

**"CHAPTER 41D
STATE RISK MANAGEMENT AND INSURANCE
ADMINISTRATION**

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" **§41D-1 Definitions.** As used in this chapter:

"Attorney general" means the attorney general of the State.

"Captive insurance company" shall have the same meaning as captive insurance company in section 431:19-101.

"Casualty insurance" shall have the same meaning as general casualty insurance has in section 431:1-209; provided that in this chapter "casualty insurance" shall exclude accident and health or sickness insurance as defined in section 431:1-205, and includes marine and transportation insurance as defined in section 431:1-207, vehicle insurance as defined in section 431:1-208, surety insurance as defined in section 431:1-210, and ocean marine insurance as defined in section 431:1-211.

"Comptroller" means the comptroller of the State as designated in section 26-6.

"Department" means the department of accounting and general services.

"Informal resolution" means the process of investigating a claim and negotiating the resolution of the claim.

"Insurance" shall have the same meaning in this chapter as it has in section 431:1-201.

"Property insurance" shall have the same meaning in this chapter as it has in section 431:1-206.

"Property of the State" includes real and personal property rented or used by the State and for which the State is responsible to the owner, as well as property owned by the State.

"Risk manager" means the risk manager described in section 41D-7.

"State agency" means all executive departments, boards, and commissions of the State and all public corporations created by the legislature, but excludes any contractor with the State.

"Tort claim" means any written request or demand for damages against the State within the meaning of chapter 662, and includes a "complaint" within the meaning of Rule 7(a) of the Hawaii Rules of Civil Procedure, of the District Court Rules of Civil Procedure and of the Federal Rules of Civil Procedure, if the complaint is for damages against the State within the meaning of chapter 662. [L 1988, c 266, pt of §1; am L 2000, c 132, §2; am L 2003, c 212, §2]

Revision Note

Definitions rearranged.

" **§41D-2 Responsibilities of the comptroller.** (a) The comptroller, through the risk manager, shall:

- (1) Have discretion to purchase casualty insurance for the State or state agencies, including those employees of the State who, in the comptroller's discretion, may be at risk and shall be responsible for the acquisition of all casualty insurance;
- (2) Have discretion to purchase property insurance for the State or state agencies and shall acquire all property insurance;
- (3) Direct and manage all risk management and insurance programs of the State, except for employee benefits insurance and workers' compensation insurance programs or as otherwise provided in chapters 87, 88, 383 to 386A, 392, and 393;
- (4) Consult with state agencies to determine what property, casualty, and other insurance policies are presently in force or are sought by the state agencies and to make determinations about whether to continue subscribing to insurance policies. In the event that the risk manager's determination is not satisfactory to the state agency, the state agency may have the risk manager's decision reviewed by the comptroller. In this case, the comptroller's decision shall be final;
- (5) Consolidate and combine state insurance coverages, and purchase excess insurance when, in the comptroller's discretion, it is appropriate to do so;
- (6) Acquire risk management, investigative, claims adjustment, actuarial, and other services, except attorney's services, as may be required for the sound administration of this chapter;
- (7) Gather from all state agencies and maintain data regarding the State's risks and casualty, property, and fidelity losses;
- (8) In conjunction with the attorney general and as otherwise provided by this chapter, compromise or settle claims cognizable under chapter 662;
- (9) Provide technical services in risk management and insurance to state agencies;
- (10) Be authorized to establish a captive insurance company pursuant to article 19 of chapter 431 to effectuate the purposes of this chapter; and
- (11) Do all other things appropriate to the development of sound risk management practices and policies for the State.

(b) Any provision in this section to the contrary notwithstanding, the University of Hawaii (as to casualty insurance risks only), the Research Corporation of the

University of Hawaii (as to casualty insurance risks only), the public health facilities of the department of health (with respect to medical malpractice risks only), and the Hawaii health systems corporation and its regional system boards shall be exempt from the requirements of this chapter. [L 1988, c 266, pt of §1; am L 1989, c 327, §12; am L Sp 1993, c 8, §54; am L 2000, c 132, §3; am L 2004, c 216, §13; am L 2007, c 290, §13]

Note

Chapter 87 referred to in subsection (a)(3) is repealed. For present provisions, see chapter 87A.

" **§41D-3 Adjustment of claims against the State.** (a) The attorney general may review any claim. The attorney general may refer claims to the comptroller for informal resolution.

(b) All claims against the State that are within the purview of section 41D-8 shall be reviewed in the first instance by the comptroller for informal resolution as provided in this section.

(c) The comptroller may compromise or settle a claim within the purview of section 41D-8 for an amount not exceeding \$15,000, and the comptroller may pay the claim without review by the attorney general.

(d) The comptroller may compromise or settle a tort claim not within the purview of section 41D-8 for \$10,000 or less without the necessity of court approval, and the comptroller may pay the claim.

(e) Upon referral by the comptroller, the attorney general, in the attorney general's discretion, shall make determinations of whether a claim would or would not be within the purview of section 41D-8 for purposes of subsections (c) and (d).

(f) If the tort claim cannot be resolved informally as set forth in subsections (c) and (d), the comptroller promptly shall inform the attorney general.

(g) All of the efforts of the comptroller or the comptroller's delegate under this section shall be "compromise negotiations" within the meaning of rule 408, Hawaii Rules of Evidence, as set forth in section 626-1.

