

ACT 261

H.B. NO. 3968

A Bill for an Act Relating to Workers' Compensation Insurance.

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

SECTION 1. The legislature finds that an adequate and available workers' compensation insurance market is necessary for the economic welfare of the State, and that without workers' compensation insurance, the orderly growth and economic development of the State would be impeded. Adequate insurance for worker's compensation is necessary to enable employers to satisfy their legal obligation under chapter 386, Hawaii Revised Statutes.

The workers' compensation assigned risk pool was established to provide coverage for employers whose job classifications have a high risk of employee injury or illness. However, many Hawaii businesses have been placed in the assigned risk pool merely because they are small businesses, not because they are high risks. The assigned risk pool is a growing market that has increased steadily for the last ten years and presently is the largest market share of workers' compensation insurance. For policy year 1994, approximately thirty per cent of Hawaii's businesses were in the assigned risk pool.

At least four states have established employers' mutual insurance companies in response to workers' compensation problems in their states. The policyholders of these companies are actively involved in the running of the companies. These entities write a significant market share in their respective states and provide a full range of workers' compensation services.

The purpose of this Act is to replace the existing workers' compensation assigned risk pool with a statutorily established nonprofit corporation to be known as the Hawaii employers' mutual insurance company (HEMIC) to provide workers' compensation coverage for Hawaii employers, including employers who have in good faith, but without success, sought workers' compensation insurance in the voluntary market. Initially, no employer shall be refused coverage.

HEMIC will operate as a domestic mutual insurance company and will not be a state agency. It will be owned and governed by its policyholders, Hawaii employers. HEMIC will not receive any state appropriation. HEMIC or its liabilities shall not be deemed to constitute a debt or liability of the State of Hawaii or a pledge of full faith and credit of the State.

Property destruction by Hurricane Iniki in 1992 caused an insurance crisis in the State. To ease the crisis, the legislature created the Hawaii hurricane relief fund in 1993, which required state bonds and general fund appropriations. In contrast, it is the legislature's intent to provide relief in the workers' compensation system by establishing HEMIC before an insurance "crisis" is reached and without the financial involvement of the State.

Because HEMIC will be the company of last resort and basically must take all comers, the legislature is concerned with its long-term success. Concerns about HEMIC's initial financing and operating funds have been expressed by those who want to make sure that the legislature will not have to step in and statutorily "bail out" HEMIC later on. One way to keep this from happening is to put HEMIC on as strong a financial footing as possible by not limiting the board's ability to make prudent business decisions in this regard. Therefore, HEMIC should be authorized to exercise a full range of financing options to ensure its viability just as would any private sector business.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

“ARTICLE **HAWAII EMPLOYERS’ MUTUAL INSURANCE COMPANY**

§431: -101 Purpose. The Hawaii employers’ mutual insurance company is established to provide workers’ compensation coverage to employers of the State at the highest level of service with the lowest possible cost, consistent with reasonable and applicable actuarial standards and the sound financial integrity of the company. The purposes of the company are to provide the highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder’s experience, practice, and operating effectiveness.

§431: -102 Definitions. As used in this article:

“Administrator” means the president and chief executive officer of the Hawaii employers’ mutual insurance company.

“Board” means the board of directors of the Hawaii employers’ mutual insurance company.

“Company” means the Hawaii employers’ mutual insurance company established by this article.

“Investment manager” means any fiduciary, who has been designated by the board to manage, acquire, or dispose of the company’s assets, a bank as defined by law, or an insurance company qualified to perform services under the laws of more than one state.

“Qualified actuary” means a member of the American Academy of Actuaries who is either a fellow of the Casualty Actuarial Society or an Associate of the Casualty Actuarial Society who has five or more years of experience.

§431: -103 Hawaii employers’ mutual insurance company, established. (a) The Hawaii employers’ mutual insurance company is established as a nonprofit, independent corporation to provide workers’ compensation insurance and related services to Hawaii employers.

