

JAN 17 2025

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. The legislature finds that climate disasters,
2 extreme weather attributable to climate change, and harms
3 resulting from long-term changes to the climate system pose a
4 threat to the health, safety, and security of all residents of,
5 and visitors to, Hawaii.

6 For residents, climate change risks include an increase in
7 precipitation and intense tropical storms, hotter temperatures,
8 rising sea level, and intensified drought. Accordingly, Hawaii
9 has a compelling state interest in protecting its citizens from
10 climate disasters, extreme weather attributable to climate
11 change, and harms resulting from long-term changes to the
12 climate system. This protection includes affordable access to a
13 functioning insurance market in the State.

14 The legislature further finds there is also a compelling
15 state interest in preserving public resources for traditional
16 public purposes, which does not include subsidizing the
17 continued operation of the insurance industry. The insurance



1 industry has been destabilized and harmed by the deception of
2 people and entities who have engaged in misleading and deceptive
3 practices about the connection between fossil fuel products and
4 climate change. The State's insurance industry, particularly
5 the property and casualty insurance sector, has been
6 destabilized by large and frequent payouts to policyholders for
7 a variety of events caused by or attributable to the deception
8 of these responsible parties. This instability has led to
9 increased nonrenewal rates and premiums on all islands and for
10 multiple types of insurance policies. Between 2018 and 2023,
11 insurance nonrenewal rates increased by ninety-one per cent in
12 the county of Kauai, two hundred ninety-six per cent in the city
13 and county of Honolulu, one hundred eighty-four per cent in the
14 county of Maui, and seventy per cent in the county of Hawaii.

15 The legislature further finds that the area burned by
16 wildfires in Hawaii has increased fourfold. Most recently,
17 climate change exacerbated the Maui wildfires, which destroyed
18 the town of Lahaina and killed at least one hundred two people.
19 In the aftermath of this tragic and horrific event, insurance
20 companies operating in Hawaii have already paid out over
21 \$2,300,000,000 across more than ten thousand wildfire claims to



1 fire victims, with another \$1,000,000,000 of additional insured
2 losses yet to be paid. The scope and scale of damage has led to
3 difficult settlement negotiations in which parties have tried to
4 address how to meet the needs of fire victims, maintain a
5 solvent market for insurance, and keep vital public utilities
6 and educational institutions operating in our communities.
7 Hawaii has a compelling state interest in protecting the
8 integrity of these institutions as they seek to provide relief
9 to harmed and impacted parties.

10 Climate change has also impacted the amount of water
11 available in key watersheds across the islands. Ongoing drought
12 has created water security issues that are exacerbated by the
13 growing water demand, which may increase up to thirty-six per
14 cent by the end of the century. For example, rainfall in the
15 Nuuanu watershed is projected to decrease by as much as
16 twenty-seven per cent, and both the Heeia and Na Wai Eha
17 watershed are also experiencing decreases in rainfall,
18 threatening groundwater supplies and drinking water
19 availability.

20 At Hawaii's shorelines, sea level has risen ten inches on
21 average compared to 1950, and the mean number of days that cause



1 high tide flooding in Honolulu has almost doubled from six to
2 eleven days per year since the 1960s. Almost all the shorelines
3 in Hawaii, approximately ninety-two per cent, are predicted to
4 retreat between one and twenty-four meters by 2050. Researchers
5 predict that shoreline retreat rates have doubled from the
6 historical rate due to sea level rise.

7 Climate change is also causing more extreme temperatures in
8 Hawaii. The average annual temperature in Hawaii in 2016 was
9 about 1.7 degrees Fahrenheit warmer than the one hundred-year
10 mean from 1917 to 2016. Similarly, global mean sea surface
11 temperature has increased by about 1.8 degrees Fahrenheit over
12 the past century and waters around Hawaii have followed this
13 trend.

14 The legislature finds that insurance companies operating in
15 the State need to redress the harm that responsible parties have
16 caused through climate disasters, extreme weather attributable
17 to climate change, and harms resulting from long-term changes to
18 the climate system. Hawaii has a compelling state interest in
19 ensuring that the Hawaii hurricane relief fund and the Hawaii
20 property insurance association, which are both state entities,
21 exercise their subrogation rights to recover from responsible



1 parties that have caused damages due to climate disasters,
2 extreme weather attributable to climate change, and harms
3 resulting from long-term changes to the climate system. The
4 courts of this State are the appropriate venue to provide this
5 relief. The legislature further declares that these harms
6 related or attributable to climate change should not be deemed
7 acts of God, unforeseeable, or otherwise classified as a force
8 majeure event eligible for litigation limitations or defenses,
9 except as otherwise explicitly and unambiguously provided.

