~insurance regulation fund.~~] All sums transferred into the [~~insurance regulation~~] compliance resolution fund under section 26-9(o). All sums transferred from the insurance division into the compliance resolution fund may be expended by the commissioner to carry out the commissioner’s duties and obligations under title 24.

(b) [~~The insurance regulation~~] Sums from the compliance resolution fund expended by the commissioner shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ or retain, by contract or otherwise, without regard to [~~chapters~~] chapter 76 [~~and 77~~], hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that is subject to [~~chapters~~] chapter 76 [~~and 77~~] prior to July 1, 1999, shall remain subject to [~~chapters~~] chapter 76 [~~and 77~~].

(c) Moneys deposited by the commissioner in the [~~special~~] fund shall not revert to the general fund.

(d) The commissioner shall determine the amount or amounts to be assessed and the time any moneys from assessments are due for each line or type of insurance or entity regulated under title 24; provided that:

- (1) The criteria for making the assessment shall be established by rule; provided further that the commissioner shall have provisional authority to make assessments prior to adoption of the rule but this provisional authority shall not extend beyond two years from June 28, 1999;
- (2) The insurers or entities under title 24 shall be provided reasonable notice of when their respective assessments are due;
- (3) The assessments by line or type shall bear a reasonable relationship to the costs of regulating the line or type of insurance, including any administrative costs of the division; and
- (4) The sum total of all assessments made and collected shall not exceed the special fund ceiling or ceilings related to the fund that are established by the legislature.

As used in this subsection, “reasonable notice” means a period of at least sixty days.

(e) The commissioner may suspend an assessment of any insurer if the commissioner determines that an insurer or entity may reach insolvency or other financial difficulty if the assessment is made against that insurer or entity.

~~(f) The commissioner shall prepare an annual report to the director, governor, and the legislature of the use of the fund. The report shall describe assessments~~

by line or type of insurance, and expenditures made from the fund including non-payroll operating expenses. The report shall be submitted to the legislature no later than twenty days prior to the convening of each regular legislative session.]”

SECTION 6. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Beginning with fiscal year 2000-2001, and including fiscal year 2001-2002, each mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of \$10,000 for the first zero to seventy thousand private, nongovernment members the entity covers and an additional assessment on a pro rata basis to be determined and imposed by the commissioner for covered members exceeding seventy thousand; provided that in the third year and each year thereafter, assessments shall be borne on a pro rata basis. The aggregate annual assessment shall not exceed \$1,000,000. The assessment shall be credited to the ~~[insurance regulation]~~ compliance resolution fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase.”

SECTION 7. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys credited to the ~~[insurance regulation]~~ compliance resolution fund that are not used for ~~[health] insurance regulation [or], general administration purposes, or as otherwise allowed pursuant to section 26-9(o)~~ shall not revert to the general fund nor shall be used for other purposes.”

SECTION 8. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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:

- (1) The ~~[insurance regulation]~~ compliance resolution fund; or
- (2) The captive insurance administrative fund if independent contractor examiners or captive staff examiners were employed for a captive insurer’s examination.

The commissioner or the commissioner’s examiners shall not receive or accept any additional emolument on account of any examination.”

SECTION 9. Section 431:2-307.5, Hawaii Revised Statutes, is amended to read as follows:

“**§431:2-307.5 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 ~~[insurance regulation]~~ compliance resolution 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 insurance regulation fund.~~

~~(e) (b) All moneys, fees, and other payments received by the commissioner under this part shall be deposited to the credit of the state [insurance-regulation-] compliance resolution fund.~~

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

SECTION 10. Section 431:3-221, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-221 Power to fine.** In addition to or in lieu of the suspension, revocation, or refusal to extend any certificate of authority, the commissioner ~~[may]~~, after hearing, may levy a fine upon the insurer in an amount not less than \$500 and not more than \$50,000. The order levying the fine shall specify the period within which the fine shall be fully paid, ~~[and]~~ which ~~[period]~~ shall not be less than thirty nor more than forty-five days from the date of the order. Upon failure to pay ~~[any such]~~ the fine when due, the commissioner shall revoke the insurer’s certificate of authority if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance-regulation]~~ compliance resolution fund.”