(b) The company shall be organized and operated as a domestic mutual insurance company. The company shall comply with, unless specifically excluded, all requirements of the insurance code regarding a domestic mutual insurance company. The company shall not be an agency of the State. The company or its liabilities shall not be deemed to constitute debts or liabilities of the State of Hawaii or pledges of the full faith and credit of the State. The company shall write workers’ compensation insurance policies covering Hawaii employers as required or authorized by law and employers’ liability to the same extent as any other private insurer. The company shall not write other lines of insurance, reinsurance, or excess insurance.

(c) The company may insure Hawaii employers against their liability for compensation or damages for injury or death under the United States Longshoremen’s and Harbor Workers’ Compensation Act or federal or maritime laws like any other private insurer.

(d) The company’s assets shall consist of real and personal property and shall include all premiums and other moneys paid to the company, all property, and other income acquired, earned, or otherwise gained by the use of premiums and other moneys paid to the company by deposits, investments, exchanges, and other transactions. The company’s assets shall be the sole property of the company and shall be used exclusively by the company for the operation and obligations of the company.

(e) Notwithstanding any other law to the contrary, the company shall be excluded from the surplus requirements of domestic mutual insurers from January 1, 1997, through December 31, 2007.

(f) The company is exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, association, guaranty, or insolvency fund authorized or required by this chapter.

(g) On or after January 1, 1997, the company shall provide workers' compensation coverage to Hawaii employers otherwise entitled to coverage but not able to or not electing to purchase coverage in the voluntary insurance market, and are not authorized, either individually or as a part of a group, to self-insure. An authorized self-insured is eligible for coverage upon termination of self-insurance.

§431: -104 Company divisions. (a) For purposes of providing representation on the board, the company shall consist of industry divisions and a high-risk division. Assignments to each division shall be made by the administrator with the approval of the board. The initial company divisions shall include:

- (1) Manufacturing and producers;
- (2) Services, entertainment, and amusement;
- (3) Professions;
- (4) Construction;
- (5) Wholesale and retail sales;
- (6) Transportation and public utilities;
- (7) Finance, insurance, and real estate; and
- (8) High risk.

(b) An employer with two or more lost-time claims greater than \$10,000, and a loss ratio greater than 1.0, over the immediately preceding three years shall be placed in the high-risk division.

(c) The administrator, with the approval of the board, shall modify the requirements for placing employers in the high risk division if the qualifications result in the high risk division being limited to only those employers with measurable adverse loss ratios, demonstrated accident frequency records, or a demonstrated attitude of noncompliance with workplace safety and health programs or claims management requirements.

(d) The company shall give notice to each employer in the high risk division not less than thirty days prior to the policy renewal date requesting a report on the employer's lost-time claims for the policy year. The report shall be used to determine the employer's qualification for placement in the high risk division.

(e) The company may apply a rating differential and charge a surcharge to any employer placed in the high risk division.

§431: -105 Board of directors, established. (a) The board of directors of the company shall be responsible for the organization, management, policies, and activities of the company. The board shall consist of nine voting members and one nonvoting member. The voting members shall consist of the following:

- (1) Eight directors who shall be owners, officers, or employees of policy-holders of the company and shall represent each of the company divisions; and
- (2) One director who shall be a public, at-large member elected by the board of directors;

The administrator shall be the nonvoting member of the board.

(b) The initial eight division directors shall be appointed by the governor within sixty days of the effective date of this section and shall serve for terms of one year each. The governor shall ensure adequate representation from the major sectors of the economy and workforce in the State.

The public, at-large member initially elected by the board shall serve for a term of one year.

The initial board of directors shall determine the staggering and length of future directors' terms; provided that no term shall exceed three years. Upon the expiration of the terms of the initial division directors, the company's policyholders in the division represented by the director shall elect the directors. Each director shall serve for terms as specified by the board unless sooner removed for cause pursuant to rules adopted by the board. Each director shall hold office until a successor is elected as provided in this section. No person shall serve more than two full terms as director. Any other law to the contrary notwithstanding, the election and composition of the board of directors as provided in this section shall be deemed adequate to qualify the company as a mutual insurer under chapter 431.

(c) A vacancy on the board shall be filled by appointment of the governor or insurance commissioner in the case of appointed directors, or by election by the company division's policyholders or the board of directors in the case of positions formerly occupied by a director elected by the company division's policyholders or by the board of directors, respectively. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(d) Within one year after appointment, each director shall be a member or an employee of a policyholder of the company and shall continue in such status during the director's term of office. Any director representing a member that fails to maintain workers' compensation insurance from the company shall be disqualified from serving on the board.

