
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the workers'
2 compensation insurance market is necessary for the economic
3 welfare of the state, and that without adequate and affordable
4 workers' compensation insurance, the orderly growth and economic
5 development of the state would be impeded. Adequate and
6 affordable insurance for workers' compensation is also necessary
7 to enable employers to satisfy their legal obligations under
8 chapter 386, Hawaii Revised Statutes.

9 For these reasons, the legislature enacted Act 261, Session
10 Laws of Hawaii 1996, to replace the existing workers'
11 compensation assigned risk pool with a statutorily established
12 nonprofit corporation known as the Hawaii employers' mutual
13 insurance company (HEMIC). The purpose of HEMIC is to provide
14 workers' compensation coverage for Hawaii employers, including
15 employers who have in good faith, but without success, sought
16 workers' compensation insurance in the voluntary market.

17 Act 261 also required insurers in the voluntary market and
18 rating organizations to identify the overall cost savings



1 resulting from this law and to incorporate the savings into the
2 rates for new and renewal policies issued between July 1, 1996,
3 and January 31, 2000. The legislature intended these provisions
4 to provide desperately-needed premium relief to employers while
5 the legislation establishing HEMIC was implemented.

6 Act 261 had a dramatic impact on the workers' compensation
7 insurance industry. Total premiums paid and losses experienced
8 were reduced from a high in 1993 of \$339,000,000 and
9 \$223,000,000, respectively, to lows in 1999 of \$157,000,000 and
10 \$110,000,000.

11 However, once the period during which cost savings were to
12 be incorporated into rates ended, total premiums paid rose
13 drastically. Between 1999 and 2003, total premiums collected
14 increased from \$157,000,000 to \$308,000,000, an increase of
15 ninety-six per cent. During that same time, loss costs
16 experienced only a modest adjustment, increasing from
17 \$116,000,000 in 2001 to \$128,000,000 in 2003, or roughly ten per
18 cent.

19 The legislature finds that the insurance commissioner is
20 empowered to initiate proceedings for appropriate relief,
21 including but not limited to proceedings to roll back rates
22 whenever it appears to the commissioner that an insurer or other



1 interested person regulated under article 14 of chapter 431,
2 Hawaii Revised Statutes, affecting workers' compensation
3 insurance rates has set or applied any rate, classification,
4 charge, or rule affecting workers' compensation insurance that
5 is unreasonable. Despite having this authority, the insurance
6 commissioner allowed workers' compensation insurance premium
7 rates to increase by ninety-six per cent regardless of the fact
8 that loss costs rose only ten per cent during that same time
9 period.

10 Act 261 and other reform legislation approved during the
11 mid 1990s effectively stabilized workers' compensation insurance
12 loss costs, however, once the period during which loss cost
13 savings were to be incorporated in rate filings ended premiums
14 have increased dramatically.

15 Accordingly, the purpose of this Act is to establish
16 statutory mechanisms that would ensure that workers'
17 compensation insurance premiums adequately reflect insurer loss
18 cost experience. While these mechanisms are implemented, this
19 Act would require a twenty per cent roll back in workers'
20 compensation rates.

21 The legislature finds that these mechanisms, based on
22 Proposition 103, which was enacted in the state of California in



1 1988, will ensure that the rates will not be confiscatory and
2 will not prohibit an insurer from making a reasonable rate of
3 return on its investment.

4 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
5 amended by adding two new sections to article 14 to be
6 appropriately designated and to read as follows:

7 "§431:14- Workers' compensation rate filing and rate
8 making. (a) No rate for workers' compensation insurance shall
9 be approved or remain in effect that is above the maximum
10 permitted earned premium or is below the minimum permitted
11 earned premium. Where the commissioner finds that a rate or a
12 proposed rate is excessive or inadequate, the rate or proposed
13 rate shall not be used nor remain in effect. If the rate or
14 proposed rate is excessive, the commissioner shall indicate the
15 highest rate that would not be excessive, which the insurer may
16 adopt by amendment to its application, or the commissioner shall
17 reject the rate in its entirety. If the rate or proposed rate
18 is inadequate, the commissioner shall indicate the lowest rate
19 that would not be inadequate, which the insurer may adopt by
20 amendment to its application, or the commissioner shall reject
21 the rate in its entirety.