(h) Claims compromised or settled under this section shall be paid from the state risk management revolving fund. [L 1988, c 266, pt of §1; am L 1990, c 117, §1; am L 1997, c 251, §4]

" **§41D-4 State risk management revolving fund.** (a) The state risk management revolving fund is created and shall be funded in amounts reasonably necessary to:

- (1) Carry out the responsibilities of the comptroller established in section 41D-2;
- (2) Pay claims to state agencies for losses to property of the State caused by fire or other casualty, including the cost to repair or replace buildings and other structures, replace damaged contents, and to provide alternate structures while damaged structures are being repaired or replaced;
- (3) Pay claims against the State under sections 662-11, 41D-3, and 41D-8; and
- (4) Pay for losses to the State incurred by the dishonesty, nonfeasance, or misfeasance of any officer or employee of the State or for any losses to the State through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wilful misapplication, or any other fraudulent or dishonest act committed by one or more of the employees of the State acting directly or in collusion with others.

(b) In addition to any appropriation the legislature shall make to the state risk management revolving fund, the comptroller may apportion to, and collect from, state agencies those amounts of money that, in the discretion of the comptroller, reflect benefits received by the agencies under this chapter. The comptroller may consider the relevant risk and loss experience of the agencies in making apportionments and assessments. Funds so collected shall be deposited into the state risk management revolving fund.

(c) The comptroller may establish deductibles for the state agencies for certain perils or classes of property losses and may:

- (1) Assess the agencies for losses incurred in the amount of the deductible; or
- (2) Reduce the payment from the state risk management revolving fund to cover the casualty loss by the amount of the deductible.

(d) The comptroller may establish a formula for refunds to the state agencies based upon the agencies' risk and loss experience.

(e) Money in the state risk management revolving fund shall be expended only for the purposes delineated in subsection (a) and only upon the authority of the comptroller, who is given discretion when to permit expenditures from the fund. Money in the state risk management revolving fund shall not be garnished, attached, or otherwise subjected to legal compulsion to pay

actual or alleged obligations of the State, any state agency, or any state employee.

(f) The comptroller shall prepare, for each fiscal year, a report of all claims arbitrated, compromised, or settled for \$10,000 or less paid from the state risk management revolving fund. The report shall be submitted to the legislature twenty days prior to the commencement of the regular session next succeeding the year for which the report is made.

(g) Money received from the settlement of claims or losses of the State as delineated in subsection (a) shall be deemed to be trust moneys and may be deposited into the state risk management revolving fund or into a trust account with and under the control of the affected agency at the discretion of the comptroller. These moneys and any interest earned thereon shall be used for the purpose identified in any such settlement. [L 1988, c 266, pt of §1; am L 1990, c 117, §2; am L 1991, c 122, §1; am L 2006, c 173, §1]

" **[§41D-5] Investment of fund.** The director of finance shall invest all moneys appropriated or assessed to the state risk management revolving fund. Interest upon the investments shall be credited to the state risk management revolving fund. [L 1988, c 266, pt of §1]

" **[§41D-6] Fund advancement; dissolution.** If the state risk management revolving fund should become financially incapable of meeting its obligations under this chapter, the comptroller, in the comptroller's discretion, may:

- (1) Request that the governor authorize the transfer of sufficient sums to meet the fund's obligations from whatever such savings as may be available from other current appropriation for any other state program. Money so advanced shall be repaid from the state risk management revolving fund in annual installments, without interest. The amount of installments shall be fixed by the director of finance at whatever amount as can reasonably be expected to liquidate indebtedness of the fund in not more than ten years; or
- (2) Dissolve the fund, prorating remaining assets of the fund among the claimants, giving priority to those claims as, in the comptroller's discretion, is appropriate. [L 1988, c 266, pt of §1]

" **[\$41D-7] Risk management.** The comptroller shall appoint a risk manager to supervise and direct the determination and treatment for the best interests of the State of all risks appertaining to the property of the State and its personnel and operations. The risk manager shall be responsible for the administration of the comptroller's responsibilities with respect to this chapter. [L 1988, c 266, pt of §1]

" **[\$41D-8] Insurance on public vehicles.** Vehicles owned by the State or in the custody and use of any department may be self-insured or insured by purchased insurance against public liability in compliance with article 10C of chapter 431. Determinations of whether to insure or self-insure shall be made by the comptroller in conjunction with the state agency having custody or control of the vehicle, or the vehicle may be insured on a complete or excess coverage basis under a comprehensive automobile liability insurance policy entered into by the comptroller. If the vehicles are self-insured, claims for which the State is liable under article 10C of chapter 431 may be settled and paid by the comptroller from the state risk management revolving fund, notwithstanding the provisions of chapter 662. Any purchased state comprehensive automobile liability insurance policy shall be administered by and be subject to the control of the comptroller. [L 1988, c 266, pt of §1]

Cross References

Volunteer emergency medical disaster response personnel, see §321-23.3.

" **§41D-8.5 Insurance for indemnification.** The comptroller may:

- (1) Obtain sufficient loss insurance to cover the liability of the State that may arise from indemnity provisions agreed to pursuant to section 29-15.5;
- (2) Obtain sufficient loss insurance to indemnify, defend, and hold harmless a county providing assistance, services, rights, or permission to use county property to a state agency under an indemnity agreement provision pursuant to section 46-71.5; and
- (3) Obtain appropriate and sufficient reinsurance to cover the liability of a captive insurance company established pursuant to section 41D-2. [L 1997, c 168, §2; am L 2000, c 132, §4; am L 2007, c 152, §11]

" **[\$41D-9] Construction.** Nothing in this chapter shall be deemed to expand the scope of liability of the State beyond that set forth in chapter 662. Nothing in this chapter shall be construed to waive the immunity of the State from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States. [L 1988, c 266, pt of §1]