(e) Each director shall receive necessary traveling and board expenses incurred in the performance of duty as director and a fee commensurate with the duties expected of actual attendance at board meetings.

(f) No person who has any interest as a stockholder, employee, attorney, or contractor of a competing insurer shall be a director.

§431: -106 Powers; generally. Except as otherwise limited by this chapter, the company may:

- (1) Sue, be sued, complain, and defend, in its corporate name;
- (2) Have a corporate seal, which may be altered at pleasure, and use the seal by causing it, or a facsimile thereof, to be impressed, affixed, or in any other manner reproduced;
- (3) Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- (4) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all and any part of its property and assets;
- (5) Make contracts and incur liabilities, borrow money at such rates of interest as the board may determine, issue guaranty capital shares and surplus notes, require capital contributions, issue its notes, debenture bonds, and other obligations, secure any of its obligations by mortgage or pledge of all or any portion of its property or income, and secure financing by any board approved mechanism;
- (6) Allocate fiduciary responsibilities among the directors and designate other persons to carry out fiduciary responsibilities;
- (7) Collect, receive, hold, and disburse all money payable to or by the company;
- (8) Deposit the company's money in banks or depositories selected by the board and withdraw the company's money from such banks or depositories; provided that the withdrawal shall be made or authorized only upon the signatures of at least two persons approved by the board;

- (9) Pay money from the company to effectuate the company's purpose and administration, including amounts for costs incurred to establish the company; and
- (10) Exercise all powers necessary or convenient to effect the purposes of the company.

§431: -107 Duties and responsibilities. (a) All corporate powers shall be exercised by or under the authority of the board, unless otherwise provided in this chapter or in the articles of incorporation.

- (b) The board shall discharge its duties:
 - (1) In accordance with the company'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 company'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 company by an independent certified public accountant;
 - (6) By securing a fidelity bond for the administrator and in its discretion for other agents dealing with the company's assets at the company'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 company 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 company's administration;
 - (9) By carrying out the reporting and disclosure requirements required by law; and
 - (10) By appointing a qualified actuary to develop and recommend a responsible schedule of premium rates with consideration of the company's investment income or refunds, or both, and to provide actuarial certification of the company's loss reserves.
- (c) Except as otherwise provided by law, the board may:
 - (1) Transact workers' compensation insurance policies required or authorized by state law to the same extent as any other insurer;
 - (2) Provide the terms and conditions of an insurance policy;
 - (3) Provide that any written instrument be executed for the company by the administrator or the administrator's agent;
 - (4) Enter into agreements to reinsure all or part of the company's exposure to loss and to limit the risk to the company; and
 - (5) Employ persons to administer the company, including legal counsel, accountants, insurance consultants, administrators, qualified actuaries, investment managers, adjusters, other experts, and clerical employees and pay compensation and expenses in connection therewith.

§431: -108 Administrator; appointment; duties. (a) The board shall hire an administrator, who shall serve at the pleasure of the board. The administrator shall be the president of the company and the chief executive officer, who shall be responsible for the day-to-day operations and management of the company.

(b) The administrator shall have a proven successful experience as an executive at the general management level in the insurance business. The administrator shall manage and conduct the business of the company according to the

board's direction and policies. The administrator shall receive compensation authorized by the board.

(c) Before entering the duties of office, the administrator shall give a fidelity bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the company.

(d) The administrator shall be an ex officio, nonvoting member of the board.

§431: -109 Financial management. (a) The board shall select a custodial trustee to collect, receive, hold, or disburse moneys payable to or by the company.

(b) The board shall invest the company's principal and income without distinction between principal and income and keep the company's assets invested in real or personal property or other securities. The board may retain cash temporarily awaiting investment or to meet contemplated payments without liability for interest thereon.

(c) The board shall manage the company's assets, except to the extent that the authority to manage the company's assets is delegated to other qualified investment managers. The board may appoint investment managers to manage, acquire, or dispose of any of the company's assets. An investment manager may be designated as an "investment agent". The investment manager shall acknowledge in writing that he or she is a fiduciary under the company.

