

JAN 19 2023

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending the definitions of "participant contract"  
4 and "protected cell" to read:

5           "Participant contract" means a contract by which a  
6 sponsored captive insurance company, on behalf of a participant,  
7 insures the risks of a participant and may also limit the losses  
8 of each participant to its pro rata share of the assets of one  
9 or more protected cells identified in [~~such~~] the participant  
10 contract.

11           "Protected cell" means a separate account established by a  
12 sponsored captive insurance company formed or licensed under  
13 this article in which assets are maintained for one or more  
14 participants in accordance with the terms of one or more  
15 participant contracts to fund the liability assumed on behalf of  
16 the participants by [~~of~~] the sponsored captive insurance company



1 ~~[assumed on behalf of the participants]~~ as set forth in the  
2 participant contracts."

3 2. By amending the definition of "sponsored captive  
4 insurance company" to read:

5 "Sponsored captive insurance company" means a captive  
6 insurance company:

7 (1) In which the minimum required capital and surplus is  
8 provided by one or more sponsors;

9 (2) That is formed or licensed under this article;

10 (3) ~~[That insures the risks only of its participants~~  
11 ~~through separate participant contracts;]~~ In which  
12 risks assumed on behalf of the participant pursuant to  
13 separate participant contracts are maintained in  
14 separate protected cells for each participant; and

15 (4) That may fund ~~[its]~~ the liability ~~[to]~~ of each  
16 participant through one or more protected cells. A  
17 sponsored captive insurance company segregates the  
18 assets of each protected cell from the assets of other  
19 protected cells and from the assets of the sponsored  
20 captive insurance company's general account."



1 SECTION 2. Section 431:19-108, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§431:19-108 Examinations, investigations, and financial  
4 surveillance[-]; certificate of exemption. (a) The  
5 commissioner or any authorized examiner may conduct an  
6 examination, investigation, or financial surveillance of any  
7 captive insurance company as often as the commissioner deems  
8 appropriate; provided that, unless exempt or the commissioner  
9 requires otherwise:

10 (1) An examination shall be conducted at least once every  
11 five years for all captive insurance companies, except  
12 as provided in paragraph (2); and

13 (2) An examination of a risk retention captive insurance  
14 company shall be conducted no later than three years  
15 after its formation and at least once every five years  
16 thereafter.

17 The commissioner or any authorized examiner shall  
18 thoroughly inspect and examine the captive insurance company's  
19 affairs to ascertain its financial condition, its ability to  
20 fulfill its obligations, and whether it has complied with this  
21 article.



1 (b) The powers, authorities, and duties relating to  
2 examinations vested in and imposed upon the commissioner under  
3 section 431:2-301 through section 431:2-307.5 of the code are  
4 extended to and imposed upon the commissioner in respect to  
5 examinations of captive insurance companies.

6 (c) All examination reports, preliminary examination  
7 reports or results, working papers, recorded information,  
8 documents, and copies thereof produced by, obtained by, or  
9 disclosed to the commissioner or any person in the course of an  
10 examination made under this section are confidential and are not  
11 subject to subpoena and may not be made public by the  
12 commissioner or an employee or agent of the commissioner without  
13 the written consent of the company, except to the extent  
14 provided in this subsection. Nothing in this subsection shall  
15 prevent the commissioner from using information in furtherance  
16 of the commissioner's regulatory authority under this title.  
17 The commissioner may grant access to the information to public  
18 officers having jurisdiction over the regulation of insurance in  
19 any other state or country, or to law enforcement officers of  
20 this State or any other state or agency of the federal  
21 government at any time, so long as the officers receiving the



1 information agree in writing to hold it in a manner consistent  
2 with this section.

3 (d) Each branch captive insurance company shall file  
4 annually with the commissioner a certificate of compliance  
5 issued by the insurance regulatory authority of the jurisdiction  
6 in which the outside captive insurance company of the branch  
7 captive insurance company is domiciled along with certified  
8 copies of any examination reports conducted of the outside  
9 captive insurance company by its domiciliary insurance regulator  
10 during the preceding calendar year. These filings shall be made  
11 with the commissioner by March 1 of each year. So long as the  
12 branch captive insurance company complies with the requirements  
13 of this subsection, and unless otherwise deemed necessary by the  
14 commissioner, any examination of the branch captive insurance  
15 company under this subsection shall be only with respect to the  
16 business underwritten by the branch captive insurance company in  
17 this State. If necessary, however, the commissioner may examine  
18 the outside captive insurance company of any branch captive  
19 insurance company licensed under this article.

