
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new part to article 16 to be appropriately
3 designated and to read as follows:

4 **"PART . POST-ASSESSMENT PROPERTY AND LIABILITY**
5 **INSURANCE GUARANTY ASSOCIATION**

6 **§431:16-A Title.** This part shall be known as the Hawaii
7 Insurance Guaranty Association Act.

8 **§431:16-B Scope.** This part shall apply to all kinds of
9 direct insurance, but shall not apply to the following:

- 10 (1) Life, annuity, health, or disability insurance;
- 11 (2) Mortgage guaranty, financial guaranty, or other forms
12 of insurance offering protection against investment
13 risks;
- 14 (3) Fidelity or surety bonds, or any other bonding
15 obligations;
- 16 (4) Credit insurance, vendors' single interest insurance,
17 or collateral protection insurance or any similar



- 1 insurance protecting the interests of a creditor
- 2 arising out of a creditor-debtor transaction;
- 3 (5) Insurance of warranties or service contracts,
- 4 including insurance that provides for the repair,
- 5 replacement, or service of goods or property, or
- 6 indemnification for repair, replacement, or service,
- 7 for the operational or structural failure of the goods
- 8 or property due to a defect in materials, workmanship,
- 9 or normal wear and tear, or provides reimbursement for
- 10 the liability incurred by the issuer of agreements or
- 11 service contracts that provide such benefits;
- 12 (6) Title insurance;
- 13 (7) Ocean marine insurance;
- 14 (8) Any transaction or combination of transactions between
- 15 a person (including affiliates of the person) and an
- 16 insurer (including affiliates of the insurer) that
- 17 involves the transfer of investment or credit risk
- 18 unaccompanied by transfer of insurance risk; or
- 19 (9) Any insurance provided by or guaranteed by government.

20 **§431:16-C Definitions.** As used in this part:

21 "Account" means any one of the three accounts created by

22 section 431:16-D.



1 "Affiliate" means a person who directly or indirectly,
2 through one or more intermediaries, controls, is controlled by,
3 or is under common control with another person.

4 "Affiliate of the insolvent insurer" means a person who
5 directly or indirectly, through one or more intermediaries,
6 controls, is controlled by, or is under common control with an
7 insolvent insurer on December 31 of the year prior to the date
8 the insurer becomes an insolvent insurer.

9 "Association" means the Hawaii insurance guaranty
10 association created under section 431:16-D.

11 "Association similar to the association" means any guaranty
12 association, security fund, or other insolvency mechanism that
13 affords protection similar to that provided by the association.
14 The term also shall include any property-casualty insolvency
15 mechanism that obtains assessments or other contributions from
16 insurers on a pre-insolvency basis.

17 "Claimant" means any insured making a first-party claim or
18 any person instituting a liability claim, provided that no
19 person who is an affiliate of the insolvent insurer may be a
20 claimant.

21 "Commissioner" means the insurance commissioner.



1 "Control" means the possession, direct or indirect, of the
2 power to direct or cause the direction of the management and
3 policies of a person, whether through the ownership of voting
4 securities, by contract other than a commercial contract for
5 goods or nonmanagement services, or otherwise, unless the power
6 is the result of an official position with or corporate office
7 held by the person. Control shall be presumed to exist if any
8 person, directly or indirectly, owns, controls, holds with the
9 power to vote, or holds proxies representing ten per cent or
10 more of the voting securities of any other person. This
11 presumption may be rebutted by a showing that control does not
12 exist in fact.

13 "Covered claim":

14 (1) Means an unpaid claim, including one for unearned
15 premiums, submitted by a claimant, that arises out of
16 and is within the coverage and is subject to the
17 applicable limits of an insurance policy to which this
18 part applies issued by an insurer, if the insurer
19 becomes an insolvent insurer after the effective date
20 of this part; provided that:

21 (A) The claimant or insured is a resident of this
22 State at the time of the insured event provided



1 that for entities other than an individual, the
2 residence of a claimant, insured, or policyholder
3 is the state in which its principal place of
4 business is located at the time of the insured
5 event; or

6 (B) The claim is a first-party claim for damage to
7 property with a permanent location in this State.

