

ACT 207

S.B. NO. 1813

A Bill for an Act Relating to the Insurance Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-307 Insurance examiners’ revolving fund. (a) The commissioner may establish a separate fund designated as the insurance examiners’ revolving fund.

(b) The funds shall be used to compensate independent contractor examiners. Independent contractor examiners may be reimbursed or compensated for:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense allowance at a rate customary for such expense and approved by the commissioner; and
- (3) Per diem compensation at a rate customary for such compensation as approved by the commissioner.

(c) The funds may also be used to reimburse insurance division staff examiners for the following expenses necessarily incurred on account of an examination and the examiners’ education and training:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense allowance at a rate customary for such expenses and approved by the commissioner; and
- (3) Any fee or tuition necessary to attend educational and training conferences, workshops, seminars, and any similar event of this nature.

(d) The funds may also be used for other expenses relating to examinations of insurance companies.

[(c)] (e) All persons receiving any reimbursement or compensation from the insurance examiners’ revolving fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred [on account of an examination]. Persons shall not receive or accept any additional emolument on account of an examination. [Any] In the case of an examination, any reimbursement or compensation made by the fund and approved by the commissioner shall be charged to the person being examined by the commissioner and all receipts shall be credited to the fund.

[(d)] (f) Moneys in the insurance examiners’ revolving fund shall not revert to the general fund.

[(e)] (g) Each authorized insurer shall deposit at a time determined by the commissioner the sum of \$200 with the commissioner to be credited to the insurance examiners’ revolving fund.”

SECTION 2. Section 431:3-206, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-206 Additional funds required, new insurers. In addition to the paid-up capital stock or unimpaired surplus as required under section 431:3-205 and section 431:3-208, the following insurers shall possess when first authorized:

- (1) In the case of domestic stock or reciprocal insurers not existing and authorized in this State on [December 31, 1987,] July 1, 1988, or domestic mutual insurers not existing and authorized in this State on [December 31, 1987,] July 1, 1988, which qualify upon the basis of possession of surplus in lieu of applications and premiums collected as provided in section 431:4-303 to section 431:4-307, bona fide additional surplus equaling in amount not less than fifty per cent of the capital stock or surplus otherwise required for the class or classes of insurance proposed to be transacted; or
- (2) In the case of foreign and alien insurers which have been insurers for less than five years[,], except if as a result of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary), bona fide additional surplus in amount not less than fifty per cent of the capital stock or surplus otherwise required for the class or classes of insurance which the insurer is authorized to transact in its domicile."

SECTION 3. Section 431:4-120, Hawaii Revised Statutes, is amended to read as follows:

"§431:4-120 Subsequent financing. (a) No domestic insurer, insurance holding corporation, stock corporation for financing operations of a mutual insurer, or attorney-in-fact corporation of a reciprocal insurer shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit, after:

- (1) It has received a certificate of authority, if an insurer, or
- (2) It has completed its initial organization and financing, if a corporation other than an insurer.

(b) The commissioner shall issue a solicitation permit unless the commissioner finds that:

- (1) The funds proposed to be secured are excessive in amount for the purpose intended,
- (2) The proposed securities or the manner of their distribution are inequitable, or
- (3) The issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(c) A solicitation permit shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require, and shall expire when the new issue of corporate securities has been completed.

(d) A solicitation permit shall limit the portion of funds received on account of such new issue of corporate securities which may be used for promotion and sales expenses for the new issue to such amount as the commissioner deems adequate, but in no event to exceed fifteen per cent of such funds as and when actually received.

(e) For purposes of this section, insurance holding corporation means any domestic corporation:

- (1) Which, directly or indirectly through one or more intermediaries, controls a domestic insurer; and
- (2) In which the total assets of the insurer, as reported in its most recent annual statement filed with the commissioner pursuant to section 431:3-301, is twenty per cent or more of the consolidated total assets of the corporation as reported in its most recent annual report to its owners. The annual report to owners shall be prepared in accordance with generally accepted accounting principles by a certified public accountant."

