

## ACT 132

S.B. NO. 754

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:2-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner or any authorized examiner may conduct an examination of any company as often as the commissioner deems appropriate, but, at a minimum, shall conduct an examination of each domestic insurer at least once ~~in every three years, and conduct an examination of every other insurer licensed in this State at least once~~ every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners and in effect, when the commissioner exercises discretion under this section.”

SECTION 2. Section 431:3-219, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-219 Suspension period[.]; revocation.** (a) Except as otherwise expressly provided in this code, the commissioner may suspend an insurer’s certificate of authority for a period not to exceed one year. The commissioner shall state in the commissioner’s order of suspension the period during which it ~~will~~ shall be effective.

(b) After the completion of the original suspension period, the commissioner may order additional extensions of the suspension or revoke an insurer’s certificate of authority pursuant to section 431:3-218, provided there is a basis for the extended suspension or revocation and the insurer has an opportunity for a hearing prior to the imposition of the extended suspension or revocation.”

SECTION 3. Section 431:9-237, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-237 Duration of suspension.** Every order suspending any license shall specify the period during which suspension will be effective~~[-, and which period shall in no event exceed one year].~~”

SECTION 4. Section 431:14-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:14-105 Policy revisions [which] that alter coverage.** ~~[All]~~ Any policy revisions ~~[which] that~~ alter coverage in any manner shall be filed with the commissioner~~[-]~~, consist of two printed copies and one copy by electronic, telephonic, or optical means, and include an analysis of the impact of each revision on rates.

After review by the commissioner, the commissioner shall determine whether a rate filing for the policy revision must be submitted in accordance with section 431:14-104.”

SECTION 5. Section 431:15-310, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The liquidator shall have the power to:
- (1) Appoint a special deputy to act for the liquidator under this article, and to determine the special deputy’s reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
  - (2) Employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator deems necessary to assist in the liquidation;
  - (3) Fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court;
  - (4) Pay reasonable compensation to persons appointed, and defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. ~~[In the event that]~~ If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs ~~[sø]~~ incurred out of any appropriation for the maintenance of the insurance division. Any amounts ~~[sø]~~ advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance division out of the first available moneys of the insurer;
  - (5) Hold hearings, including but not limited to hearings convened for the purpose of receiving testimony and evidence to determine whether any assets of the insurer have been concealed, misappropriated, or improperly transferred from the insurer. Prior to or at any hearing convened by the liquidator, the liquidator may subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any party to subscribe to their testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents that the liquidator deems relevant to the inquiry;
  - (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose to:
    - (A) Institute timely action in other jurisdictions, to forestall garnishment and attachment proceedings against such debts;
    - (B) Do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best; and
    - (C) Pursue any creditor’s remedies available to enforce ~~[his]~~ the creditor’s claims;
  - (7) Conduct public and private sales of the property of the insurer;
  - (8) Use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 431:15-332;
  - (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowl-

- edge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation;
- (10) Borrow money on the security of the insurer's assets, or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation;
  - (11) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party;
  - (12) Continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings in this State or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 431:15-309, the liquidator shall have the power to apply to any court in this State or elsewhere for leave to substitute the liquidator for the insurer as plaintiff;
  - (13) Prosecute any action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person;
  - (14) Remove any or all records and property of the insurer to the offices of the commissioner or to ~~such other~~ another place ~~as~~ that may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have ~~such~~ reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations;
  - (15) Deposit in one or more banks in this State ~~such~~ sums ~~as~~ that are required for meeting current administration expenses and dividend distributions;
  - (16) Invest all sums not currently needed, unless the court orders otherwise;
  - (17) File any necessary documents for recordation in the bureau of conveyances or other appropriate office or elsewhere where property of the insurer is located;
  - (18) Assert all defenses available to the insurer ~~as~~ against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to ~~such~~ the obligation and may defend only in the absence of a defense by ~~such~~ the guaranty associations;
  - (19) Exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included with sections 431:15-315 ~~through~~ to 431:15-317;
  - (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered;
  - (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states; and
  - (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this State not inconsistent with the provisions of this article."

SECTION 6. Section 431:15-323, Hawaii Revised Statutes, is amended to read as follows:

**“§431:15-323 Recovery of premiums owed.** (a) A producer, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay upon written demand by the liquidator any unpaid collected premium held by [such] the person [at the time of the declaration of insolvency], whether earned or unearned, as shown on the records of the insurer. A producer, premium finance company, or any other person shall have no obligation to pay an uncollected, unpaid, unearned premium to the liquidator. The liquidator shall also have the right to recover from [such] the person any part of an unearned premium that represents commission actually paid or credited to [such] the person. Credits or setoffs or both shall not be allowed to a producer or premium finance company for any amounts advanced to the insurer by the producer or premium finance company on behalf of, but in the absence of a payment by, the insured. An insured shall be obligated to pay, upon written demand by the liquidator, any unpaid, earned premium due the insurer [at the time of the declaration of insolvency] as shown on the records of the insurer.

~~(b) Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:~~

- ~~(1) Suspend or revoke or refuse to renew the licenses of such offending party or parties; or~~
- ~~(2) Impose a penalty of not more than \$1,000 for each and every act in violation of this section by said party or parties.~~

~~(c) Before the commissioner shall take any action as set forth in subsection (b), the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon failure of the accused to appear at such hearing, the commissioner, if the commissioner shall find such violation, shall impose such of the penalties under subsection (b) as the commissioner deems advisable.~~

~~(d) When the commissioner shall take action in any or all of the ways set out in subsection (b), the party aggrieved may appeal from said action to the circuit court of the first judicial circuit.]~~

(b) The circuit court of the first judicial circuit shall have original but not exclusive jurisdiction of all civil proceedings to hear and determine the rights of any producer, premium finance company, insured, liquidator, or any other person under this section. The circuit court of the first judicial circuit may provide that any and all proceedings arising under this section shall be referred to the judge presiding over the delinquency proceeding of the insurer. In lieu of a separate action for the collection of unpaid premiums, a producer, premium finance company, insured, or any other person who contests their liability for unpaid premiums may voluntarily submit their claim and dispute to the judge presiding over the delinquency proceeding of the insurer for summary disposition.

(c) The commissioner may take administrative action in accordance with applicable law against a producer, premium finance company, or any other person the commissioner believes is in violation of subsection (a) by suspending, revoking, or refusing to renew an insurance license, or by levying a civil penalty in an amount not to exceed \$1,000 for each violation.

(d) Any appeal of the commissioner’s decision pursuant to subsection (c) shall be made pursuant to chapter 91 to the circuit court of the first judicial circuit.”

SECTION 7. Section 431:30-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The management committee shall have ~~[such]~~ the authority and duties ~~[as may be]~~ set forth in the bylaws, including but not limited to:

- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
- (2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, ~~[subject to approval by the full commission,]~~ receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;
- (3) Overseeing the offices of the commission; and
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.”

SECTION 8. Section 431:30-119, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commission shall notify the other compacting states of the ~~[withdrawing state’s intent to withdraw]~~ introduction of legislation repealing the compact within ten days of its receipt of notice thereof.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 2005.)