1 (b) The commissioner from time to time, shall determine
2 the maximum and minimum permitted after-tax rate of return for
3 workers' compensation insurance ratemaking in accordance with
4 rules adopted in accordance with chapter 91 and this chapter.
5 The maximum and minimum profit factors shall represent the range
6 of yields on investments in other enterprises presenting risks
7 to investors comparable to property and casualty insurance,
8 given due consideration to the competing interests of investors
9 and consumers, and taking into account the fact that insurance
10 is imbued with the public interest and that its purchase is
11 sometimes legally required.

12 (c) The insurer shall have the burden of proving, by a
13 preponderance of the evidence, every fact necessary to show that
14 its rate is not excessive, inadequate, unfairly discriminatory,
15 or otherwise in violation of this article.

16 (d) The commissioner shall review filings as soon as
17 reasonably possible after they have been made to determine
18 whether they meet the requirements of this article. Except as
19 otherwise provided by this article, each filing shall be on file
20 for a waiting period of ninety days before the filing becomes
21 effective. The period may be extended by the commissioner for
22 an additional period not to exceed fifteen days if the

1 commissioner gives written notice within the waiting period to
2 the insurer, rating organization, or advisory organization that
3 made the filing that the commissioner needs the additional time
4 for the consideration of the filing. Upon the written
5 application by the insurer, rating organization, or advisory
6 organization, the commissioner may authorize a filing, which the
7 commissioner has reviewed to become effective before the
8 expiration of the waiting period or any extension thereof. A
9 filing shall be deemed to meet the requirements of this article
10 unless disapproved by the commissioner within the waiting period
11 or any extension thereof.

12 (e) In addition to the powers authorized under this
13 article, the commissioner may institute proceedings for
14 appropriate relief, including but not limited to proceedings to
15 roll back current rates whenever it appears to the commissioner
16 that an insurer or other interested persons regulated by this
17 article affecting workers' compensation insurance rates has:

- 18 (1) Violated or failed to comply with any provisions of
19 this part or of any state or federal law;
20 (2) Failed to comply with any rule, regulation, or other
21 requirement of any other state or federal agency,
22 which affects workers' compensation insurance rates;



1 (3) Failed to comply with any provision of its charter or
2 franchise;

3 (4) Set or applied any rates, classification, charges, or
4 rules affecting workers' compensation insurance that
5 are unreasonable or are unreasonably discriminatory;

6 (5) Failed to give appropriate consideration to investment
7 income or realized by insurers, including investment
8 income earned from unearned premium and loss reserve
9 funds in making rates; or

10 (6) Failed to recognize good safety performance records of
11 employers in setting premium rates and levels.

12 §431:14- Approval of rates for workers' compensation

13 insurance. (a) Every insurer, which desires to change any
14 rate, shall file a complete rate application with the
15 commissioner. A complete rate application shall include all
16 data required under this chapter and any other information as
17 the commissioner may require. The applicant shall have the
18 burden of proving that the requested rate change is justified
19 and meets the requirements of this article.

20 (b) The commissioner shall notify the public of any
21 application by an insurer for a rate change. The application

1 shall be deemed approved sixty days after public notice unless
2 either:

3 (1) A consumer or the consumer's representative requests a
4 hearing within forty-five days of public notice and
5 the commissioner grants the hearing or determines not
6 to grant the hearing and issues written findings in
7 support of that decision;

8 (2) The commission on the commissioner's own motion
9 determines to hold a hearing; or

10 (3) The proposed rate adjustment exceeds seven per cent of
11 the then applicable rate for personal lines or fifteen
12 per cent for commercial lines, in which case the
13 commissioner shall hold a hearing upon a timely
14 request.