SECTION 11. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) All fees and penalties shall be deposited to the credit of the [insurancee regulation] compliance resolution fund.”~~

SECTION 12. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [In the event] If~~ any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner, upon written request made by the person to the commissioner within the time set forth in section 431:7-204.6, shall authorize a refund thereof out of the ~~[insurancee-regulation]~~ compliance resolution fund, except that a tax refund shall be payable out of the general fund, by submitting a voucher therefor to the comptroller subject to the following limitations:

- (1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner contains clerical errors, transposition of figures, typographical errors, and errors in calculation or if there is an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
- (2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied with respect to the taxpayer concerned differently than with respect to taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of

unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive.”

SECTION 13. Section 431:9-238, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any fine collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance regulation]~~ compliance resolution fund.”

SECTION 14. Section 431:11-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any insurer failing without just cause to file any registration statement as required in this article~~[-]~~ shall be liable for a fine in an amount of not less than \$100 and not more than \$500 for each day of delinquency, to be recovered by the commissioner, and the penalty so recovered shall be paid into the ~~[insurance regulation]~~ compliance resolution fund. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.”

SECTION 15. Section 431:15-334, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d)(1) Upon liquidation of a domestic nonlife mutual insurance company, any assets held in excess of its liabilities and the amounts which may be paid to its members as provided under subsection (d)(2) shall be paid into the state ~~[insurance regulation]~~ compliance resolution fund.
- (2) The maximum amount payable upon liquidation to any member for and on account of such member’s membership in a domestic nonlife mutual insurance company, in addition to the insurance benefits promised in the policy, is the total of all premium payments made by the member within the past five years with interest at the legal rate compounded annually.”

SECTION 16. Section 431:15-335, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All funds withheld under section 431:15-327 and not distributed, shall upon discharge of the liquidator be deposited with the ~~[insurance regulation]~~ compliance resolution fund and paid by the liquidator in accordance with section 431:15-332. Any sums remaining ~~[which]~~ that under section 431:15-332 would revert to the undistributed assets of the insurer shall be transferred to the ~~[insurance regulation]~~ compliance resolution fund and become the property of the State under subsection (a), unless the commissioner in the commissioner’s discretion petitions the court to reopen the liquidation under section 431:15-337.”

SECTION 17. Section 431:19-101.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All premium taxes collected from captive insurance companies licensed in this State under this article, all captive insurance company application fees, annual license fees, and examination fees collected pursuant to this article shall be credited to the captive insurance administrative fund. Each fiscal year, the commissioner shall transfer out of the fund and deposit into the ~~[insurance regulation]~~ compliance resolution fund a total of forty per cent of the total moneys credited to the fund in the prior fiscal year or \$250,000, whichever is greater, to pay for the expenditures contemplated by this section. In addition, each fiscal year, the commissioner shall transfer out of the fund and deposit into the ~~[insurance regulation]~~ compliance resolution fund up to ten per cent of the total moneys credited to the fund in the prior



fiscal year for purposes of promoting Hawaii as a captive insurance domicile. Disbursements for promotional activities from the ~~[insurance regulation]~~ compliance resolution fund shall be subject to the approval of the director of commerce and consumer affairs. Subject to the foregoing expenditure limits, all moneys remaining in the fund shall revert to the general fund.”

SECTION 18. Section 432E-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall deposit with the commissioner a fee to provide for the actual costs of the survey and educational program to be determined by the commissioner on July 1 of each year, to be credited to the ~~[insurance regulation]~~ compliance resolution fund. ~~[In addition, every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A of chapter 431, shall pay to the commissioner at a time to be determined by the commissioner, a one time assessment in an amount to be determined by the commissioner, to be credited to the insurance regulation fund.]”~~

SECTION 19. Act 142, Session Laws of Hawaii 1998, as amended by Act 163, Session Laws of Hawaii 1999, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect upon its approval and shall be repealed on July 31, 2003, except that section 3 of this Act shall not be repealed; provided that [section]<sup>1</sup> sections 36-27 and 397-5(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by ~~[section 8 of Act 163, Session Laws of Hawaii 1999,]~~ section 2 of Act 39, Session Laws of Hawaii 2002, shall be retained.”

SECTION 20. The director of finance shall transfer and deposit all funds in the insurance regulation fund (section 431:2-215, Hawaii Revised Statutes) unencumbered as of the effective date of this Act into the compliance resolution fund. Any funds remaining in the insurance regulation fund on June 30, 2002, shall be transferred into the compliance resolution fund.

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 22. This Act shall take effect on July 1, 2002.

(Approved April 23, 2002.)

#### Note

1. Not stricken.