

ACT 128

H.B. NO. 3428

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:2-308, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-308 Administrative procedure act applies. (a) The rules, notices, hearings, orders, and appeals provided for in this code are in all applicable respects subject to chapter 91, unless it is expressly provided otherwise.

(b) The commissioner shall hold a hearing if required by this code. The commissioner may hold other hearings as the commissioner deems necessary for such purposes as are within the scope of this code.

(c) The hearings shall be held at a place designated by the commissioner and, at the commissioner's discretion, may be open to the public.

(d) Application for a hearing made to the commissioner pursuant to this code shall be in writing and shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. [The] Where the commissioner has used the authority contained in section 431:9-236 to suspend, revoke, or refuse to extend a license subject to the right of the licensee to have a hearing and has suspended the license pending the hearing, the commissioner shall hold the hearing [applied for] within thirty days after the commissioner's receipt of the application unless postponed by mutual consent.

[(e) The person aggrieved may waive this initial hearing and proceed to a contested case hearing pursuant to chapter 91.

(f) (e) Any appeal made from a decision by the commissioner shall be made pursuant to chapter 91.”

SECTION 2. Section 431:3-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-301 Annual filings with commissioner. (a) Annually before March 1, or such day subsequent thereto as the commissioner upon request and

for cause may specify, the following documents are required to be filed with the commissioner:

- (1) By each insurer:
 - (A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, shall be filed using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner. The annual statement shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' accounting practices and procedures manuals. The reported information shall be verified by oaths of at least two of the insurer's principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer [is required to] shall relate only to its transactions and affairs in the United States[. The commissioner shall annually during November furnish each domestic insurer duplicate copies of annual statement forms required to be filed];
 - (B) The tax statement provided for by section 431:7-201; and¹
 - (C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;
- (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
- (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance that it is transacting; and
- (4) By each alien insurer, a certificate [of] from the proper public official as to any deposit made or held as compliance with this code.
- (b) Any insurer failing or refusing to submit the annual filings or any of the documents in accordance with subsection (a) shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer [which] that fails to file any of the documents [to which] required pursuant to subsection (a) [relates]."

SECTION 3. Section 431:3-302.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any insurer failing or refusing to submit the annual audit or any of the documents required under subsection (a) on or before June 1, or a later date as the commissioner upon request or for cause may specify, shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of

delinquency. The commissioner may suspend or revoke the certificate of authority of any insurer who fails to file any of the documents required in subsection (a)."

SECTION 4. Section 431:10C-115.5, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-115.5 No-fault administration revolving fund. (a) There is established a separate revolving fund to be administered by the commissioner and to be designated as the no-fault administration revolving fund.

(b) This fund shall be used to pay the costs of administering the commissioner's obligations under this article. The costs shall include but not be limited to costs of peer review of treatment and rehabilitation services for injuries covered by no-fault insurance, costs related to public education and information, costs related to determination of the medical-rehabilitative threshold, costs relating to closed claims studies and other studies and evaluations relating to motor vehicle insurance, and costs related to administrative contract with personnel necessary to carry out the purposes of this article.

(c) The commissioner may establish personnel positions and appoint personnel as may be necessary for the performance of the commissioner's duties in accordance with chapters 76 and 77; provided that the commissioner may employ up to one no-fault cost compliance specialist, one no-fault insurance investigator, and three no-fault cost compliance assistants exempt from chapters 76 and 77; and provided further that the no-fault cost compliance specialist, no-fault insurance investigator, and cost compliance assistants shall possess at least the minimum qualifications and experience required of comparable personnel in the motor vehicle insurance private sector. The annual compensation for the cost compliance specialist shall not be more than \$48,200. The annual compensation for the no-fault insurance investigator shall not be more than \$48,800. The annual compensation for each cost compliance assistant shall not be more than \$41,300.

[(c)] (d) Every insurer making a challenge [which] that is submitted to a peer review organization pursuant to section 431:10C-308.6 shall pay to the commissioner a fair and equitable amount, to be determined by the commissioner, plus the cost of the peer review. The commissioner may increase the amount from time to time as warranted by increases in the cost of administering the peer review program. All payments collected by the commissioner shall be deposited in the no-fault administration revolving fund. The commissioner or the peer review organization shall not receive or accept any additional emolument on account of any challenge to a peer review organization. The peer review organization shall submit its charges, which shall not exceed a fair and reasonable charge to be determined by the commissioner, along with the peer review organization's recommendation to the commissioner. The commissioner shall pay the peer review organization out of the no-fault administration revolving fund. The commissioner shall transmit copies of the peer review recommendation to the insured, insurer, and provider. The commissioner shall transmit the peer review charges to the insurer, and the insurer shall reimburse the no-fault administration revolving fund for the charges within thirty days.

[(d)] (e) Each insurer authorized to transact motor vehicle insurance in this State and each self-insurer shall deposit with the commissioner a fair and equitable amount to be determined by the commissioner on April 1 of each year, to be credited to the no-fault administration revolving fund. In addition, each insurer authorized to transact motor vehicle insurance in this State and each self-insurer in this State, shall pay to the commissioner at a time determined by the

commissioner, a one-time deposit in an amount to be determined by the commissioner, to be credited to the no-fault administration revolving fund.

[(e)] (f) Moneys in the no-fault administration revolving fund shall not revert to the general fund.