15 (c) A rate change application shall be deemed approved one
16 hundred eighty days after the rate application is received by
17 the commissioner unless either:

18 (1) That application has been disapproved by a final order
19 of the commissioner subsequent to a hearing; or

20 (2) Extraordinary circumstances exists. For the purposes
21 of this paragraph, "extraordinary circumstances"
22 includes:



1 (A) Rate change application hearings commenced during
2 the one hundred eighty-day period. If a hearing
3 is commenced during the one hundred eighty-day
4 period, the rate change application shall be
5 deemed approved upon expiration of the one
6 hundred eighty-day period or sixty days after the
7 close of the record of the hearing, whichever is
8 later, unless disapproved prior to that date; and

9 (B) Rate change applications that are not approved or
10 disapproved within the one hundred eighty-day
11 period as a result of a judicial proceeding
12 directly involving the application and initiated
13 by the applicant or the intervenor. During the
14 pendency of the judicial proceedings, the one
15 hundred eighty-day period is tolled, except that
16 in no event shall the commission have less than
17 thirty days after conclusion of the judicial
18 proceedings to approve or disapprove the
19 application. Notwithstanding any other provision
20 of law, nothing shall preclude the commissioner
21 from disapproving an application without a
22 hearing, if a stay is in effect barring the

1 commissioner from holding a hearing within the
2 one hundred eighty-day period.

3 (d) Any person may initiate or intervene in any permitted
4 or established pursuant to this chapter, challenge any action of
5 the commissioner under this article, and enforce any provision
6 of this article as they relate to workers' compensation
7 insurance.

8 (e) The commissioner or a court shall award reasonable
9 advocacy and witness fees and expenses to any person who
10 demonstrates that:

11 (1) The person represents the interest of consumers; and

12 (2) The person has made a substantial contribution to the
13 adoption of any order, regulation, or decision by the
14 commissioner or a court.

15 Where such advocacy occurs in response to a rate application,
16 the award shall be paid by the applicant."

17 SECTION 3. Section 431:14-101.5, Hawaii Revised Statutes,
18 is amended by adding eighteen new definitions to be
19 appropriately inserted and to read as follows:

20 "Catastrophe adjustment" means the substitution of multi-
21 year, long-term average of catastrophe claims for the
22 catastrophic losses of any one accident year in the recorded

1 period, based on a number of years as determined by the
2 commissioner pursuant to rule.

3 "Federal income tax factor" means 1.0 minus the insurer's
4 effective federal income tax rate reported in the most recent
5 year for which historical data are available, given full account
6 of all tax credits and offsets used or available to the insurer;
7 provided that:

8 (1) Where there has been a change in tax laws between the
9 recorded period and the rating period, the effective
10 tax rate shall be calculated using the most recent
11 year of available historical data and the tax rules
12 for the rating period;

13 (2) Where the insurer had:

14 (A) A net tax credit or a net tax liability on a net
15 pretax loss, the effective tax rate shall be
16 zero;

17 (B) A net tax credit, the amount of the credit shall
18 be added, as a positive number, to nationwide
19 projected ancillary income; or

20 (C) A net tax liability, the amount of the liability
21 shall be subtracted from nationwide projected
22 ancillary income;



1 and

2 (3) Where the insurer's effective tax rate reported in the
3 most recent year for which historical data are
4 available exceeds thirty-four per cent and the insurer
5 had a net tax liability on a net pretax profit, the
6 effective tax rate shall be thirty-four per cent and
7 the amount by which the tax liability exceeds thirty-
8 four per cent shall be subtracted from nationwide
9 ancillary income.

10 "Investment income factor" means the projected yield
11 multiplied by the sum of the reserves ratio plus the surplus
12 ratio.

13 "Leverage factor" means the ratio of net written premiums
14 to surplus.

15 "Loss development" means the process by which reported
16 losses are adjusted for anticipated payout patterns based on the
17 average of the ratio of losses for the three most recent
18 accident-years available for a reporting interval for as many
19 reporting intervals as the commissioner may prescribe for a
20 given line; provided that:

21 (1) Filings shall contain both paid losses and case-
22 specific reserves, stated separately;



1 (2) Loss development may employ either paid losses or the
2 sum of paid losses and case-specific reserves if the
3 ratio of case-specific reserves to paid losses
4 increases by an amount greater than a figure to be
5 specified by the commissioner for their respective
6 line; and

7 (3) Loss development shall be passed solely on paid
8 losses.