SECTION 4. Section 431:4-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may increase its capital stock by[:
- (1) Complying with section 416-64, except that the increase in capital is effective upon the payment of the increased capital in full; and
 - (2) Filing a certificate with the commissioner that the increased capital has been paid in full in cash, upon which filing the increase in capital is effective. Such certification shall be filed:
 - (A) After filing of a certificate required by section 416-64; and
 - (B) Within a period prescribed by the commissioner.]

complying with section 415-58 and section 431:4-120. The increase in capital shall be effective upon the payment of the increased capital in full in cash.”

SECTION 5. Section 431:7-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:7-301 Deposits of insurers. (a) The director of finance shall accept, when made through the commissioner, deposits of securities or funds by insurers as follows:

- (1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this State.
- (2) Deposits of insurers in amount as required to be made by the laws of other states as prerequisites for authority to transact insurance in such other states.
- (3) Deposits in other additional amounts permitted to be made by this part.

(b) This part shall apply to the deposits listed in this section unless expressly inconsistent with the provisions of article 3 of this code, in which case the provisions of article 3 shall prevail.”

SECTION 6. Section 431:8-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person, other than an insured, who in this State represents or aids an unauthorized insurer in violation of this part may [be found guilty of a misdemeanor, and] be subject to a fine not in excess of \$1,000.”

SECTION 7. Section 431:8-312, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-312 Records of surplus lines broker. (a) Each licensed surplus lines broker shall keep in the broker’s office in this State a full and true record of each surplus lines contract placed by the broker including a copy of the policy, certificate, cover note, or other evidence of insurance showing such of the following items as may be applicable:

- (1) Amount of the insurance and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium charged;
- (4) Any return premium paid;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract, and the terms thereof¹
- (7) Name and address of the insured;

- (8) Name and address of the insurer;
- (9) Amount of tax and other sums to be collected from the insured; and
- (10) Any additional information required by the commissioner.

(b) For each contract of insurance placed by a surplus lines broker, the broker shall maintain a written statement as to the diligent efforts by the surplus lines broker or the general agent to place the insurance with authorized insurers.

(c) The record of each contract shall be kept open at all reasonable times to examination by the commissioner without notice for a period not less than five years following the termination of the contract."

SECTION 8. Section 431:9-213, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any [person] individual so designated or empowered by a corporation or partnership must be a resident of this State[.] and may not be so empowered or designated by more than one corporation or partnership, except when the corporations or partnerships are affiliates of each other. As used herein, a corporation or partnership is an affiliate of another corporation or partnership if the same person, directly or indirectly through one or more intermediaries, controls both corporations or partnerships. As used herein, "control" and "controls" have the same meaning as in section 431:11-102."

SECTION 9. Section 431:9-219, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner may license as a nonresident agent or broker for all classes of insurance an individual who is otherwise qualified under this article, but who is not a resident of or domiciled in this State, if by the laws of the state [or province], United States territory or possession, or country of the individual's residence or domicile a similar privilege is extended to residents of this State."

SECTION 10. Section 431:10-107, Hawaii Revised Statutes, is amended to read as follows:

"§431:10-107 Filing of certificate. (a) Every insurer shall file with the commissioner a certificate signed by an officer of the insurer stating that the contract meets the minimum Flesch reading ease score required in section 431:10-104(1).

(b) Whenever the score is lower than the minimum allowed under section 431:10-104(1), the insurer shall file the certificate [shall indicate] indicating the lower score and [request] requesting the contract be approved under section 431:10-108. The insurer shall file with the certificate a copy of the contract and additional information necessary to support its request. Each filing requesting an approval pursuant to section 431:10-108 shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(c) In determining the accuracy of any certificate, the commissioner may require the insurer to submit a copy of the contract and any additional information."