[(f)] (g) The commissioner shall report annually to the legislature before the convening of each regular session as to fund administration and expenditures."

SECTION 5. Section 431:10G-301, Hawaii Revised Statutes, is amended to read as follows:

"§431:10G-301 Required motorcycle and motor scooter policy coverage. (a) An insurance policy covering a motorcycle or motor scooter shall provide insurance in the following amounts to pay, on behalf of the owner or any operator of the insured motorcycle or motor scooter, sums [which] that the owner or any operator may legally be obligated to pay for injury, death, or damage to the property of others, except property owned by, being transported by, or in charge of the insured [which] that arise out of the ownership, operation, maintenance, or use of the motorcycle or motor scooter:

- (1) Liability coverage of not less than [\$35,000] \$25,000 for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm; and
 - (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property, including motorcycles or motor scooters and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident.
- (b) At the option of the owner, each insurer shall:
- (1) Offer medical payment coverage up to [\$15,000] \$20,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, [and] dental [services], [and necessary] ambulance, hospital, professional nursing, and funeral services;
 - (2) Offer an income disability plan; and
 - (3) Offer liability coverage in excess of the minimum coverages required by this section."

SECTION 6. Section 431:14-119, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-119 Publication of approved workers' compensation rate filings. The insurer or rating organization submitting the workers' compensation rate filing or lost cost filing shall publish a notice of the filing within fifteen days from the date of filing and notice of an approved filing in a newspaper of general circulation in this State in a form approved by the commissioner."

SECTION 7. Section 431:19-102.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:

- (1) Compliance with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type, and any requirements [which] that the commissioner may adopt by rule; [and]
- (2) [By filing with the department of commerce and consumer affairs its articles of association, charter, or other organizational document together with appropriate amendments bringing the articles of association, charter, or other organizational document into compliance with the laws of this State, along with a certificate of general good issued by the commissioner.] The articles of incorporation or other organizational document shall be amended in compliance with the laws of this State and restated in its entirety before submission to the commissioner. Before the amended and restated articles of incorporation or other organizational document is transmitted to the department of commerce and consumer affairs, the foreign or alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the redomestication and maintenance of the corporation will promote the general good of the State. In arriving at the finding, the commissioner shall consider:
 - (A) The character, reputation, financial standing, and purposes of the foreign or alien captive insurance company;
 - (B) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
 - (C) Any other aspects as the commissioner deems advisable;
- (3) The following shall be transmitted to the department of commerce and consumer affairs for filing:
 - (A) Articles of redomestication;
 - (B) Certificate of general good issued by the commissioner;
 - (C) Certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which the foreign or alien captive insurance company is incorporated; provided that the certificate shall be dated not earlier than thirty days prior to the filing of the articles of redomestication; and provided further that if the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate;
 - (D) Amendments to the articles of incorporation or other organizational document in compliance with the laws of this State;
 - (E) Restatement of the articles of incorporation or other organizational document in its entirety; and
 - (F) Organization fee; and
- (4) The articles of redomestication shall set forth the following:
 - (A) Name of the corporation;
 - (B) Date of incorporation and state or country of incorporation;
 - (C) Street address of the principal office in this State;
 - (D) Names and titles of the officers and directors of the corporation;
 - (E) A statement that the corporation is moving its domicile from its present state or country to this State;
 - (F) A statement that redomestication will occur upon filing the articles of redomestication and that the corporation shall be

- (G) subject to the laws of this State; and
A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the state or country under the laws of which the corporation is incorporated are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents."

SECTION 8. Section 431:19-102.4, Hawaii Revised Statutes, is amended to read as follows:

"[§431:19-102.4] Redomestication; conversion to foreign insurer.

(a) Any domestic captive insurance company, upon approval by the commissioner, may transfer its domicile to any other jurisdiction in accordance with the laws of that jurisdiction.

(b) Before transferring its domicile to any other jurisdiction and before the notice of change in domicile is transmitted to the department of commerce and consumer affairs, the domestic captive insurance company shall deliver to the commissioner a notice of intent to transfer, along with payment of a transfer fee of \$300, and petition the commissioner to issue a certificate of transfer.

(c) The notice of change in domicile, the certificate of transfer issued by the commissioner, the proof of redomestication, and the filing fee shall be transmitted to the department of commerce and consumer affairs. The notice of change in domicile shall set forth the following:

- (1) Name of the corporation;
- (2) Dates that notice of the corporation's intent to transfer domicile from this State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in this State;
- (3) Date of the transfer of its domicile; and
- (4) State or country to which its domicile will be transferred.

(d) Upon [such a] any transfer[,], authorized pursuant to this section, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the [filing of proof of redomestication with] issuance of a certificate of discontinuance by the department of commerce and consumer affairs [along with payment of a filing]; provided that at the time of issuance of the certificate of discontinuance, the captive insurance company shall pay a certificate fee [of \$300.] in accordance with chapter 415."

SECTION 9. Section 431:21-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Nine voting members selected by the member insurers;
- (2) One [nonvoting] voting member appointed by the commissioner to represent insurance agents; and
- (3) Two [nonvoting] voting members appointed by the commissioner to represent the public."

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SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval; provided that as of June 30, 1995, Section 4 of this Act is repealed and section 431:10C-115.5, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 8, 1994.)

Note

1. Should be underscored.