

ACT 224

S.B. NO. 3158

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10 to be appropriately designated and to read as follows:

“§431:10- Pooled insurance. (a) Insurers may offer pooled insurance which allows liability insurance and all other types of insurance required by law, not including prepaid health insurance, to be obtained for a construction project. Pooled insurance may be purchased by:

- (1) The State and its public instrumentalities for specific public works construction projects, or any other construction project in the public interest which is publicly financed in whole or in part; or
- (2) A private person or legal entity subject to the State’s tax laws for a specific construction project.

Pooled insurance shall be limited to those construction projects that are estimated to cost \$50,000,000 or more for the total construction project.

(b) For purposes of this section, “pooled insurance” means an insurance policy or policies from licensed private insurers which cover the liability of all developers, contractors, and subcontractors, for their performance directly related to the project. The insurance policy or policies shall cover only a specific public works or private construction project and shall be in effect for the limited period of time required to complete construction of that project; provided that the policy or policies shall cover claims in accordance with the terms of the policy or policies and within the applicable statute of limitations for those claims.

(c) The State, its public instrumentalities, or a private person or entity may obtain a pooled insurance policy or policies and seek contributions or reimbursements of premiums from any contractor or subcontractor who is included as a named insured. In the alternative to the preceding, the State, its instrumentalities, or a private person or entity may arrange a premium payment guarantee from any contractor or subcontractor included as a named insured.

(d) As used in this section, “contractors,” and “subcontractors” do not include architects and engineers.

(e) Nothing in this section shall be construed to alter or nullify the liability of any party to the State for claims arising from a public works construction project.

(f) In cases of conflict with section 386-124, this section shall control.”

SECTION 2. Section 431:14-116.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The plan shall provide a formula allowing an insurer who voluntarily removes an insured risk from the residual market to be eligible for a take-out credit applicable against that insurer’s residual market assessment base levied by the plan. The terms and conditions of the take-out credit shall be as follows:

- (1) An insurer shall receive a credit against its assessment base for the amount of the annual premium reflected in its financial statements for the respective calendar year. This reported premium shall be stated on the same financial basis as the premiums that are reported for use in determining each insurer’s residual market assessment base and shall be subject to subsequent adjustments and audits;
- (2) The credit applicable to the residual market assessment base shall be as follows:
First year: \$2 credit for every \$1 of premium removed;
Second year: \$1 credit for every \$1 of premium removed; and
Third year: \$1 for every \$1 of premium removed;
- (3) If the insurer keeps the insured risk out of the residual market for three years, that insurer shall receive credit for each of three years. If the insurer does not write the business for three years, it shall receive credit only for the period of time that it covered the risk in the voluntary market. Under no circumstances shall an insurer receive credit for risks returned to the residual market within one policy year;
- (4) An insurer shall not return an insured taken from the residual market to the residual market after one year of coverage to subsequently reissue insurance to the insured to obtain the higher credit established for the first year of residual market removal in paragraph (2);
- (5) There shall be no maximum limit on credits received; provided that the credits shall not reduce the insurer’s assessment base below zero;
- (6) The kind and amount of coverage to be offered to voluntary risks shall not be less than those afforded by the policy being replaced, unless the kinds and amounts are refused by the insureds; [and]
- (7) The commissioner may approve loss sensitive rating plans for larger companies that generate more than \$150,000 in insurance premiums[.]; and
- (8) The commissioner may adjust or terminate the credit program depending on market conditions, provided that any adjustment or termination shall not affect any credit earned prior to the adjustment or termination.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.