

## ACT 252

S.B. NO. 2326

A Bill for an Act Relating to the Hawaii Employer's Mutual Insurance Company.

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

SECTION 1. The purpose of this Act is to amend the law establishing the Hawaii employers' mutual insurance company (HEMIC), Act 261, Session Laws of Hawaii (SLH) 1996, to:

- (1) Create an oversight council to monitor HEMIC's performance of its statutory obligations to ensure that HEMIC fulfills its objective of providing reliable, affordable workers' compensation insurance to Hawaii employers; and
- (2) Make clarifications regarding the State providing capital to HEMIC.

HEMIC was created by the legislature as a preemptive measure to avoid a crisis in the availability of workers' compensation insurance without exposing the State to unlimited liability for workers' compensation losses. Because the legislature was concerned that direct funding of HEMIC would leave the State open to derivative liability for HEMIC's obligations, the legislature provided capital for HEMIC's operations indirectly, through certain exemptions. Thus, the legislature exempted HEMIC from the surplus requirements otherwise applicable to mutual insurance companies in the State of Hawaii. That exemption, in conjunction with HEMIC's exemption from assessments by the Hawaii hurricane relief fund (HHRF), will provide capital to fund HEMIC's operations from HEMIC's inception through 2007. The exemption from the surplus requirements allows HEMIC to write policies and generate premium income. The portion of the premium income representing HHRF assessments is instead retained in HEMIC's surplus.

Act 261, SLH 1996, which explicitly exempted HEMIC from surplus requirements, failed to explicitly state that HEMIC is not subject to HHRF assessments for the period through December 31, 2007. This Act both clarifies and amends HEMIC's enabling legislation to make it clear that while HEMIC does have an exemption from HHRF assessments, HEMIC is to be exempt only up to the first \$25,000,000 of written premiums in each calendar year.

This Act also amends HEMIC's participation in the Hawaii property and liability insurance guaranty association. HEMIC is not to participate in the Hawaii property and liability insurance guaranty association prior to January 1, 2008.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 14A to be appropriately designated and to read as follows:

**“§431:14A- Oversight council.** (a) There is established the Hawaii employers' mutual insurance company oversight council which shall meet at least once annually. For administrative purposes only, the council shall be assigned to the department of commerce and consumer affairs. The council shall oversee the activities of the company to ensure that the company fulfills its purpose as set forth in this article.

(b) The council shall consist of five members who shall include:

- (1) A member of the senate appointed by the president of the senate;
- (2) A member of the house of representatives appointed by the speaker of the house of representatives;
- (3) The director of the department of labor and industrial relations;
- (4) The director of the department of commerce and consumer affairs; and
- (5) An at-large member who is an owner, officer, or employee of the company policyholder appointed by the governor;

provided that if any designee under paragraphs (1) to (4) does not meet the test in subsection (c), the president of the senate, speaker of the house, or governor, as applicable, shall designate an appropriate representative. Section 26-34 shall not apply to appointments under this section.

(c) No person shall serve on the council who within the second degree of consanguinity or affinity has a direct and substantial interest in an insurer that competes with the company, including but not limited to:

- (1) A stockholder of a competing company (excluding a holder of less than one per cent of the outstanding shares in a publicly traded company);
- (2) An employee of a competing company;
- (3) An attorney who represents a competing company; or
- (4) A party who contracts with a competing company (excluding an independent contractor or business owner who does less than twenty-five per cent of its total annual volume of business per year with competing insurers).

(d) Members of the council shall serve without compensation, but shall be reimbursed for reasonable expenses necessary for the performance of their duties.

(e) The administrator shall serve as liaison officer to the council. Not later than sixty days after passage of this Act and every June 15 thereafter, the board shall provide to the council any and all data and information the council may require, including but not limited to:

- (1) The company's statutorily required annual financial statement;
- (2) Copies of any reports issued by the insurance division in connection with the triennial examination of the company; and
- (3) Actuarial certification of loss reserves.

(f) After receipt of the data and information required pursuant to subsection (e), the council shall review the activities of the company and determine whether the company is fulfilling its purpose as set forth in this article. The council shall promptly, but in no event later than October 15, 1998, and every October 15 thereafter, submit a report to the governor with a copy to the board of directors, stating whether the company is fulfilling its purpose as set forth in this article. If the council determines that there are any deficiencies in the company's fulfillment of its purposes as set forth in this article, it shall include in its report a detailed description

of any deficiencies. Within a timeframe established by the council, but in no event later than six months after delivery of the council's report in accordance with this section, the company shall respond in writing to any deficiencies identified in the council's report. The Hawaii employers' mutual insurance company shall provide staff support to the council.

(g) If the governor determines that corrective action is appropriate after reviewing the council's report and the company's response, the governor shall inform the legislature, and the legislature shall consider what action is needed."

SECTION 3. Section 431:14A-102, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"'Council' means the Hawaii employers' mutual insurance company oversight council."

SECTION 4. Section 431:14A-103, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

"(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. The company is also excluded during this time period from any assessments by the Hawaii hurricane relief fund otherwise required by section 431P-5(b)(8); provided that the exclusion shall apply to the first \$25,000,000 of written premiums in each calendar year; and provided further that annual written premiums in excess of \$25,000,000 shall be assessed in accordance with section 431P-5(b)(8).

(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, insolvency fund,<sup>1</sup> and training fund authorized or required by this chapter. Notwithstanding the foregoing exemptions, beginning January 1, 2008, the company shall participate in the property and liability insurance guaranty association, pursuant to sections 431:16-101 to 431:16-117; provided that the company shall meet the surplus requirements applicable to all other domestic insurers under chapter 431 effective January 1, 2008."

SECTION 5. Section 431:14A-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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

## ACT 252

- 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[.]; and
  - (11) By cooperating with and assisting the council in its duties and responsibilities.'

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved July 20, 1998.)

### Notes

- 1. Prior to amendment "or education" appeared here.
- 2. Edited pursuant to HRS §23G-16.5.