

ACT 182

H.B. NO. 2472

A Bill for an Act Relating to Insurance.

*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 part I of article 3 to be appropriately designated and to read as follows:

“**§431:3- Stock insurer.** A stock insurer is an incorporated insurer with capital stock divided into shares and owned by its stockholders to whom the earnings are distributed as dividends on their shares.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 9 to be appropriately designated and to read as follows:

“**§431:9- Appointment required.** (a) No person engaging in the business of insurance in this State shall do so without holding the required appointment.

(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any insurance policy without having an appointment with the insurer.

(c) No subagent or solicitor in this State shall solicit or take applications for, procure, or place for others any insurance policy without having an appointment with a general agent who holds an appointment with the insurer.

(d) Any person violating this section shall be subject to penalties as provided in section 431:9-201.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 10 to be appropriately designated and to read as follows:

“§431:10- Notice of cancellation or nonrenewal. In the case of cancellation of a policy, the insurer shall give written notice to the insured not fewer than ten days prior to the effective date of cancellation. For nonrenewal of a policy, the insurer shall give written notice to the insured not fewer than thirty days prior to the effective date of nonrenewal. If under title 24 or a policy, a longer time period is required for a notice of cancellation or nonrenewal for the policy, the longer period shall be applicable. Cancellation or nonrenewal shall not be deemed valid unless evidence of mailing is provided.”

SECTION 4. Section 431:2-209, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, void or obsolete filings relating to rates, certificate of authority applications, foreign or alien insurers’ annual statements and valuation reports, cards, and expired bonds. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner’s possession.”

2. By amending subsection (e) to read:

“(e) The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

- (1) Complaints and investigation reports;
- (2) Working papers of [examination reports;] examinations, complaints, and investigation reports;
- (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing [said] the information;
- (4) Any documents or information received from the National Association of Insurance Commissioners, the federal government, or insurance departments of other states, territories, and commonwealths that are confidential in other jurisdictions. The commissioner shall be authorized to share information, including otherwise confidential information with the National Association of Insurance Commissioners, the federal government, or insurance departments of other states, territories, and commonwealths so long as the statutes or regulations of the other jurisdictions permit them to maintain the same level of confidentiality as required under Hawaii law.”

SECTION 5. Section 431:2-215, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established a special fund to be designated as the insurance regulation fund. All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner’s education and training fund (section 431:2-214), the patients’ compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee (section 431:10C-115), and the captive insurance administrative fund (section 431:19-101.8)[,] to the extent provided by section 431:19-101.8(b), shall be deposited into the insurance regulation fund. All sums transferred into the insurance regulation fund may be expended by the commissioner to carry out the commissioner’s duties and obligations under title 24.

(b) The insurance regulation fund shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ[,] or retain, by contract or otherwise, without regard to chapters 76 and 77, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that is subject to chapter<sup>1</sup> 76 and 77 prior to July 1, 1999 shall remain subject to chapters 76 and 77.’’

SECTION 6. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the event any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner, upon written request made by the person to the commissioner within the time set forth in section 431:7-204.6, shall authorize a refund thereof out of the insurance regulation fund [of this State], except that a tax refund shall be payable out of the general fund, by submitting a voucher therefor to the comptroller [of this State] subject to the following limitations:

- (1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner [shall contain] contains clerical errors, transposition of figures, typographical errors, and errors in calculation or if there [shall be] is an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
- (2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied [in] with respect to the taxpayer concerned differently than [in] with respect [of] to taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive.’’

SECTION 7. Section 431:8-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and:

- (1) In the case of a foreign insurer, shall maintain in the broker’s office a current certificate, in proper form, from the regulatory authority in the domicile of the unauthorized insurer, to the effect that the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which equals the minimum capital and surplus requirements of this State for that kind of insurer as set out in article 3; or
- (2) In the case of an alien insurer, shall maintain in the broker’s office evidence of the financial responsibility of the insurer. Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system in an amount not less than [\$2,500,000] \$5,400,000 for the protection of all its policyholders in the United States consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized

insurers writing like kinds of insurance in this State, shall constitute prima facie evidence of responsibility.

Upon request by the commissioner, the broker shall immediately submit to the commissioner the items described in this subsection.”

SECTION 8. Section 431:9-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Following a catastrophe in this State, a Hawaii license shall not be required of a nonresident independent adjuster for the adjustment of losses; provided:

- (1) The common losses suffered that are to be adjusted are a direct result of that catastrophe;
- (2) The adjuster provides to the licensing branch of the insurance division a certified copy of the adjuster’s current license in another [state’s current license.] state. That other state shall have similar licensing requirements to section [431:9-217;] 431:9-222; and
- (3) That within three working days of when the nonresident independent adjuster begins work, the insurance company, independent adjusting company, general agent, or subagent that is utilizing the adjuster shall provide on its letterhead to the licensing branch of the insurance division:
  - (A) The name of the adjuster;
  - (B) The adjuster’s Hawaii mailing and business addresses and phone numbers; and
  - (C) The adjuster’s permanent [nonresident] home and business addresses and phone numbers.