(d) The board may:

- (1) Sell the company's securities. No purchaser of the company's securities is bound to see to the application of the purchase money or inquire as to the validity of such sale;
- (2) Vote on behalf of any stocks, bonds, or securities of any corporation or issuer held in the company or request any action to such corporation or issuer. The board may give general or special proxies or powers of attorney with or without powers of substitution;
- (3) Participate in reorganizations, recapitalization, consolidations, mergers, and similar transactions for stocks, bonds, or other securities of any corporation that are held by the company, and accept and retain any property received thereunder for the company;
- (4) Exercise any subscription rights and conversion privileges for the company's stocks or securities;
- (5) Compromise, compound, and settle any debt or obligation due to or from the company; reduce the amount of principal and interest, damages, and costs of collection in settling such debts;
- (6) Cause securities held by it to be registered in its own name or in the name of a nominee without indicating that the securities are held in a fiduciary capacity and to hold any securities in bearer form. The company's records, however, shall show that such investments are part of the company;
- (7) Delegate its investment powers to investment managers of the company to expedite the purchase and sale of securities. The purchase or sale of securities by these managers shall be in the name selected by the board. The authority of these managers to purchase or sell securities for the company shall be evidenced by written authority executed by the administrator. The board shall require these managers to keep it currently informed as to the nature and amount of the investments made for the company by them. The board may enter into appropriate agreements with these managers setting forth their investment powers and limitations. The board may terminate the services of these managers. These managers shall be subject to the board's instructions;
- (8) Pay taxes or assessments that are assessed against the company;

- (9) Require any applicant or policyholder to furnish the board with such information necessary for the company's administration; and
- (10) Delegate its authority to the administrator or any authorized representative to maintain any legal proceedings necessary to protect the company or the directors or to secure payment due to the company. In connection with this delegation, the board or the administrator or their representative may compromise, settle, or release claims on behalf of or against the company or the board.

§431: -110 Premium rates, determination. (a) The board shall establish the premium rates to be charged for insurance sold by the company. The company shall comply with the requirements set forth in article 14 of this chapter. Premium rates shall be set at levels sufficient, when invested, to carry all claims to maturity, to meet the reasonable expenses for administering the company, and to maintain a reasonable surplus.

(b) The board shall hire a qualified actuary to assist with the development of sound premium rates.

§431: -111 Reserves, investment. The board may invest or reinvest any surplus or reserves within the limitations established for insurance companies under chapter 431.

§431: -112 Financial statements and other reports. (a) The company shall submit to the commissioner an annual statement of financial condition audited by an independent certified accountant. The audit report shall contain an actuarial opinion prepared by a qualified actuary on the company's claims reserves and expenses. The financial statement shall be on a form prescribed by the commissioner and shall include actuarially appropriate reserves for:

- (1) Known claims and associated expenses;
- (2) Claims incurred but not reported and associated expenses;
- (3) Unearned premiums; and
- (4) Bad debts, reserves for which shall be shown as liabilities.

(b) The company shall compile and maintain statistical and actuarial data relating to the determination of premium rate levels, the incidence of work-related injuries, the cost of injuries, and other data relating to work injuries. The compiled information shall be submitted annually to the commissioner and to the director of labor and industrial relations.

§431: -113 Annual accounting; dividends. (a) The company shall conduct an annual accounting of its incurred loss experience and expenses.

(b) The board may declare and apportion reasonable dividends to policyholders, determined by an actuarial opinion prepared by a qualified actuary after evaluating the impact of the dividends on the solvency of the company. The dividends may be paid or credited to policyholders according to classifications of policies established by the board.

(c) No dividends shall be:

- (1) Paid or credited in a manner that unfairly discriminates between policies within the same classification;
- (2) Made contingent upon payment of any renewal premium on any policy; or
- (3) Paid or credited in the first three years of operation of the company.

§431: -114 Audits. The administrator, or designated representative, shall have reasonable access to any policyholder's payroll and employment records

during regular working hours to carry out audits of payroll reported, the number of employees on the payroll, and other information necessary for the administration of this article.