8 (2) Shall not include:

9 (A) Any amount awarded as punitive or exemplary
10 damages;

11 (B) Any amount sought as a return of premium under
12 any retrospective rating plan;

13 (C) Any amount due any reinsurer, insurer, insurance
14 pool, underwriting association, health
15 maintenance organization, hospital plan
16 corporation, professional health service
17 corporation, or self-insurer as subrogation
18 recoveries, reinsurance recoveries, contribution,
19 indemnification, or otherwise. No such claim for
20 any amount due any reinsurer, insurer, insurance
21 pool, underwriting association, health
22 maintenance organization, hospital plan



1 corporation, or self-insurer may be asserted
2 against a person insured under a policy issued by
3 an insolvent insurer other than to the extent
4 that the claim exceeds the association obligation
5 limitations set forth in section 431:16-F;

6 (D) Any first-party claim by an insured whose net
7 worth exceeds \$10,000,000 on December 31 of the
8 year prior to the date the insurer becomes an
9 insolvent insurer; provided that an insured's net
10 worth on that date shall be deemed to include the
11 aggregate net worth of the insured and all of its
12 subsidiaries and affiliates as calculated on a
13 consolidated basis;

14 (E) Any third-party claim relating to a policy of an
15 insured whose net worth exceeds \$25,000,000 on
16 December 31 of the year prior to the date the
17 insurer becomes an insolvent insurer, provided
18 that an insured's net worth on that date shall be
19 deemed to include the aggregate net worth of the
20 insured and all of its subsidiaries and
21 affiliates as calculated on a consolidated basis.
22 This exclusion shall not apply to third-party



1 claims against the insured where the insured has
2 applied for or consented to the appointment of a
3 receiver, trustee, or liquidator for all or a
4 substantial part of its assets, filed a voluntary
5 petition in bankruptcy, filed a petition or an
6 answer seeking a reorganization or arrangement
7 with creditors or to take advantage of any
8 insolvency law, or if an order, judgment, or
9 decree is entered by a court of competent
10 jurisdiction, on the application of a creditor,
11 adjudicating the insured bankrupt or insolvent or
12 approving a petition seeking reorganization of
13 the insured or of all or substantial part of its
14 assets;

15 (F) Any claim that would otherwise be a covered
16 claim, but is an obligation to or on behalf of a
17 person who has a net worth greater than that
18 allowed by the insurance guaranty association law
19 of the state of residence of the claimant at the
20 time specified by such law, and which association
21 has denied coverage to that claimant on that
22 basis;



1 (G) Any first-party claims by an insured that is an
2 affiliate of the insolvent insurer;

3 (H) Any fee or other amount relating to goods or
4 services sought by or on behalf of any attorney
5 or other provider of goods or services retained
6 by the insolvent insurer or an insured prior to
7 the date it was determined to be insolvent;

8 (I) Any fee or other amount sought by or on behalf of
9 any attorney or other provider of goods or
10 services retained by any insured or claimant in
11 connection with the assertion or prosecution of
12 any claim, covered or otherwise, against the
13 association;

14 (J) Any claims for interest; or

15 (K) Any claim filed with the association or a
16 liquidator for protection afforded under the
17 insured's policy for incurred-but-not-reported
18 losses.

19 "Insolvent insurer" means an insurer licensed to transact
20 insurance in this State, either at the time the policy was
21 issued or when the insured event occurred, and against whom a
22 final order of liquidation has been entered after the effective



1 date of this part with a finding of insolvency by a court of
2 competent jurisdiction in the insurer's state of domicile.

3 "Insured" means any name insured, any additional insured,
4 any vendor, lessor, or any other party identified as an insured
5 under the policy.

6 "Member insurer" means any person who:

7 (1) Writes any kind of insurance to which this part
8 applies under section 431:16-B, including the exchange
9 of reciprocal or inter-insurance contracts; and

10 (2) Is licensed to transact insurance in this State
11 (except at option of the State).

12 An insurer shall cease to be a member insurer effective on the
13 day following the termination or expiration of its license to
14 transact the kinds of insurance to which this part applies;
15 provided further that the insurer shall remain liable as a
16 member insurer for any and all obligations, including
17 obligations for assessments levied prior to the termination or
18 expiration of the insurer's license and assessments levied after
19 the termination or expiration, which relate to any insurer that
20 became an insolvent insurer prior to the termination or
21 expiration of such insurer's license.