10 The legislature further finds that for decades, certain
11 people and entities have spread intentional lies, misinformation
12 and disinformation, and misrepresentations about the connection
13 between climate change and fossil fuel-based products, as well
14 as how climate change has directly contributed injuries in this
15 State. Continued lies, misinformation and disinformation, and
16 misrepresentations by these responsible parties pose a threat to
17 the health, safety, and security of Hawaii's residents and
18 visitors. These parties have long known the dangers of fossil
19 fuel-based products; however, they have continued to deny and
20 lie for profit. Hiding, obfuscating, and denying information to
21 consumers, elected officials, and regulators alike has harmed



1 and continues to harm Hawaii. Hawaii has a compelling interest
2 in protecting consumers from these lies and misleading
3 information, while also encouraging factual and truthful
4 information on how climate disasters and other harms can be
5 attributed to the responsible parties who have spread those
6 falsehoods.

7 The legislature further finds and declares that:

8 (1) Individuals and entities involved in the production of
9 fossil fuel products have engaged in a decades-long
10 project to protect their bottom lines with a
11 coordinated effort to deceive the public about the
12 reality of the climate crisis;

13 (2) Documents unveiled by litigation and investigative
14 journalists demonstrate that those parties were aware
15 of the potentially catastrophic impact of their
16 products from as early as the 1950s. Even though
17 research conducted by their own scientists affirmed
18 the impacts of their business, these parties outright
19 denied that climate change was real, spread
20 disinformation to cast doubt on the science, and



1 fought regulatory action against fossil fuel and
2 fossil fuel products;

3 (3) The 1970s and 1980s saw the development of a clear
4 scientific consensus that increasing carbon dioxide
5 concentration in the atmosphere would contribute to
6 global warming, and that the heightened carbon dioxide
7 emissions were attributable to fossil fuels. These
8 facts were supported by several fossil fuel industry
9 scientists from different companies such as Exxon and
10 Shell, who presented these findings to their
11 management with warnings that the "present trend of
12 fossil fuel consumption will cause dramatic
13 environmental effects before the year 2050;"

14 (4) Despite acknowledging that increased carbon dioxide
15 concentrations due to fossil-fuel combustion posed a
16 considerable threat, responsible parties decided not
17 to take steps to prevent the risks of climate change.
18 Instead, they stopped funding major climate research
19 and launched campaigns to discredit climate science
20 and delay actions perceived as contrary to their



business interests. These corporations carried out these campaigns by:

(A) Developing public relations strategies that were contradictory to their knowledge and scientific insights;

(B) Engaging in public communications campaigns to promote doubt and downplay the threats of climate change; and

(C) Funding individuals, organizations, and research aimed at discrediting the growing body of publicly available climate science;

(5) From 1970 to 2020, the oil and gas industry responsible parties made nearly \$2,800,000,000 a day and \$1,000,000,000,000 dollars a year in profit;

(6) Responsible parties currently advertise "green" efforts to the public that mask the lack of real investment in resiliency and energy-source transition and the continued prioritization of the extraction, refinement, and distribution of fossil fuel products;

(7) A December 2022 report by a congressional oversight committee revealed internal documents from senior



1 leaders from the fossil fuel industry that explicitly
2 reject taking accountability for the greenhouse gas
3 emissions associated with their products; and

4 (8) By conduct and impact, these responsible parties have
5 intentionally obfuscated the truth about climate
6 change and outright deceived the public to continue
7 dependence on fossil fuel products.

8 The legislature further finds that the intentional lies,
9 misinformation, and disinformation, and misrepresentations by
10 responsible parties about the connection between the products
11 they sell is not political speech, but fundamentally commercial
12 activity with incidental political impact. The legislature
13 finds that these parties must be accountable to those harmed by
14 climate disasters, extreme weather attribute to climate change,
15 and long-term changes to the climate system.

16 The legislature finds that the Hawaii hurricane relief fund
17 and the Hawaii property insurance association have not exercised
18 their right of subrogation against responsible parties who
19 should be held accountable for substantially contributing to
20 losses associated with climate change due to their misleading
21 and deceptive practices.



1 It is the intent of this State to provide a judicial forum
2 for the efficient, just, and equitable resolution of insurers'
3 subrogation claims stemming from climate disasters, extreme
4 weather attributable to climate change, and harms resulting from
5 long-term changes to the climate system.

6 The purpose of this Act is to:

- 7 (1) Require property and casualty insurance rates that
8 incorporate historical or projected losses from fire
9 or catastrophe hazards to be conditioned on agreement
10 by the insurer to file and litigate subrogation claims
11 against responsible parties; and
- 12 (2) Require the Hawaii property insurance association to
13 file and litigate subrogation claims against certain
14 responsible parties for claims paid by the insurer for
15 losses that are attributable to climate change.

16 SECTION 2. Section 431:14-103, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Rates shall be made in accordance with the following
19 provisions:

- 20 (1) Rates shall not be excessive, inadequate, or unfairly
21 discriminatory.



