

**"CHAPTER 386A  
HAWAII STATE COMPENSATION MUTUAL INSURANCE FUND**

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## Note

Chapter heading amended by L 1989, c 277, §1.

" **§386A-1 Definitions.** As used in this chapter:

"Board" means the fund's board of directors.

"Fund" means the Hawaii state compensation mutual insurance fund. [L 1985, c 296, pt of §11; am L 1989, c 277, §2]

" **§386A-2 Fund's establishment.** (a) There is established a workers' compensation state insurance fund to be known as the "Hawaii state compensation mutual insurance fund".

(b) The fund shall not be an agency of the State. The fund shall be a nonprofit independent mutual insurance corporation under the control of a board of directors. The fund shall pay taxes and license fees like other insurance carriers.

(c) The fund's assets shall consist of real and personal property and shall include all premiums and other money paid to the fund, and all property and other income acquired, earned, or otherwise gained by the use of premiums and other money paid to the fund, by deposits, investments, exchanges, and other transactions. The fund's assets shall be the sole property of the fund and shall be used exclusively by the fund for the operation and obligations of the fund.

(d) Except for a state loan at its inception, the fund shall be self-supporting. The fund shall repay the State for the loan with interest within ten years.

(e) The fund's principal office shall be in Honolulu, Hawaii. The board may establish branch offices in other locations. [L 1985, c 296, pt of §11; am L 1989, c 277, §3]

" **§386A-3 Fund's purpose.** The fund's purpose is to sell workers' compensation insurance at the lowest actuarially responsible price as determined by the fund's board. The fund shall commence operation upon appointment and qualification of the initial five members of the fund's board, but the workers' compensation insurance sold initially by the fund shall provide insurance coverage for work injuries occurring from a date to be established by the board and not more than one year from the date of the appointment and qualification.

The fund may serve as a model for the workers' compensation insurance industry to determine minimum insurance premium rates. It shall be competitive with other private workers' compensation insurance carriers. [L 1985, c 296, pt of §11; am L 1989, c 277, §4]

" **§386A-4 Number, appointment, term.** (a) The board shall be composed of five directors, whose term of office shall be five years, and each director shall hold office until the appointment and qualification of the director's successor.

(b) The terms of the first five directors, who shall be appointed by the governor, upon the fund becoming operational as provided in section 386A-12, shall expire as follows:

- (1) One for one year;
- (2) One for two years;
- (3) One for three years;
- (4) One for four years; and
- (5) One for five years.

Thereafter, each director shall be appointed for a term of five years.

Upon the payment in full of the loan from the State and all interest thereon, the unexpired terms of the appointed directors shall expire, and the fund's policyholders shall be entitled to elect all of the directors. Any other law to the contrary notwithstanding, the selection and composition of the board of directors as provided in this section shall be deemed adequate to qualify the fund as a mutual insurer under chapter 431.

(c) A vacancy on the board shall be filled by appointment of the governor in the case of vacancies in positions formerly occupied by the governor's appointee, or by election by the fund's policyholders in the case of positions formerly occupied by a director elected by the fund's policyholders. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(d) Each director shall receive necessary traveling and board expenses incurred in the performance of duty as a director and a fee of \$100 for each day of actual attendance at board meetings, but not to exceed \$500 a month.

(e) Within one year after appointment, each director shall be a policyholder or an employee of a policyholder of the fund and shall continue in such status during the director's term of office.

No person who has any interest as a stockholder, employee, attorney, or contractor of a competing insurance carrier shall be a director.

(f) The board shall determine the content and sale of workers' compensation insurance policies.

(g) The board shall discharge its duties:

- (1) In accordance with the fund's purpose;
- (2) With the care, skill, prudence, and diligence under the circumstances that a prudent director, acting in a like capacity and familiar with such matters would use in conducting a similar enterprise and purpose;