1 "Net direct written premiums" means direct gross premiums
 2 written in this state on insurance policies to which this part
 3 applies, less return premiums thereon and dividends paid or
 4 credit to policyholders on such direct business. "Net direct
 5 written premiums" does not include premiums on contracts between
 6 insurers or reinsurers.

7 "Person" means any individual or legal entity, including
 8 governmental entities.

9 "Self-insurer" means a person that covers its liability
 10 through a qualified individual or group self-insurance program
 11 or any other formal program created for the specific purpose of
 12 covering liabilities typically covered by insurance.

13 **§431:16-D Creation of the association.** There is created a
 14 nonprofit unincorporated legal entity to be known as the Hawaii
 15 insurance guaranty association. All insurers defined as member
 16 insurers in section 431:16-C shall be and remain members of the
 17 association as a condition of their authority to transact
 18 insurance in this State. The association shall perform its
 19 functions under a plan of operation established and approved
 20 under section 431:16-G and shall exercise its powers through a
 21 board of directors established under section 431:16-E. For



1 purposes of administration and assessment, the association shall
2 be divided into three separate accounts:

- 3 (1) The account for workers' compensation;
- 4 (2) The account for automobile; and
- 5 (3) The account for all other claims covered by the
6 association.

7 **§431:16-E Board of directors.** (a) The board of directors
8 of the association shall consist of not less than five nor more
9 than nine persons serving terms as established in the plan of
10 operation. The members of the board shall be selected by member
11 insurers subject to the approval of the commissioner. Vacancies
12 on the board shall be filled for the remaining period of the
13 term by a majority vote of the remaining board members subject
14 to the approval of the commissioner. If no members are selected
15 within sixty days after the effective date of this part, the
16 commissioner may appoint the initial members of the board of
17 directors.

18 (b) In approving selections to the board, the commissioner
19 shall consider, among other things, whether all member insurers
20 are fairly represented.



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

4 **§431:16-F Powers and duties of the association.** (a) The
5 association shall:

6 (1) Be obligated to pay covered claims existing prior to
7 the order of liquidation, that arise within thirty
8 days after the order of liquidation or before the
9 policy expiration date if such expiration date is less
10 than thirty days after the order of liquidation, or
11 that arise before the insured replaces the policy or
12 causes its cancellation, if the insured does so within
13 thirty days of the order of liquidation.

14 (A) The obligation shall be satisfied by paying to
15 the claimant an amount as follows:

16 (i) The full amount of a covered claim for
17 benefits under a workers' compensation
18 insurance coverage;

19 (ii) An amount not exceeding \$10,000 per policy
20 for a covered claim for the return of
21 unearned premium; or



1 (iii) An amount not exceeding \$300,000 per claim
2 for all other covered claims.

3 (B) In no event shall the association be obligated to
4 pay a claimant an amount in excess of the
5 obligation of the insolvent insurer under the
6 policy or coverage from which the claim arises.
7 Notwithstanding any other provisions of this
8 part, a covered claim shall not include a claim
9 filed with the association after the earlier of:

10 (i) Eighteen months after the date of the order
11 of liquidation; or

12 (ii) The final date set by the court for the
13 filing of claims against the liquidator or
14 receiver of an insolvent insurer.

15 (C) Any obligation of the association to defend an
16 insured on a covered claim shall cease upon the
17 association's:

18 (i) Payment, either by settlement releasing the
19 insured or on a judgment, of an amount equal
20 to the lesser of the association's covered
21 claim obligation limit or the applicable
22 policy limit; or



1 (ii) Tender of such amount;

2 (2) Be deemed the insurer only to the extent of its

3 obligation on the covered claims and to that extent,

4 subject to the limitations provided in this part,

5 shall have all rights, duties, and obligations of the

6 insolvent insurer as if the insurer had not become

7 insolvent, including but not limited to, the right to

8 pursue and retain salvage and subrogation recoverable

9 on paid covered claim obligations. The association

10 shall not be deemed the insolvent insurer for any

11 purpose relating to the issue of whether the

12 association is amenable to the personal jurisdiction

13 of the courts of any state;

14 (3) Allocate claims paid and expenses incurred among the

15 three accounts separately, and assess member insurers

16 separately for each account, amounts necessary to pay

17 the obligations of the association under this part

18 subsequent to an insolvency, the expenses of handling

19 covered claims subsequent to an insolvency and other

20 expenses authorized by this part.

