

ACT 277

S.B. NO. 833

A Bill for an Act Relating to the Hawaii Workers' Compensation State Fund.

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

SECTION 1. Chapter 386A, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“HAWAII [WORKERS’ COMPENSATION STATE FUND]
STATE COMPENSATION MUTUAL INSURANCE FUND”**

SECTION 2. Section 386A-1, Hawaii Revised Statutes, is amended by amending the definition of “fund” to read as follows:

“ “Fund” means the Hawaii [workers’ compensation state fund.] state compensation mutual insurance fund.”

SECTION 3. Section 386A-2, Hawaii Revised Statutes, is amended to read as follows:

“[[§386A-2]] Fund’s establishment. (a) There is established a workers’ compensation state insurance fund to be known as the “Hawaii [workers’ compensation state fund”.] state compensation mutual insurance fund”.

(b) The fund shall not be an agency of the State. The fund shall be a nonprofit [organization] independent mutual insurance corporation under the control of a board of directors [and placed within the department of budget and finance for admin-

istrative purposes, except as otherwise provided herein]. The fund shall pay taxes and license fees like other insurance carriers.

(c) The fund's assets shall consist of [legislative appropriations and all of the fund's] 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 department of budget and finance shall have custody of the fund's assets as determined by the board.

(f)] (e) The fund's principal office shall be in Honolulu, Hawaii. The board may establish branch offices in other locations."

SECTION 4. Section 386A-3, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~**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 [on June 12, 1985,] 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 [July 1, 1986.] 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."

SECTION 5. Section 386A-4, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The board shall be composed of five directors, [who shall be appointed by the governor, upon the Hawaii workers' compensation state fund becoming operational as provided in section 386A-12.

(b) A director's] 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 [July 1, 1986,] 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."

SECTION 6. Section 386A-4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

- "(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 [a] 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."

SECTION 7. Section 386A-12, Hawaii Revised Statutes, is amended to read as follows:

"[**§386A-12**] **State fund operational.** The Hawaii [workers' compensation] state compensation mutual insurance fund shall become operational upon funding by special appropriation by the legislature.

SECTION 8. Chapter 386A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§386A- 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."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

ACT 277

SECTION 10. This Act shall take effect upon its approval.

(Approved June 9, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.