SECTION 11. Section 431:10A-302, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-302 Applicability. [This part shall apply to disability insurance policies and group contracts and individual subscriber contracts of a nonprofit medical indemnity or hospital service association, which are delivered or issued

for delivery in this State on or after the date specified in rules adopted by the commissioner in accordance with those sections.]

Notwithstanding anything to the contrary contained in this part, this part shall apply to:

- (1) A medicare supplement policy issued and delivered to a person domiciled in this State;
- (2) A medicare supplement policy issued and delivered to a person not domiciled in this State but pursuant to which a certificate is issued and delivered to a person domiciled in this State; and
- (3) Any certificate delivered to a person domiciled in this State which is issued pursuant to a medicare supplement policy.

The commissioner shall have all rights and powers with respect to the group or master policy and certificate issued pursuant to the medicare supplement policy as if the group or master policy was issued and delivered to a person domiciled in this State."

SECTION 12. Section 431:10B-108, Hawaii Revised Statutes, is amended to read as follows:

"§431:10B-108 Filing, approval, and withdrawal of forms and premium rates. (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner for approval. Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund. Forms and rates so filed shall be approved at the expiration of forty-five days after filing, unless earlier approved or disapproved by the commissioner. The commissioner by written notice to the insurer, within the forty-five day period, may extend the period for an additional thirty days.

(b) The commissioner, within the waiting period or any extension thereof after the filing of¹ the policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, shall disapprove any form or any premium rates if:

- (1) The benefits provided are not reasonable in relation to the premium charge; or
- (2) The form contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the code or of any rule adopted thereunder.

(c) The benefits provided by the policy form shall not be deemed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is not at least sixty per cent. [In the determination of the reasonableness of the relation of benefits and premiums consistent with a sixty per cent loss ratio, the commissioner may establish a common authorized premium rate for similar or substantially similar coverage by class of creditor. The commissioner may approve a higher rate than the common rate where a creditor's experience under a specific policy form reasonably indicates an ultimate loss ratio higher than sixty per cent, but the commissioner shall limit the use of the higher rate to those creditors whose experience was the basis of the approval of the higher rates. The commissioner shall require insurers to file the information as the commissioner deems necessary to determine that this standard is met every two years, or more often in the commissioner's discretion, on forms recommended by the National Association of Insurance Commissioners for that purpose. Upon giving notice as is required by law, the commissioner may withdraw approval of any form including

the rate set forth therein, on the ground that a reasonable relation of benefits to¹ the rate set forth therein, on the ground that a reasonable relation of benefits to premiums no longer exists, or may approve a higher or lower rate if justified by experience.

The commissioner shall adopt a rate that shall be deemed acceptable as satisfying this standard without any actuarial or statistical filing.] The commissioner may adopt by rules prima facie acceptable premium rates that shall reasonably be expected to produce a sixty per cent loss ratio. The prima facie rates shall be usable without actuarial or statistical justification when filed together with an otherwise acceptable policy form. The rules shall specify the plans of benefits to which the premium rates shall apply.

[(d) The commissioner shall adopt by rules prima facie acceptable premium rates, except as set forth below, which shall be usable without statistical justification when filed together with an otherwise acceptable policy form submission. The rates shall produce or shall reasonably be expected to produce a ratio of losses incurred to premiums earned of at least sixty per cent. The rules shall specify the plans of benefits to which the premium rates apply.

(e)] (d) The commissioner shall approve deviations to rates higher than the prima facie acceptable rates upon filing of reasonable evidence that loss experience for a creditor or a class of creditors exceeds the average loss experience used to determine the [established] prima facie rates [and shall base the commissioner's determination on the sixty per cent loss ratio standard.] if the commissioner determines the use of the higher rates will result in a ratio of claims incurred to premiums earned that is not less than sixty per cent. Except where the deviated rate exceeds [sixty cents per \$100 initial insurance per year] the prima facie rate for reducing term credit life insurance and its actuarial equivalent for other forms of credit life insurance, a reasonable variance from the sixty per cent loss ratio standard may be required. The deviation may be limited to the debtors or creditors whose experience was the statistical basis for the filing.