21 (A) The assessments of each member insurer shall be

22 in the proportion that the net direct written



1 premiums of the member insurer for the calendar
2 year prior to the assessment on the kinds of
3 insurance in the account bears to the net direct
4 written premiums of all member insurers for the
5 calendar year prior to the assessment on the
6 kinds of insurance in the account. Each member
7 insurer shall be notified of the assessment not
8 later than thirty days before it is due.

9 (B) No member insurer may be assessed in any one year
10 on any account an amount greater than two per
11 cent of that member insurer's net direct written
12 premiums for the calendar year preceding the
13 assessment on the kinds of insurance in the
14 account. If the maximum assessment, together
15 with the other assets of the association in any
16 account, does not provide in any one year in any
17 account an amount sufficient to make all
18 necessary payments from that account, the funds
19 available shall be pro-rated and the unpaid
20 portion shall be paid as soon thereafter as funds
21 become available.



1 (C) The association shall pay claims in any order
2 that it deems reasonable, including the payment
3 of claims as such are received from the claimants
4 or in groups or categories of claims.

5 (D) The association may exempt or defer, in whole or
6 in part, the assessment of any member insurer, if
7 the assessment would cause the member insurer's
8 financial statement to reflect amounts of capital
9 or surplus less than the minimum amounts required
10 for a certificate of authority by any
11 jurisdiction in which the member insurer is
12 authorized to transact insurance; provided,
13 however, that during the period of deferment, no
14 dividends shall be paid to shareholders or
15 policyholders. Deferred assessments shall be
16 paid when the payment will not reduce capital or
17 surplus below required minimums. The payments
18 shall be refunded to those companies receiving
19 larger assessments by virtue of that deferment,
20 or at the election of any such company, credited
21 against future assessments.



1 (E) Each member insurer may set off against any
2 assessment, authorized payments made on covered
3 claims and expenses incurred in the payment of
4 such claims by the member insurer if they are
5 chargeable to the account for which the
6 assessment is made;

7 (4) Investigate claims brought against the association and
8 adjust, compromise, settle, and pay covered claims to
9 the extent of the association's obligation and deny
10 all other claims. The association shall have the
11 right to appoint and to direct legal counsel retained
12 under liability insurance policies for the defense of
13 covered claims;

14 (5) Not be bound by any settlement, release, compromise,
15 waiver, or judgment executed or entered within twelve
16 months prior to an order of liquidation and shall have
17 the right to assert all defenses available to the
18 association including, but not limited to, defenses
19 applicable to determining and enforcing its statutory
20 rights and obligations to any such claim. The
21 association shall be bound by any settlement, release,
22 compromise, waiver, or judgment executed or entered



1 into more than one year prior to an order of
 2 liquidation; provided, however, the claim is a covered
 3 claim and the settlement or judgment was not a result
 4 of fraud, collusion, default, or failure to defend.

5 Further, as to any covered claims arising from a
 6 judgment under any decision, verdict, or finding based
 7 on the default of the insolvent insurer or its failure
 8 to defend, the association either on its own behalf or
 9 on behalf of an insured may apply to have the
 10 judgment, order, decision, verdict, or finding set
 11 aside by the same court or administrator that made the
 12 judgment, order, decision, verdict, or finding and
 13 shall be permitted to defend such claim on the merits;

14 (6) Handle claims through its employees or through one or
 15 more insurers or other persons designated as servicing
 16 facilities. Designation of a servicing facility is
 17 subject to the approval of the commissioner, but the
 18 designation may be declined by a member insurer;

19 (7) Reimburse each servicing facility for obligations of
 20 the association paid by the facility and for expenses
 21 incurred by the facility while handling claims on
 22 behalf of the association and shall pay the other



1 expenses of the association authorized by this part;
 2 and
 3 (8) Establish procedures for requesting financial
 4 information from insureds and claimants on a
 5 confidential basis for purposes of applying sections
 6 of this part concerning the net worth of first and
 7 third-party claimants, subject to such information
 8 being shared with any other association similar to the
 9 association and the liquidator for the insolvent
 10 company on the same confidential basis. If the
 11 insured or claimant refuses to provide the requested
 12 financial information and an auditor's certification
 13 of the same where requested and available, the
 14 association may deem the net worth of the insured or
 15 claimant to be in excess of \$ at the relevant
 16 time.