For the purpose of this subsection, a catastrophe exists when due to a sudden, specific, and natural or manmade disaster or phenomenon, there arises property losses in Hawaii that are covered by insurance. These losses must be so severe that resident licensed and independent adjusters will be unable to adjust the losses within a reasonable time as determined by the division.”

SECTION 9. Section 431:9-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-201 License required.** (a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be a general agent, subagent, solicitor, or adjuster unless so licensed by this State.

(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any class of insurance for which the general agent, subagent, or solicitor is not licensed and does not hold an appointment from the insurer in this State for that class of insurance.

(c) A regular salaried officer or employee of an authorized insurer shall not be required to be licensed by reason of rendering assistance to, or on behalf of a licensed general agent, subagent, or solicitor, provided that the salaried officer or employee devotes substantially all of the officer’s or employee’s time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.

(d) Any person violating this section shall be [fined not more than \$1,000] assessed a civil penalty not to exceed \$5,000 for each factually different violation.

(e) Any person who knowingly violates this section shall be assessed a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

(f) Each repetition of an act that constitutes a violation subject to subsection (d) or (e) shall constitute a separate violation.”

SECTION 10. Section 431:10B-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The benefits provided by the policy form shall not be deemed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is not at least sixty per cent. The commissioner may adopt by rules prima facie acceptable premium rates that shall reasonably be expected to produce a sixty per cent loss ratio. The prima facie rates shall be usable without actuarial or statistical justification when filed together with an otherwise acceptable policy form[.]; provided that the ratio of losses for the most recent three years is at least sixty per cent. The rules shall specify the plans of benefits to which the premium rates shall apply.”

SECTION 11. Section 431:10C-307.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Violation of subsection (a) is a criminal offense and shall constitute a:
- (1) Class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$20,000;
  - (2) Class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$300; or
  - (3) Misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is [less than \$300.] \$300 or less.”

SECTION 12. Section 431:11-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer who is authorized to do business in this State and who is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and section 431:11-106(a)(1), (b), and (d). [The insurer shall file a copy of the registration statement and summary of its registration statement as required by subsections (b) and (c) with the National Association of Insurance Commissioners.] The insurer [also] shall file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer is authorized to do business if requested by the commissioner of that state. Any insurer who is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer who is a member of a holding company system who is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.”

SECTION 13. Section 431:11-111, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) Any insurer failing[,] without just cause[,] to file any registration statement as required in this article, shall be [required, after notice and hearing, to pay a penalty of \$100 for each day’s delay,] liable for a fine in an amount of not less than \$100 and not more than \$500 for each day of delinquency, to be recovered by the commissioner, and the penalty so recovered shall be paid into the insurance

regulation fund [of this State. The maximum penalty under this subsection is \$5,000]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly [shall permit] permits any of the officers or agents of the insurer to engage in any transactions or make investments [which] that have not been properly reported or submitted pursuant to sections 431:11-105(a), 431:11-106(a)(2), or 431:11-106(b), or who violates this article, shall [pay, in their individual capacity, a civil forfeiture of not more than \$5,000 per violation, after notice and hearing before the commissioner.] be subject to a fine of not less than \$100 and not more than \$10,000 per violation. In determining the amount of the [civil forfeiture,] fine, the commissioner shall take into account the appropriateness of the [forfeiture] fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.”

2. By amending subsections (d) and (e) to read:

“(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the commissioner may cause criminal proceedings to be instituted against the insurer or the responsible director, officer, employee, or agent thereof. Any insurer who wilfully violates this article [may be fined not more than \$5,000.] shall be subject to a fine of not less than \$100 and not more than \$10,000 per violation. Any individual who wilfully violates this article [may be fined in the individual’s capacity not more than \$5,000,] shall be subject to a fine in the individual’s capacity of not less than \$100 and not more than \$10,000 per violation, or be imprisoned for not more than one year.

(e) Any officer, director, or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes, or causes to be made, any false statements [or], false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner’s duties under this article, upon conviction thereof, shall be imprisoned for not more than one year, or fined \$5,000, or both. Any fines imposed shall be paid by the officer, director, or employee in [their] the person’s individual capacity.”

SECTION 14. Section 431:15-335, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All unclaimed funds subject to distribution remaining in the liquidator’s hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the [insurance regulation fund,] director of finance, and shall be paid without interest except in accordance with section 431:15-332 to the person entitled thereto or the person’s legal representative upon proof satisfactory to the [insurance regulation fund] director of finance of the person’s right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the [insurance regulation fund.] general fund.”

SECTION 15. Section 432:2-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Nothing in this article shall exempt fraternal benefit societies from the provisions and requirements of [sections 416-19 and 416-20.] section 431:2-215.”

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SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 17. This Act shall take effect upon its approval.

(Approved June 7, 2000.)

### Notes

1. Prior to amendment, “chapters” appeared here.
2. Edited pursuant to HRS §23G-16.5.