(e) Whenever the commissioner determines it to be prudent, the commissioner may require insurers to file information as the commissioner deems necessary to determine whether the approved deviation from prima facie rates is still justified. If the commissioner determines the insurer's loss experience no longer justifies a deviation from the prima facie rates, then, upon giving notice as required in subsection (g), the commissioner shall disapprove the deviation and any form including the rate set forth therein.

(f) Credit life insurance policies for which premium rates vary by individual ages or by age brackets shall be filed as provided in this section. The commissioner shall approve or disapprove the filings in accordance¹ the sixty per cent loss ratio standard and the other applicable provisions of law.

(g) If the commissioner notifies the insurer that the form or premium rate is disapproved, it shall be unlawful thereafter for the insurer to issue or use the form or premium rate. In the notice, the commissioner shall specify the reason for the commissioner's disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No policy, certificate of insurance, or notice of proposed insurance, nor any application, endorsement, or rider, or premium rate, shall be issued or used until the expiration of [thirty] forty-five days after it has been so filed, unless the commissioner gives the commissioner's prior written approval.

(h) The commissioner at any time after hearing held not less than twenty days after written notice to the insurer, may withdraw the commissioner's approval of a form or premium rate on any ground set forth in subsection (b). The written notice of the hearing shall state the reason for the proposed withdrawal.

(i) It shall be unlawful for the insurer to issue or use forms or premium rates after the effective date of their withdrawal.

(j) If a group policy of credit life insurance or credit disability insurance:

- (1) Has been delivered in this State before July 1, 1969, or
- (2) Has been or is delivered in another state before or after July 1, 1969, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in subsections (b) and (e) of section 431:10B-107. The forms shall be approved by the commissioner if:
 - (i) They conform with the requirements specified in those subsections;
 - (ii) They are accompanied by a certification in a form satisfactory to the commissioner that the substance of the forms are in substantial conformity with the master policy; and
 - (iii) The schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with and approved by the commissioner;

provided the premium rate in effect on existing group policies may be continued until the first policy anniversary date following July 1, 1969.

(k) Any order or final determination of the commissioner under this section shall be subject to chapter 91."

SECTION 13. Section 431:10C-203, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-203 Rate filings. (a) [Every] At least thirty days before an insurer proposes its filing to become effective, the insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance [at least thirty days before the proposed effective date of the filing.] which it proposes to use. Each filing shall indicate the proposed effective date of the filing and the character and extent of the coverage contemplated.

(b) An insurer shall not implement a rate pursuant to a proposed rate filing until the effective date of the filing unless the insurer requests in writing and receives authorization from the commissioner to implement the rate filing prior to the expiration of the thirty-day period.

[(b)] (c) The commissioner also may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

[(c)] (d) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

[(d)] (e) A filing and any supporting information shall be open to the¹ public¹ upon filing with the commissioner."

SECTION 14. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- "(d) (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, the commissioner finds that:
- (A) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

- (B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;
 - (C) The financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
 - (D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 - (E) The competence, experience, and integrity of those persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and [of the public to permit the merger or other acquisition of control; or] not in the public interest; or
 - (F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (2) The public hearing referred to in [item] paragraph (1) shall [be held] commence within [thirty] sixty days after the statement required by subsection (a) is filed, except that the hearing may commence within such additional time as agreed to by the commissioner, the acquiring party and the person to be acquired, and at least twenty days notice [thereof] of the scheduled public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The insurer shall give notice to its security holders. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in chapter 91. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.
- (3) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

SECTION 15. Section 431:19-101, Hawaii Revised Statutes is amended by amending the definition of "association" to read as follows:

"(2) Association means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, [that has been in continuous existence for at least one year,] the number of¹ organizations of which collectively:

- (A) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer,¹ or

- (B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.”

SECTION 16. Section 431:8-303, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 431:8-304, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 19. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.