17 (b) The association may:
 18 (1) Employ or retain such persons as are necessary to
 19 handle claims and perform other duties of the
 20 association;

21 (2) Borrow funds necessary to effect the purposes of this
 22 part in accord with the plan of operation;



- 1 (3) Sue or be sued, and such power to sue includes the
- 2 power and right to intervene as a party as a matter of
- 3 right before any court in this State that has
- 4 jurisdiction over an insolvent insurer as authorized
- 5 by this part;
- 6 (4) Negotiate and become a party to such contracts as are
- 7 necessary to carry out the purpose of this part;
- 8 (5) Perform such other acts as are necessary or proper to
- 9 effectuate the purpose of this part;
- 10 (6) Refund to the member insurers in proportion to the
- 11 contribution of each member insurer to that account
- 12 that amount by which the assets of the account exceed
- 13 the liabilities, if at the end of any calendar year,
- 14 the board of directors finds that the assets of the
- 15 association in any account exceed the liabilities of
- 16 that account as estimated by the board of directors
- 17 for the coming year; and
- 18 (7) Bring an action against any third-party administrator,
- 19 agent, attorney, or other representative of the
- 20 insolvent insurer to obtain custody and control of all
- 21 files, records, and electronic data (hereinafter
- 22 referred to as "claims information") related to an



1 insolvent company that are appropriate or necessary
2 for the association, or a similar association in other
3 states, to carry out its duties under this part.

4 (A) In the suit, the association shall have the
5 absolute right through emergency equitable relief
6 to obtain custody and control of all such claims
7 information in the custody or control of the
8 third-party administrator, agent, attorney, or
9 other representative of the insolvent insurer,
10 regardless of where the claims information may be
11 physically located. In bringing the action, the
12 association shall not be subject to any defense,
13 lien (possessory or otherwise) or other legal or
14 equitable ground whatsoever for refusal to
15 surrender the claims information that might be
16 asserted against the liquidator of the insolvent
17 insurers.

18 (B) To the extent that litigation is required for the
19 association to obtain custody of the claims
20 information requested and it results in the
21 relinquishment of claims information to the
22 association after refusal to provide the same in



1 response to a written demand, the court shall
2 award the association its costs, expenses, and
3 reasonable attorneys' fees incurred in bringing
4 the action.

5 (C) This section shall have no effect on the rights
6 and remedies that the custodian of the claims
7 information may have against the insolvent
8 insurers, so long as those rights and remedies do
9 not conflict with the rights of the association
10 to custody and control of the claims information
11 under this part.

12 (c) Except for actions by member insurers aggrieved by
13 final actions or decisions of the association pursuant to
14 section 431:16-G(c)(8), all actions relating to or arising out
15 of this part against the association must be brought in the
16 courts in this State. Those courts shall have exclusive
17 jurisdiction over all actions relating to or arising out of this
18 part against the association.

19 Exclusive venue in any action by or against the association
20 is in the first circuit of the circuit court. The association,
21 at the option of the association, may waive that venue as to
22 specific actions.



1 In any lawsuit contesting the applicability of net worth
2 limitations relating to "covered claim" or section
3 431:16-I(b)(1) where the insured or claimant has declined to
4 provide the required financial information, the insured or
5 claimant shall bear the burden of proof concerning its net worth
6 at the relevant time. If the insured or claimant fails to prove
7 that its net worth at the relevant time was less than the
8 applicable amount, the court shall award the association its
9 full costs, expenses, and reasonable attorneys' fees in
10 contesting its claim.

11 **§431:16-G Plan of operation.** (a) The association shall
12 submit to the commissioner a plan of operation and any
13 amendments thereto necessary or suitable to assure the fair,
14 reasonable, and equitable administration of the association.
15 The plan of operation and any amendments thereto shall become
16 effective upon approval in writing by the commissioner.

17 If the association fails to submit a suitable plan of
18 operation within ninety days following the effective date of
19 this part, or if at any time thereafter the association fails to
20 submit suitable amendments to the plan, the commissioner, after
21 notice and hearing, shall adopt such reasonable rules as are
22 necessary or advisable to effectuate the provisions of this



1 part. The rules shall continue in force until modified by the
2 commissioner or superseded by a plan submitted by the
3 association and approved by the commissioner.

4 (b) All member insurers shall comply with the plan of
5 operation.