9 "Loss trend" means the process by which forces not
10 reflected in historic loss data are expected to affect losses in
11 the rating period.

12 "Maximum permitted earned premiums" means the sum of
13 projected losses plus projected allocated loss adjustment
14 expenses plus projected fixed expenses minus projected ancillary
15 income divided by the sum of 1.0 minus the variable expense
16 factor minus the maximum profit factor plus the investment
17 income factor.

18 "Maximum profit factor" means the maximum after-tax rate of
19 return, as determined by the commissioner, divided by the
20 product of the leverage factor multiplied by the federal income
21 tax factor.



1 "Minimum permitted earned premium" means the sum of
2 projected losses plus projected allocated loss adjustment
3 expenses plus projected fixed expenses minus projected ancillary
4 income divided by the sum of 1.0 minus the variable expense
5 factor minus the minimum profit factor plus the investment
6 income factor.

7 "Minimum profit factor" means the minimum permitted after-
8 tax rate of return, as determined by the commissioner, divided
9 by the product of the leverage factor multiplied by the federal
10 income tax factor.

11 "Projected allocated loss adjustment expenses" means the
12 insurer's historic costs per exposure associated with the
13 adjustment of specific claims; provided that where an insurer
14 elected to disaggregate a line of insurance into commodity and
15 specialty categories, the insurer may, in addition to the
16 computation of projected allocated loss adjustment expenses
17 specified in this section, tender an alternative computation of
18 projected allocated loss adjustment expenses for the specialty
19 category, which the commissioner shall approve if the
20 commissioner finds the projection to have been made in a sound
21 actuarial manner.



1 "Projected ancillary income" means projected net income to
2 the insurer or an affiliate of the insurer not derived from
3 insurance premiums subject to this section but derived from
4 operations directly related to insurance subject to this
5 article; provided that:

6 (1) Projected ancillary income shall be expressed on a
7 per-exposure basis; and

8 (2) Premium financing revenues and membership dues shall
9 be included within projected ancillary income.

10 "Projected fixed expenses" means allowable historic fixed
11 expenses per exposure, adjusted for expense trend, and shall
12 consist of other acquisition, field supervision, and collection
13 expenses incurred plus state and local taxes, licenses, and fees
14 incurred minus premium taxes plus unallocated loss adjustment
15 expenses; provided that commission and brokerage expenses shall
16 not be included in fixed expenses.

17 "Projected losses" means the insurer's historic losses per
18 exposure, adjusted by catastrophe adjustment, loss development,
19 and loss trend, and shall be calculated by applying the loss
20 trend factor separately to data from each accident-year in the
21 recorded period.



1 "Projected yield" means the insurer's imbedded yield in the
2 most recent year for which investment results have been
3 reported, plus an average of the insurer's realized capital
4 gains over the most recent five years; provided that imbedded
5 yield shall be calculated as the insurer's net investment
6 income, excluded capital gains, divided by the average of the
7 insurer's start-of-year and year-end surplus and reserves for
8 the most recent year for which investment results have been
9 reported.

10 "Reserves ratio" means the average of the last two years'
11 loss revenues plus loss adjustment expenses revenues plus
12 unearned premium reserves divided by the earned premium for the
13 most recent year for which data are available.

14 "Surplus ratio" means the reciprocal of the leverage
15 factor.

16 "Variable expense factor" means the sum of the commission
17 rate and the state premium tax rate."