- (3) By diversifying the fund's investments to minimize the risk of losses, unless it is prudent not to do so;
  - (4) In accordance with governing legal documents;
  - (5) By having an annual audit of the fund by an independent certified public accountant and by making copies of such audit available to the governor and the state legislature;
  - (6) By securing fidelity bonds for the directors and in its discretion for other agents dealing with the fund's assets at the fund's expense;
  - (7) By purchasing liability insurance for errors and omissions for the board, each director, and any other fiduciary employed or contracted by the fund to cover liability or losses caused by the act or omission of a fiduciary;
  - (8) By maintaining proper books of accounts and records of the fund's administration;
  - (9) By carrying out the reporting and disclosure requirements required by law; and
  - (10) By determining an actuarially responsible schedule of premium rates with consideration of the fund's investment income or refunds, or both, to policyholders.
- (h) Except as otherwise provided by law, the fund may:
- (1) Transact workers' compensation insurance policies required or authorized by state law to the same extent as any other insurer.
    - (A) The fund may insure Hawaii employers against their liability for compensation or damages for injury or death under the United States Longshoremen's and Harbor Workers' Compensation Act or other federal or maritime laws like any other private insurer;
    - (B) The fund may insure an out-of-state employer against its liability for damages under the State's law for bodily injury or death occurring within the State of Hawaii if the fund also sold workers' compensation insurance to the employer as an in-state employer;
  - (2) Allocate fiduciary responsibilities among the directors and designate other persons to carry out fiduciary responsibilities;
  - (3) Collect, receive, hold, and disburse all money payable to or by the fund;
  - (4) Deposit the fund's money in banks or depositories selected by the board. Withdrawals from such banks or depositories shall be made or authorized only upon the

signatures of at least two persons approved by the board;

- (5) Pay money from the fund to effectuate the fund's purpose and administration, including costs incurred to establish the fund;
- (6) Employ persons to administer the fund, including, but not limited to, legal counsel, accountants, insurance consultants, administrators, actuaries, investment managers, adjustors, and any other expert and clerical employees and pay compensation and expenses in connection therewith, without the restrictions or requirements affecting public officers and employees under title 7;
- (7) By August 1, 1986, appoint an administrator, establish an administration office, and secure real and personal property to maintain such office to administer the fund;
- (8) Provide for the fund's administration, jointly, with other similar funds or similar purposes, to reduce expenses of administration;
- (9) Select the department of budget and finance or other organization to serve as custodial trustee to collect, receive, hold, or disburse money payable to or by the fund;
- (10) Invest the fund's principal and income without distinction between principal and income and keep the fund's assets invested in real or personal property or other securities. The board may retain cash temporarily awaiting investment or to meet contemplated payments without liability for interest thereon.

The board may manage the fund's assets, except to the extent that such authority to manage the fund's assets is delegated to other qualified investment managers.

The board may appoint investment managers to manage, acquire, or dispose of any of the fund's assets. An investment manager may be designated as an "investment agent".

An investment manager is any fiduciary, who has been designated by the board to manage, acquire, or dispose of the fund's assets, a bank as defined by law, or an insurance company qualified to perform services under laws of more than one state. Such investment manager shall acknowledge in writing that it is a fiduciary under the fund.

The board may, but not by way of limitation:

- (A) Sell the fund's securities. No purchaser of the fund's securities is bound to see to the application of the purchase money or inquire as to the validity of such sale;
- (B) Vote in behalf of any stocks, bonds, or securities of any corporation or issuer held in the fund or request any action to such corporation or issuer. The board may give general or special proxies or powers of attorney with or without powers of substitution;
- (C) Participate in reorganizations, recapitalizations, consolidations, mergers, and similar transactions for stocks, bonds, or other securities of any corporation which are held in the fund and may accept and retain any property received thereunder for the fund. The board may exercise any subscription rights and conversion privileges for the fund's stocks or securities;
- (D) Compromise, compound, and settle any debt or obligation due to or from the fund. The board may reduce the amount of principal and interest, damages, and costs of collection in settling such debts;
- (E) Cause securities held by it to be registered in its own name or in the name of a nominee without indicating that such securities are held in the fiduciary capacity and to hold any securities in bearer form. The fund's records, however, shall show that such investments are part of the fund;
- (F) In order to expedite the purchase and sale of securities, the board may delegate their investment powers to investment managers of the fund. The purchase or sale of any securities by such managers shall be in the name selected by the board. The authority of such managers to purchase or sell such securities for the fund shall be evidenced by written authority executed by the fund's administrator. The board shall require such managers to keep them currently informed as to the nature and amount of the investments made for the fund by them. The board may enter into appropriate agreements with such managers setting forth their investment powers and limitations. The board may terminate the services of such managers. Such managers shall be subject to the board's instructions;