6 (c) The plan of operation shall:

7 (1) Establish the procedures whereby all the powers and
8 duties of the association under section 431:16-F will
9 be performed;

10 (2) Establish procedures for handling assets of the
11 association;

12 (3) Mandate that procedures be established for the
13 disposition of liquidating dividends or other moneys
14 received from the estate of the insolvent insurer;

15 (4) Mandate that procedures be established to designate
16 the amount and method of reimbursing members of the
17 board of directors under section 431:16-E(c);

18 (5) Establish procedures by which claims may be filed with
19 the association and establish acceptable forms of
20 proof of covered claims. Notice of claims to the
21 receiver or liquidator of the insolvent insurer shall
22 be deemed notice to the association or its agent and a



- 1 list of claims shall be periodically submitted to the
2 association or association similar to the association
3 in another state by the receiver or liquidator;
- 4 (6) Establish regular places and times for meetings of the
5 board of directors;
- 6 (7) Mandate that procedures be established for records to
7 be kept of all financial transactions of the
8 association, its agents, and the board of directors;
- 9 (8) Provide that any member insurer aggrieved by any final
10 action or decision of the association may appeal to
11 the commissioner within thirty days after the action
12 or decision;
- 13 (9) Establish the procedures whereby selections for the
14 board of directors will be submitted to the
15 commissioner; and
- 16 (10) Contain additional provisions necessary or proper for
17 the execution of the powers and duties of the
18 association.
- 19 (d) The plan of operation may provide that any or all
20 powers and duties of the association, except those under section
21 431:16-F(a)(3) and (b)(2), are delegated to a corporation,
22 association similar to the association, or other organization



1 that performs or will perform functions similar to those of this
2 association or its equivalent in two or more states. Such a
3 corporation, association, or organization shall be reimbursed as
4 a servicing facility would be reimbursed and shall be paid for
5 its performance of any other functions of the association. A
6 delegation under this subsection shall take effect only with the
7 approval of both the board of directors and the commissioner,
8 and may be made only to a corporation, association, or
9 organization that extends protection not substantially less
10 favorable and effective than that provided by this part.

11 **§431:16-H Duties and powers of the commissioner.** (a) The
12 commissioner shall:

13 (1) Notify the association of the existence of an
14 insolvent insurer not later than three days after the
15 commissioner receives notice of the determination of
16 the insolvency. The association shall be entitled to
17 a copy of any complaint seeking an order of
18 liquidation with a finding of insolvency against a
19 member company at the same time that the complaint is
20 filed with a court of competent jurisdiction; and



1 (2) Upon request of the board of directors, provide the
2 association with a statement of the net direct written
3 premiums of each member insurer.

4 (b) The commissioner may:

5 (1) Suspend or revoke, after notice and hearing, the
6 certificate of authority to transact insurance in this
7 State of any member insurer that fails to pay an
8 assessment when due or fails to comply with the plan
9 of operation. As an alternative, the commissioner may
10 levy a fine on any member insurer that fails to pay an
11 assessment when due. The fine shall not exceed five
12 per cent of the unpaid assessment per month, except
13 that no fine shall be less than \$100 per month; and

14 (2) Revoke the designation of any servicing facility if
15 the commissioner finds claims are being handled
16 unsatisfactorily.

17 (c) Any final action or order of the commissioner under
18 this part shall be subject to judicial review in a court of
19 competent jurisdiction.

20 **§431:16-I Effect of paid claims.** (a) Any person
21 recovering under this part shall be deemed to have assigned the
22 person's rights under the policy to the association to the



1 extent of his recovery from the association. Every insured or
2 claimant seeking the protection of this part shall cooperate
3 with the association to the same extent as the person would have
4 been required to cooperate with the insolvent insurer. The
5 association shall have no cause of action against the insured of
6 the insolvent insurer for any sums it has paid out except such
7 causes of action as the insolvent insurer would have had if the
8 sums had been paid by the insolvent insurer and except as
9 provided in subsection (b). In the case of an insolvent insurer
10 operating on a plan with assessment liability, payments of
11 claims of the association shall not operate to reduce the
12 liability of the insureds to the receiver, liquidator, or
13 statutory successor for unpaid assessments.