18 SECTION 4. Section 431:14-120, Hawaii Revised Statutes, is
19 repealed.

20 [~~"§431:14-120 Additional powers for workers' compensation~~
21 ~~rate filing and ratemaking.~~ (a) The commissioner shall review

1 ~~filings as soon as reasonably possible after they have been made~~
2 ~~to determine whether they meet the requirements of this article.~~

3 ~~(b) Except as provided herein, each filing shall be on~~
4 ~~file for a waiting period of ninety days before the filing~~
5 ~~becomes effective. The period may be extended by the~~
6 ~~commissioner for an additional period not to exceed fifteen days~~
7 ~~if the commissioner gives written notice within the waiting~~
8 ~~period to the insurer, rating organization, or advisory~~
9 ~~organization that made the filing that the commissioner needs~~
10 ~~the additional time for the consideration of the filing. Upon~~
11 ~~the written application by the insurer, rating organization, or~~
12 ~~advisory organization, the commissioner may authorize a filing~~
13 ~~which the commissioner has reviewed to become effective before~~
14 ~~the expiration of the waiting period or any extension thereof.~~
15 ~~A filing shall be deemed to meet the requirements of this~~
16 ~~article unless disapproved by the commissioner within the~~
17 ~~waiting period or any extension thereof.~~

18 ~~(c) The commissioner may institute proceedings for~~
19 ~~appropriate relief including but not limited to proceedings to~~
20 ~~roll back current rates whenever it appears to the commissioner~~
21 ~~that an insurer or other interested persons regulated by this~~
22 ~~article affecting workers' compensation insurance rates has:~~



- 1 ~~(1) Violated or failed to comply with any provisions of~~
- 2 ~~this part or of any state or federal law;~~
- 3 ~~(2) Failed to comply with any rule, regulation, or other~~
- 4 ~~requirements of any other state or federal agency~~
- 5 ~~which affects workers' compensation insurance rates;~~
- 6 ~~(3) Failed to comply with any provision of its charter or~~
- 7 ~~franchise;~~
- 8 ~~(4) Set or applied any rates, classification, charges, or~~
- 9 ~~rules affecting workers' compensation insurance that~~
- 10 ~~are unreasonable or are unreasonably discriminatory;~~
- 11 ~~(5) Failed to give appropriate consideration to investment~~
- 12 ~~income earned or realized by insurers, including~~
- 13 ~~investment income earned from unearned premium and~~
- 14 ~~loss revenue funds in making rates; or~~
- 15 ~~(6) Failed to recognize good safety performance records of~~
- 16 ~~employers in setting premium rates and levels."]~~

17 SECTION 5. (a) For any coverage for a policy for workers'

18 compensation insurance issued or renewed on or after February 1,

19 2007, every insurer shall reduce its premiums to levels which

20 are at least twenty per cent less than the premiums for the same

21 coverage which were in effect on January 31, 2007.

1 (b) Between February 1, 2007, and January 31, 2008,
2 premiums reduced pursuant to subsection (a) may only be
3 increased if the commissioner determines that the reduced
4 premium would be inadequate. The insurer shall have the burden
5 of proving, by a preponderance of the evidence, every fact
6 necessary to show that the reduced premium is inadequate.

7 (c) For an insurer who applies for a workers' compensation
8 insurance policy rate for the first time on or after February 1,
9 2007, the rate shall be twenty per cent less than the rate which
10 was in effect on January 31, 2007, for similarly situated risks.

11 (d) Any separate affiliate of an insurer, established on
12 or after February 1, 2007, shall be subject to the provisions of
13 this section and shall reduce its charges to levels which are at
14 least twenty per cent less than the insurer's charges in effect
15 on that date.

16 SECTION 6. If any provision of this Act, or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act which can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 7. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 8. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 9. This Act shall take effect upon its approval,
7 provided that sections 2, 3, and 4 shall take effect on July 1,
8 2008.

9

INTRODUCED BY: 

 DWL
 Kirk Caldwell

JAN 23 2006

HB247

Report Title:

Workers' compensation; Insurance Premiums; Rates

Description:

Requires workers' compensation insurance premiums to be rolled back by 20%. After July 1, 2008, prohibits workers' compensation insurance premium rates above the maximum earned premium and below the minimum earned premium. Establishes a formula for the determination of the maximum earned premium and minimum earned premium. Authorizes consumers to initiate or intervene in any workers' compensation insurance rate making proceeding.