- (11) Borrow money from any source and secure repayment thereof by pledging any of the fund's assets;
- (12) Buy, sell, exchange, lease, convey, and otherwise acquire or dispose of any real or personal property under proper terms and sign and deliver any necessary instrument of conveyances or transfer, or both, in connection therewith;
- (13) Enter into any agreement to carry out this chapter and to administer the fund;
- (14) Pay taxes or assessments assessed against the fund;
- (15) Require any employer or policyholder or any employee to furnish the board with such information necessary for the fund's administration;
- (16) Delegate its authority to the administrator or any authorized representative to maintain any legal proceedings necessary to protect the fund or the directors or to secure payment due to the fund. In connection therewith the board or the administrator or their representative may compromise, settle, or release claims on behalf of or against the fund or the board;
- (17) Promote safety programs to employer clients, including, but not limited to, the following activities:
  - (A) Analysis of reports of industrial accidents of employer clients to help determine the cause of these accidents;
  - (B) Conduct of studies for the purpose of risk and hazard identification and assessment by safety and medical professionals;
  - (C) Conduct of educational programs designed to prevent frequently recurring industrial accidents; and
  - (D) Inspection of work sites and investigation of unsafe working conditions to promote job safety and elimination of hazards;
- (18) Provide the terms and conditions of an insurance policy;
- (19) Provide that any written instrument be executed for the fund by the administrator or the administrator's agent;
- (20) Pay for reasonable expenses to educate the directors and fund personnel, including but not limited to traveling, room and board, and tuition expenses. [L 1985, c 296, pt of §11; am L 1989, c 277, §§5, 6]

**Revision Note**

In subsection (h)(1)(B), (2) to (9), (10)(A) to (F), (11) to (16), (17)(D), and (18) to (19), punctuation changed pursuant to §23G-15.

" **[\$386A-5] Board meetings.** (a) The board's quorum to transact business shall consist of at least three directors. Unless a quorum is present, no business shall be transacted.

(b) Each director shall have one vote. All board actions and decisions shall be by majority vote.

(c) Directors shall determine the time and place of the board's regular meetings. The fund's administrator shall notify directors of the time and place of meetings.

(d) Special meetings may be held at the call of the chairperson or any two directors upon giving at least seven days' written notice to all other directors. Unless otherwise specified in the call and notice, meetings shall be held at the fund's principal office.

(e) Directors shall elect a chairperson, secretary, and treasurer and other officers as it decides.

(f) Directors may also exercise their powers by written assent of all directors. [L 1985, c 296, pt of §11]

" **[\$386A-6] Limitation of liability of directors.** If an investment manager has been appointed under this chapter, no director shall be liable for the acts or omissions of such investment manager or be under an obligation to invest or otherwise manage any assets of the fund, which are subject to management by the investment manager. [L 1985, c 296, pt of §11]

" **[\$386A-7] Liability and rights of parties and third persons.** (a) Neither the State nor any policyholder nor any director or employee of the fund shall be liable to make any payments to the fund or pay any expenses of the fund, except as provided under this chapter.

No policyholder shall have any right to the return of any money paid to the fund, except as determined by the directors or by law.

(b) The board may refund premiums to policyholders; provided that such refunds do not jeopardize the fund's actuarial responsibility. [L 1985, c 296, pt of §11]

" **[\$386A-8] Termination and merger.** (a) The fund may be terminated only by law.

(b) Any assets remaining in the fund after the termination of the fund and any assets acquired or disbursed as a result of merger, consolidation, amalgamation, affiliation, exchange of



credits, or otherwise, shall be used by the board solely for the purposes under this chapter and for administrative expenses incident thereto. [L 1985, c 296, pt of §11]

" **[§386A-9] Governing law.** The interpretation of this chapter shall be governed by the laws of Hawaii. [L 1985, c 296, pt of §11]

" **[§386A-10] Administrator's appointment and duties.** The board shall appoint and may remove the fund's administrator and fix the administrator's salary. The administrator shall manage and conduct the fund's business affairs under the board's direction and policies. The administrator shall perform other duties prescribed by the board. [L 1985, c 296, pt of §11]

" **[§386A-11] Exemptions.** The fund shall be exempt from the application of title 7, title 8, and title 9, in conducting the fund's business. [L 1985, c 296, pt of §11]

" **§386A-12 State fund operational.** The Hawaii state compensation mutual insurance fund shall become operational upon funding by special appropriation by the legislature. [L 1985, c 296, pt of §11; am L 1989, c 277, §7]

" **[§386A-13] Insurance code applicable.** The Hawaii state compensation mutual insurance fund shall be subject to the provisions of chapter 431 to the same extent and degree as any domestic provider of workers' compensation insurance within the State. Any statutory provisions which conflict with the provisions of this chapter, as amended, shall be resolved in terms of the language of this chapter. [L 1989, c 277, §8]