14 (b) The association shall have the right to recover from
15 the following persons all amounts paid by the association on
16 behalf of the person, whether for indemnity or defense or
17 otherwise:

18 (1) Any insured whose net worth on December 31 of the year
19 immediately preceding the date the insurer becomes an
20 insolvent insurer exceeds \$25,000,000; provided that
21 an insured's net worth on such date shall be deemed to
22 include the aggregate net worth of the insured and all



1 of its subsidiaries and affiliates as calculated on a
2 consolidated basis; and

3 (2) Any person who is an affiliate of the insolvent
4 insurer.

5 (c) The association and any association similar to the
6 association in another state shall be recognized as claimants in
7 the liquidation of an insolvent insurer for any amounts paid by
8 them on covered claims obligations as determined under this part
9 or similar laws in other states and shall receive dividends and
10 any other distributions at the priority set forth in section
11 431:15-332. The receiver, liquidator, or statutory successor of
12 an insolvent insurer shall be bound by determinations of covered
13 claim eligibility under this part and by settlements of claims
14 made by the association or a similar organization in another
15 state. The court having jurisdiction shall grant those claims
16 priority equal to that which the claimant would have been
17 entitled in the absence of this part against the assets of the
18 insolvent insurer. The expenses of the association or similar
19 organization in handling claims shall be accorded the same
20 priority as the liquidator's expenses.

21 (d) The association shall periodically file with the
22 receiver or liquidator of the insolvent insurer statements of



1 the covered claims paid by the association and estimates of
2 anticipated claims on the association. The filing shall
3 preserve the rights of the association against the assets of the
4 insolvent insurer.

5 **§431:16-J Exhaustion of other coverage.** (a) Any person
6 having a claim under an insurance policy, whether or not it is a
7 policy issued by a member insurer, and the claim under the other
8 policy arises from the same facts, injury, or loss that gave
9 rise to the covered claim against the association, shall be
10 required first to exhaust all coverage provided by the policy.
11 Any amount payable on a covered claim under this part shall be
12 reduced by the full applicable limits stated in the other
13 insurance policy and the association shall receive a full credit
14 for such stated limits, or, where there are no applicable stated
15 limits, the claim shall be reduced by the total recovery.
16 Notwithstanding the foregoing, no person shall be required to
17 exhaust any right under the policy of an insolvent insurer.

18 (b) A claim under a policy providing liability coverage to
19 a person who may be jointly and severally liable with or a joint
20 tortfeasor with the person covered under the policy of the
21 insolvent insurer that gives rise to the covered claim shall be
22 considered to be a claim arising from the same facts, injury, or



1 loss that gave rise to the covered claim against the
2 association.

3 (c) A claim under an insurance policy shall also include,
4 for purposes of this section:

5 (1) A claim against a health maintenance organization, a
6 hospital plan corporation, or a professional health
7 service corporation;

8 (2) Any amount payable by or on behalf of a self-insurer;
9 and

10 (3) To the extent that the association's obligation is
11 reduced by the application of this section, the
12 liability of the person insured by the insolvent
13 insurer's policy for the claim shall be reduced in the
14 same amount.

15 (d) Any person having a claim that may be recovered under
16 more than one insurance guaranty association or its equivalent
17 shall seek recovery first, from the association of the place of
18 residence of the insured except that if it is a first-party
19 claim for damage to property with a permanent location, the
20 person shall seek recovery first from the association of the
21 location of the property, and if it is a workers' compensation
22 claim, the person shall seek recovery first from the association



1 of the residence of the claimant. Any recovery under this part
2 shall be reduced by the amount of recovery from any other
3 insurance guaranty association or its equivalent.

4 **§431:16-K Prevention of insolvencies.** To aid in the
5 detection and prevention of insurer insolvencies:

6 (1) The board of directors, upon majority vote, may make
7 recommendations to the commissioner for the detection
8 and prevention of insurer insolvencies;

9 (2) The board of directors, upon majority vote, may make
10 recommendations to the commissioner on matters
11 generally related to improving or enhancing regulation
12 for solvency; and

13 (3) The board of directors, at the conclusion of any
14 domestic insurer insolvency in which the association
15 was obligated to pay covered claims, may prepare a
16 report on the history and causes of the insolvency,
17 based on the information available to the association,
18 and submit the report to the commissioner.

19 **§431:16-L Examination of the association.** The association
20 shall be subject to examination and regulation by the
21 commissioner. The board of directors shall submit, not later



1 than March 30 of each year, a financial report for the preceding
2 calendar year in a form approved by the commissioner.