(2) Due consideration shall be given to:

(A) Past and prospective loss experience within and outside this State; provided that if the claim does not exceed the selected deductible amount pursuant to section 386-100, and the employer reimburses the insurer for the amount, the claims shall not be calculated in the employer's experience rating or risk category;

(B) The conflagration and catastrophe hazards, if any~~[+]~~, with the requirement that rates incorporating historical or projected losses from conflagration or catastrophe hazards shall be conditioned upon agreement by the insurer to file and litigate subrogation claims against responsible parties for claims paid for losses from climate disasters or extreme weather attributable to climate change;

(C) Any proceeds recovered by the insurer through subrogation claims;

~~[(+)]~~ (D) A reasonable margin for underwriting profit and contingencies;



1 ~~[(D)]~~ (E) Dividends, savings, or unabsorbed premium
2 deposits allowed or returned by insurers to their
3 policyholders, members, or subscribers;

4 ~~[(E)]~~ (F) Past and prospective expenses both
5 country-wide and those specially applicable to
6 this State;

7 ~~[(F)]~~ (G) Investment income from unearned premium and
8 loss reserve funds; and

9 ~~[(G)]~~ (H) All other relevant factors within and
10 outside this State.

11 (3) In the case of fire insurance rates, consideration
12 shall be given to the experience of the fire insurance
13 business during a period of not less than the most
14 recent five-year period for which that experience is
15 available.

16 (4) The systems of expense provisions included in the
17 rates for use by any insurer or group of insurers may
18 differ from those of other insurers or groups of
19 insurers to reflect the requirements of the operating
20 methods of any insurer or group with respect to any
21 class of insurance, or with respect to any subdivision



1 or combination thereof for which subdivision or
2 combination separate expense provisions are
3 applicable.

4 (5) Risks may be grouped by classifications for the
5 establishment of rates and minimum premiums.

6 Classification rates may be modified to produce rates
7 for individual risks in accordance with rating plans
8 that establish standards for measuring variations in
9 hazards or expense provisions, or both. These
10 standards may measure any differences among risks that
11 can be demonstrated to have a probable effect upon
12 losses or expenses. No risk classification may be
13 based upon race, creed, national origin, or the
14 religion of the insured.

15 (6) Manual, minimum, class rates, rating schedules, or
16 rating plans shall be made and adopted, except in the
17 case of:

18 (A) Special rates where manual, minimum, class rates,
19 rating schedules, or rating plans are not
20 applicable; and

21 (B) Specifically rated inland marine risks.



1 (7) No insurer authorized to do business in this State
2 shall issue any policy that provides or makes
3 available to any risks preferred rates based upon any
4 grouping of persons, firms, or corporations by way of
5 membership, license, franchise, contract, agreement,
6 or any other means, other than common majority
7 ownership of the risks, or except where:

8 (A) A common stock ownership in and management
9 control of the risks are held by the same person,
10 corporation, or firm;

11 (B) Permitted or authorized by filings in existence
12 as of January 1, 1988, under the casualty rating
13 law and the fire rating law, as these filings may
14 be amended from time to time;

15 (C) Health care providers, as defined in
16 section 671-1 that could have joined the
17 patients' compensation fund as it existed in
18 chapter 671, part III, prior to May 31, 1984,
19 joined together with one or more groups of
20 related or unrelated health care providers;

21 (D) Permitted under article 12; or



(E) Otherwise expressly provided by law."

SECTION 3. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The plan of operation shall:

(1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;

(2) Establish maximum limits of liability to be placed through the association;

(3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;

(4) Establish a schedule of deductibles, if appropriate;

(5) Establish the commission to be paid to licensed producers;

(6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the



1 investment income, shall annually fund the
2 administration of the association. The administration
3 of the association shall include the expenses incurred
4 in processing applications, conducting inspections,
5 issuing and servicing policies, paying commissions,
6 and paying claims, but shall not include assessments
7 approved by the commissioner[+]. Rates charged shall
8 also account for proceeds obtained by the association
9 from subrogation claims made by the association;

10 (7) Establish the manner and scope of the inspection and
11 the form of the inspection report. The inspection
12 guidelines may include setting minimum conditions the
13 property must meet before an inspection is required;

14 (8) Establish procedures whereby selections for the board
15 of directors will be submitted to the commissioner for
16 the commissioner's information;

17 (9) Establish procedures for records to be kept of all
18 financial transactions of the association, its
19 producers, and its board of directors;

20 (10) Establish procedures by which applications will be
21 received and serviced by the association;



(11) Establish guidelines for the investigation and payment of claims; ~~and~~

(12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association~~[-]~~; and

(13) Require the association to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses from climate disasters and extreme weather attributable to climate change."

SECTION 4. Nothing in this Act shall be construed to limit in any way the enforceability of existing laws concerning insurance, consumer protection, climate, environment, energy, or natural resources, by either the government or other private plaintiffs.

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

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

INTRODUCED BY: _____



S.B. NO. 1166

Report Title:

HPIA; Property Insurance; Subrogation Claims; Property and Casualty Rate Regulation

Description:

Requires that property and casualty insurance rates that incorporate historical or projected losses from fire or catastrophe hazards be conditioned on agreement by the insurer to file and litigate subrogation claims against responsible parties. Requires the Hawaii Property Insurance Association to file and litigate subrogation claims against certain responsible parties for claims paid by the insurer for losses that are attributable to climate change. Requires insurance rates to account for proceeds obtained by the Association through subrogation claims.

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