§431: -115 Denial, cancellation, and termination. The company may deny coverage or renewal of an existing policy or may terminate an existing policy of a policyholder or applicant for:

- (1) Nonpayment of an undisputed premium;
- (2) Refusal to permit on-site workplace safety examinations;
- (3) Failure to comply with workplace safety and health programs required by the company; or
- (4) Failure to accurately disclose information concerning the applicant's or policyholder's ownership, change of ownership, operations, or payroll, including the allocation of payroll among state and federal compensation programs, and other information necessary for the board to determine premium rates.

§431: -116 Wilful misrepresentation and fraud. (a) Any person who wilfully makes a false statement or representation for the purpose of directly obtaining any compensation or payment or for the purpose of avoiding any compensation or payment under this article shall be subject to the penalties in section 386-98.

(b) The company shall develop and implement a program to identify and investigate fraudulent insurance acts.

§431: -117 Workplace safety and health programs. (a) The company shall work with policyholders, health care providers, and employees to develop, implement, and monitor workplace safety and health and return to work programs. The programs shall include the development of a workplace accident and injury reduction plan that promotes safe working conditions.

(b) The company shall promote safety programs to policyholders by:

- (1) Analyzing reports of industrial accidents of members to help determine the cause of those accidents;
- (2) Conducting studies for risk and hazard identification and assessments by safety and medical professionals;
- (3) Conducting educational programs designed to prevent frequently recurring industrial accidents; and
- (4) Inspecting work sites and investigating unsafe working conditions to promote job safety and eliminate hazards.

(c) Company representatives shall have reasonable access to the premises of any policyholder or applicant during regular working hours to carry out workplace evaluations.

(d) Upon the completion of a detailed inspection and recognition of a high regard for employee work safety, a deviation may be applied to the rate structure of that insured noting special recognition of those efforts.

§431: -118 Discontinuation of residual market plan. (a) The residual market plan, as authorized by section 431:14-116.6, is discontinued effective December 31, 1996, or the date the company writes its first policy, whichever date is later, except for dissolution of any obligations for claims arising out of any policies written pursuant to the plan with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. It is the intent of this section to provide for an orderly transfer of policies from the residual market plan as authorized by section 431:14-116.6 to the company.

(b) The residual market plan shall continue its operation for all policies with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. All policies written thereunder shall be for one-year terms, and shall not be terminated prior to expiration except for cause. In no case shall policies with inception dates of January 1, 1997, or the date the company writes its first policy, whichever date is later, be provided under the residual market plan authorized by section 431:14-116.6.

§431: -119 Discontinuation of assigned risks. (a) Assigned risk coverage, as authorized by section 431:14-116, is discontinued effective December 31, 1996, or the date the company writes its first policy, whichever date is later, except for dissolution of any obligations for claims arising out of any policies written pursuant to section 431:14-116 with inception dates on or before December 31, 1996, or the date the company writes its first policy, whichever date is later. It is the intent of this section to provide for an orderly transfer of assigned risks as authorized by section 431:14-116 to the company.

(b) Assigned risk coverage, as authorized under section 431:14-116 shall continue operation for all policies with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. All policies written thereunder shall be for one-year terms, and shall not be terminated prior to expiration except for cause. In no case shall policies with inception dates of January 1, 1997, or the date the company writes its first policy, whichever date is later, be provided for assigned risks authorized by section 431:14-116."

SECTION 3. Section 431:14-116, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-116 Assigned risks. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner[.]; provided that this section shall not apply to workers' compensation insurance after December 31, 1996, or the date the domestic mutual insurance company established pursuant to 431: writes its first policy, whichever is later."

SECTION 4. The Hawaii employers' mutual insurance company may issue debentures one time in an amount not exceeding \$10,000,000, payable solely from premiums received from insurance policies and other revenues received by the company for the initial operating expenses of the company. The debentures shall be issued in the name of the company and not in the name of the State. The final maturity date of the debentures shall not exceed ten years from the date of issuance. The board shall set aside and pledge revenues from premiums and other sources for the payment of the principal and interest on the bonds debentures.

SECTION 5. Rate reduction; insurers. The insurance commissioner shall effect a moratorium and not approve any rate level increase in workers' compensation insurance during the period July 1, 1996, to January 31, 1997.