20 (e) Except for risk retention captive insurance companies,  
21 captive insurance companies may apply to the commissioner for a



1 certificate of exemption from examination; provided that the  
2 captive insurance company applicant has:

3       (1) Satisfactorily completed at least one examination  
4             under this section;

5       (2) Continuously filed and continues to file all financial  
6             statements and other reports and otherwise complies  
7             with all other required provisions of this article;  
8             and

9       (3) Demonstrated other good cause supporting the  
10            application for certificate of exemption from further  
11            examination.

12       (f) If the commissioner is satisfied with the captive  
13 insurance company's application, the commissioner may issue a  
14 certificate of exemption from examination along with renewals  
15 thereof.

16       (g) Unless earlier revoked by the commissioner for good  
17 cause, a certificate of exemption from examination shall be  
18 valid for a period not to exceed five years from its effective  
19 date, and a captive insurance company may apply to the  
20 commissioner for renewal of its certificate of exemption from



1 examination no earlier than six months prior to its expiration  
2 date."

3 SECTION 3. Section 431:19-303, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§431:19-303 **Protected cells.** A sponsored captive  
6 insurance company formed and licensed under this article may,  
7 subject to the commissioner's approval, establish and maintain  
8 one or more protected cells to insure risks of one or more  
9 participants, or other parties unaffiliated with a participant,  
10 or both, subject to the following:

11 (1) The shareholders or members of a sponsored captive  
12 insurance company shall be limited to its participants  
13 and sponsors; provided that a sponsored captive  
14 insurance company may issue nonvoting securities to  
15 other persons on terms approved by the commissioner;

16 (2) A protected cell shall be organized and operated in  
17 only those forms of business organization authorized  
18 by the commissioner, including an association,  
19 corporation, limited liability company, partnership,  
20 or trust;



- 1           (3) Each protected cell shall be accounted for separately  
2           on the books and records of the sponsored captive  
3           insurance company to reflect the financial condition  
4           and results of operations of the protected cell, net  
5           income or loss, dividends or other distributions to  
6           participants, and other factors as may be provided in  
7           the participant contract or required by the  
8           commissioner;
- 9           (4) The assets of a protected cell shall not be chargeable  
10          with liabilities arising out of any other insurance  
11          business the sponsored captive insurance company may  
12          conduct;
- 13          (5) No sale, exchange, or other transfer of assets may be  
14          made by a sponsored captive insurance company between  
15          or among any of its protected cells without the  
16          consent of the protected cells;
- 17          (6) No sale, exchange, transfer of assets, dividend, or  
18          distribution may be made from a protected cell to a  
19          sponsor or participant without the commissioner's  
20          approval, and in no event shall the approval be given  
21          if the sale, exchange, transfer, dividend, or



1 distribution would result in insolvency or impairment  
2 with respect to a protected cell;

3 (7) Each sponsored captive insurance company shall  
4 annually file with the commissioner, financial reports  
5 as the commissioner shall require, that shall include,  
6 without limitation, accounting statements detailing  
7 the financial experience of each protected cell;

8 (8) Each sponsored captive insurance company shall notify  
9 the commissioner in writing within ten business days  
10 of any protected cell that is insolvent or otherwise  
11 unable to meet its claim or expense obligations; and

12 (9) No participant contract shall take effect without the  
13 commissioner's prior written approval, and the  
14 addition of each new protected cell and withdrawal of  
15 any participant or termination of any existing  
16 protected cell shall constitute a change in business  
17 plan requiring the commissioner's prior written  
18 approval."

19 SECTION 4. Section 431:19-305, Hawaii Revised Statutes, is  
20 amended by amending subsection (d) to read as follows:



1           "(d) A participant shall insure only [~~its own~~] risks  
2 approved by the commissioner through a sponsored captive  
3 insurance company."

4           SECTION 5. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 6. This Act shall take effect upon its approval.

7

INTRODUCED BY: 



**Report Title:**

Insurance; Captive Insurance; Examination Exemption; Insurance Commissioner; Participants; Protected Cells

**Description:**

Requires sponsored captive insurance companies to maintain separate protected cells for separate participant contracts. Except for risk retention captive insurance companies, authorizes captive insurance companies to apply for a certificate of exemption from examination from the Insurance Commissioner, provided certain conditions are met. Requires protected cells established by sponsored captive insurance companies to be approved by the Insurance Commissioner. Authorizes sponsored captive insurance companies to establish and maintain protected cells to insure risks of parties unaffiliated with a participant under certain circumstances. Requires a participant, through a sponsored captive insurance company, to insure only risks approved by the Insurance Commissioner.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

