

**ACT 121**

H.B. NO. 3424

A Bill for an Act Relating to Liquidation of Insurers.

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

SECTION 1. Section 431:15-103, Hawaii Revised Statutes, is amended by amending the definition of “guaranty association” to read as follows:

“(9) Guaranty association means the Property and Casualty Post-Assessment Guaranty Association created by part I of article 16, the Life and Health Guaranty Fund created by part II of article 16, and any other similar entity now or hereafter created by the legislature of this State for the payment of claims of insolvent insurers. Foreign guaranty association means any similar entities [now in existence in or hereafter] created by the legislature of any other state.”

SECTION 2. Section 431:15-332, Hawaii Revised Statutes, is amended to read as follows:

**“§431:15-332 Priority of distribution.** The priority of distribution of claims from the insurer’s estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

- [(a)] (1) Class 1. The costs and expenses of administration, including but not limited to the following:
  - [(1)] (A) The actual and necessary costs of preserving or recovering the assets of the insurer;
  - [(2)] (B) Compensation for all services rendered in the liquidation;
  - [(3)] (C) Any necessary filing fees;
  - [(4)] (D) The fees and mileage payable to witnesses; [and]
  - [(5)] (E) Reasonable attorney’s fees[.]; and
  - (F) The reasonable expenses of a guaranty fund or association, or foreign guaranty association in handling claims.
- [(b)] (2) Class 2. [The reasonable expenses of a guaranty fund or association, or foreign guaranty association in handling claims.] All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, claims under nonassessable policies for unearned premium or other premium refunds, and all claims of a guaranty fund or association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to its employee shall be treated as a gratuity.  
Notwithstanding the foregoing, the following claims shall be excluded from class 2:
  - (A) Obligations of the insolvent insurer arising out of reinsurance contracts;
  - (B) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured’s request or after the policy has been canceled as provided in this section. Notwithstanding this paragraph, earned premium claims on policies, (other than re-insurance agreements) shall not be excluded;
  - (C) Obligations to insurers, insurance pools, or underwriting associations, and their claims for contribution, indemnity, or subrogation, equitable or otherwise;
  - (D) Any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer; and
  - (E) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy.
- [(c)] (3) Class 3. [Debts due to employees for services performed to the extent that they do not exceed \$1,000 and represent payment for

services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. The priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.] Claims of the federal government.

- [(d)] (4) Class 4. [All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty fund or association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to its employee shall be treated as a gratuity.] Debts due to employees for services performed to the extent that they do not exceed \$1,000 and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. The priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.
- [(e)] (5) Class 5. [Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.] Claims of general creditors.
- [(f)] (6) Class 6. Claims of [the federal or] any state or local government. Claims including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claims shall be postponed to the class of claims under [subsection (h).] paragraph 8.
- [(g)] (7) Class 7. Claims filed late or any other claims other than claims under [subsections (h) and (i).] paragraphs 8 and 9.
- [(h)] (8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with the law.
- [(i)] (9) Class 9. The claims of shareholders or other owners.”

SECTION 3. The provisions of the Act do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1996.)