3 **§431:16-M Tax exemption.** The association shall be exempt
4 from payment of all fees and all taxes levied by this State or
5 any of its subdivisions except taxes levied on real or personal
6 property.

7 **§431:16-N Recoupment of assessment.** (a) Each member
8 insurer shall annually recoup the assessments paid in the
9 preceding years by the insurer under this part. The recoupment
10 shall be recovered by means of a surcharge on premiums charged
11 for policies for all kinds of insurance, except life, title,
12 surety, accident and health or sickness, credit mortgage
13 guaranty, and ocean marine. Prior to recoupment, each member
14 insurer shall submit its plan for recoupment to the commissioner
15 for approval. The surcharge shall be at a uniform percentage
16 rate reasonably calculated to recoup the assessment paid by the
17 member insurer. Any excess recovery by a member insurer shall
18 be credited pro rata to that member insurer's policyholders'
19 premiums in the succeeding year unless there has been a
20 subsequent assessment, in which case the excess will be used to
21 pay the amount of the subsequent assessment. If a member
22 insurer fails to recoup the entire amount of its assessment in



1 the first year under the procedure provided in this section, it
2 may repeat the procedure in succeeding years until the full
3 assessment is recouped.

4 (b) Each insurer shall provide to the Hawaii insurance
5 guaranty association an accounting of its recoupments. The
6 Hawaii insurance guaranty association shall compile the
7 insurers' accountings and submit it as part of its annual report
8 to the commissioner.

9 (c) The amount of and reason for any surcharge shall be
10 separately stated on any billing sent an insured. The surcharge
11 shall not be considered premiums for any other purpose,
12 including the computation of gross premium tax or the
13 determination of producer commissions.

14 **§431:16-O Immunity.** There shall be no liability on the
15 part of, and no cause of action of any nature shall arise
16 against any member insurer, the association or its agents or
17 employees, the board of directors, or any person serving as a
18 representative of any director, or the commissioner or
19 commissioner's delegate for any action taken or any failure to
20 act by them in the performance of their powers and duties under
21 this part.



1 **§431:16-P Stay of proceedings.** All proceedings in which
2 the insolvent insurer is a party or is obligated to defend a
3 party in any court in this State shall, subject to waiver by the
4 association in specific cases involving covered claims, be
5 stayed until the last day fixed by the court for the filing of
6 claims and such additional time thereafter as may be determined
7 by the court from the date the insolvency is determined or an
8 ancillary proceeding is instituted in the State, whichever is
9 later, to permit proper defense by the association of all
10 pending causes of action. The liquidator, receiver, or
11 statutory successor of an insolvent insurer covered by this part
12 shall permit access by the board or its authorized
13 representative to such of the insolvent insurer's records that
14 are necessary for the board in carrying out its functions under
15 this part with regard to covered claims. In addition, the
16 liquidator, receiver or statutory successor shall provide the
17 board or its representative with copies of those records upon
18 the request by the board and at the expense of the board."

19 SECTION 2. Section 431P-15, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "~~§431P-15~~ **Exemption from property and liability**
22 **insurance guaranty association; insolvency of fund.**



1 Notwithstanding any other provision of law to the contrary,
 2 neither the fund nor its policyholders shall be subject to the
 3 provisions of, or be eligible for, the benefits provided in
 4 sections [~~431:16-101 to 117~~] 431:16-A to D inclusive. If the
 5 total amount available at any time to the fund is insufficient
 6 to make all necessary payments, the moneys available shall be
 7 prorated and the unpaid portion shall be paid as soon thereafter
 8 as moneys become available."

9 SECTION 3. Part I of article 16 of chapter 431, Hawaii
 10 Revised Statutes, is repealed.

11 SECTION 4. In codifying the new sections added by section
 12 1 of this Act, the revisor of statutes shall substitute
 13 appropriate section numbers for the letters used in designating
 14 the new sections in this Act.

15 SECTION 5. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18

INTRODUCED BY: _____



JAN 15 2008



Report Title:

Insurance; Property and Liability

Description:

Replaces the property and liability insurance guaranty association act with the National Conference of Insurance Legislators post-assessment property liability insurance guaranty association model act, which provides among other things expanded provisions on "covered claims" and replaces the association's power to cancel policies issued by insolvent insurers with immunity from pre-liquidation settlements of the insurer.