- (1) Commencing February 1, 1997, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers'

compensation coverage, in effect on January 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1997, to January 31, 1998. The cost savings identified shall have been applied equitably to all policyholders. There shall be no exception to the requirements of this paragraph, unless the commissioner, pursuant to an insurer's petition, shall find that the use of the rates required herein by an insurer will be inadequate to the extent that the rates jeopardize the solvency of the insurer required to use such rates. If the Hawaii employers' mutual insurance company begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1998.

- (2) Commencing February 1, 1998, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1998, to January 31, 1999. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1999.
- (3) Commencing February 1, 1999, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1999, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1999, to January 31, 2000. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to all workers' compensation policies issued and annually renewed through January 31, 2000.

SECTION 6. Rate reduction; assigned risk pool.

- (1) Commencing November 1, 1996, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1996, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.

- (2) Commencing November 1, 1997, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.

SECTION 7. Rate reduction; rating or advisory organization.

- (1) Commencing November 1, 1996, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.

SECTION 8. Relief. (a) Except as otherwise provided in this Act, all rates or loss costs for workers' compensation insurance shall comply with the provisions contained in chapter 431, Hawaii Revised Statutes. Any insurer or rating organization which contends that the rate provided for in this Act is inadequate shall state in its filing the rate it contends is appropriate and shall state with specificity the factors or data which it contends should be considered in order to produce such appropriate rate. The insurer shall be permitted to use all of the generally accepted actuarial techniques in making any filing pursuant to this subsection. It shall be the insurer's or rating organization's burden to actuarially justify any rate increase from the reduced rates provided for in this Act. The insurer or rating organization shall include in the filing the expected impact of Act 234, Session Laws of Hawaii 1995, and this Act, where appropriate, on losses, expenses and rates.

(b) In making this filing as provided for by this subsection, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii

Revised Statutes, or a rating organization, or the Hawaii employers' mutual insurance company, shall comply with the following provisions:

- (1) Any rate filing contending that the rates established in this Act are inadequate shall be filed not later than sixty days prior to the appropriate filing date specified.
- (2) The insurance commissioner shall review and approve or disapprove the rate filing not later than thirty days prior to the appropriate filing date specified with respect to filings submitted pursuant to this Act.
- (c) A filing shall be deemed to meet the workers' compensation rate filing requirements unless disapproved by the commissioner within the waiting period or any extension thereof. All filings submitted under this Act shall be deemed public records. All filings submitted under this Act shall be exempt from chapter 92-41, Hawaii Revised Statutes. The public hearing notice shall be filed with the office of the lieutenant governor at least six calendar days before the public hearing.
- (d) If the filing is approved under this Act, a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes, may be convened. Notwithstanding any law to the contrary, a petition and demand for hearing shall not stay the implementation of the rates approved by the commissioner or the rates currently in effect, whichever is higher. A final order of the commissioner may be appealed in accordance with chapter 91, Hawaii Revised Statutes.
- (e) If a filing is disapproved in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91, Hawaii Revised Statutes. The insurer or rating organization shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved insurer or assigned risk pool shall be entitled to the rates currently established or the filed rates, whichever is lower.
- (f) With respect to any approval or disapproval by the commissioner regarding any rate filing focusing upon a reduction, the aggrieved insurer or assigned risk pool shall be entitled to charge the current filed rates while the action of the commissioner is being challenged and contested.
- (g) Upon final disposition, pursuant to chapter 91, Hawaii Revised Statutes, or by a court of competent jurisdiction of the insurance commissioner's approval or disapproval of the rates, the insurance commissioner shall immediately determine and order that the insurer or assigned risk pool make the appropriate rebates of premiums to policyholders or allow the insurer or assigned risk pool to exact a surcharge on premiums.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. In the event that the Hawaii employers' mutual insurance company's certificate of authority is revoked by the insurance commissioner, section 431: -118 and section 431: -119 of this Act, and the amendments made pursuant to this Act to section 431:14-116, Hawaii Revised Statutes, shall be repealed, and upon such repeal section 431:14-116, Hawaii Revised Statutes, shall be reenacted in the form in which it existed prior to the effective date of this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 19, 1996.)¹

Note

1. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.