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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. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I of article 19 to be  
3 appropriately designated and to read as follows:  
4           "§431:19-       Dormant captive insurance companies. (a) A  
5 captive insurance company may apply to the commissioner for a  
6 certificate of dormancy and the commissioner may grant a  
7 certificate of dormancy. The certificate of dormancy shall be  
8 subject to renewal every five years and shall expire if not  
9 renewed. The application for renewal shall be submitted no less  
10 than ninety days prior to the certificate expiration date. The  
11 issuance of a certificate of dormancy shall automatically cause  
12 the certificate of authority of the captive insurance company to  
13 be placed in inactive status.  
14           (b) A dormant captive insurance company that has been  
15 issued a certificate of dormancy shall:  
16           (1) Possess and thereafter maintain unimpaired, paid-in  
17           capital and surplus of no less than \$25,000;



- 1       (2) Prior to March 1 of each year, submit to the  
2       commissioner a report of its financial condition,  
3       verified by oath of two of its executive officers, in  
4       a form as may be prescribed by the commissioner; and
- 5       (3) Pay a certificate of dormancy renewal fee of \$300.
- 6       (c) A dormant captive insurance company that has been  
7       issued a certificate of dormancy shall not:
- 8       (1) Conduct the business of insurance;  
9       (2) Be subject to or liable for the payment of any tax  
10       under section 431:19-116;
- 11       (3) Be required to file audited annual financial  
12       statements and other reports required under section  
13       431:19-107; and
- 14       (4) Be subject to examination under section 431:19-108,  
15       except for non-compliance with this section.
- 16       (d) Before conducting any insurance business, a dormant  
17       captive insurance company shall apply for approval from the  
18       commissioner to surrender its certificate of dormancy and to  
19       reactivate its certificate of authority.
- 20       (e) A certificate of dormancy shall be revoked if a  
21       dormant captive insurance company violates any provisions of



1 subsections (a) through (c) or the conditions under the  
2 definition of dormant captive insurance company.

3 (f) The commissioner may adopt rules as necessary to carry  
4 out this section.

5 (g) As used in this section, unless the context requires  
6 otherwise, "dormant captive insurance company" means a captive  
7 insurance company that as of the filing of its application for a  
8 certificate of dormancy under this section:

9 (1) Has never transacted the business of insurance; or

10 (2) Has ceased transacting the business of insurance and  
11 has no remaining insurance liabilities associated with  
12 any business of insurance transacted by it."

13 SECTION 2. Section 431:2-217, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§431:2-217[+] **Trade name.** (a) Prior to the use or  
16 change of a trade name to sell, solicit, or negotiate insurance  
17 in this State, the licensee shall register the trade name with  
18 the department of commerce and consumer affairs pursuant to part  
19 II of chapter 482.

20 (b) Upon registration of the trade name with the  
21 department of commerce and consumer affairs, the licensee may



1 apply, on a form approved by the commissioner, to add or remove  
2 a trade name on a license. The applicant shall provide proof of  
3 registration of a trade name to the commissioner.

4 (c) If the commissioner finds the application for use or  
5 change of a trade name is substantially identical to another  
6 trade name registered with the department of commerce and  
7 consumer affairs, or substantially identical to a legal name or  
8 trade name of a revoked license, the commissioner shall deny use  
9 of the trade name on a license issued pursuant to this chapter.

10 (d) A licensee shall inform the commissioner, by any means  
11 acceptable to the commissioner, of any change of status of a  
12 trade name registered with the department of commerce and  
13 consumer affairs within thirty days of the change.

14 (e) For purposes of this section, "trade name" includes  
15 the name under which an individual or business entity is  
16 conducting business or doing business."

17 SECTION 3. Section 431:9A-154, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§431:9A-154 Self-study courses.** (a) In addition to the  
20 requirements of courses generally, an approved continuing  
21 education course provider shall also require for self-study



1 courses, including computer-based courses, a written or  
2 computer-based examination at the conclusion of the self-study  
3 course. The examination shall:

- 4 (1) Be composed of multiple choice questions, essay  
5 questions, or both;
- 6 (2) Have at least three different versions of itself, used  
7 on a random or rotating basis;
- 8 (3) If composed of multiple choice questions for a course  
9 approved for up to four credit hours, include at least  
10 twenty-five multiple choice questions;
- 11 (4) If composed of multiple choice questions for a course  
12 approved for more than four credit hours, include at  
13 least fifty multiple choice questions;
- 14 (5) Be graded by the continuing education course provider  
15 or the continuing education course provider's agent;
- 16 (6) If the examination is computer-based, not include  
17 prompts designed to aid the person taking the  
18 examination; and
- 19 (7) If the course is a computer-based course with a  
20 computer-based examination, be designed to prevent the



1            licensee from taking the examination without reviewing  
2            the course materials.

3            (b) To pass a multiple-choice self-study course, the  
4 licensee shall answer at least seventy per cent of the  
5 examination questions correctly.

6            (c) A self-study course examination shall not be  
7 administered by a person who:

- 8            (1) Is related to, or is a business associate of, the  
9            licensee taking the examination; or  
10           (2) Has a financial interest in the success or failure of  
11           a licensee taking the examination.

12           (d) The effective date of a completed examination pursuant  
13 to this section shall be the date the continuing education  
14 course provider receives the completed examination. Upon  
15 receipt of the completed examination, the continuing education  
16 course provider or the continuing education course provider's  
17 agent shall grade the examination and mail the results to the  
18 licensee within fifteen days.

19           (e) The written or computer-based examination and contents  
20 shall be made available by the continuing education course



1 provider, upon request, to the commissioner, and shall not be  
2 required to be submitted for filing."

3 SECTION 4. Section 431:9B-102, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) The commissioner may require a reinsurance  
6 intermediary-manager subject to subsection (b) to[+:

7 ~~(1) File a bond from an insurance company licensed to do~~  
8 ~~business within the State or with an insurance company~~  
9 ~~approved by the commissioner, in an amount equal to~~  
10 ~~\$500,000 or ten per cent of the annual reinsurance~~  
11 ~~premiums managed by the reinsurance~~  
12 ~~intermediary-manager, whichever is greater, except~~  
13 ~~that the bond amount under this paragraph shall not~~  
14 ~~exceed \$10,000,000, for the protection of the~~  
15 ~~reinsurer;~~

16 ~~(2) Maintain an errors and omissions policy with an~~  
17 ~~insurance company licensed to do business within the~~  
18 ~~State or with an insurance company approved by the~~  
19 ~~commissioner, in an amount equal to \$250,000 or~~  
20 ~~twenty-five per cent of the annual reinsurance~~  
21 ~~premiums managed by the reinsurance~~



1           intermediary manager, whichever is greater, except  
2           that the policy limits under this paragraph shall not  
3           exceed \$10,000,000; and

4           (3) Provide] provide any [other] report required by the  
5           commissioner.

6   ~~[At the commissioner's request, the reinsurance~~  
7   ~~intermediary manager shall provide the commissioner with proof~~  
8   ~~of the bond and policy and appropriate documentation to show~~  
9   ~~that the bond and policy continue to be in effect, or that a new~~  
10 ~~bond and new policy have been secured.]"~~

11           SECTION 5. Section 431:9B-106, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "**§431:9B-106 Required contract provisions; reinsurance**  
14 **intermediary-managers.** Transactions between a reinsurance  
15 intermediary-manager and the reinsurer it represents in that  
16 capacity shall only be entered into pursuant to a written  
17 contract, specifying the responsibilities of each party that  
18 shall be approved by the reinsurer's board of directors. The  
19 contract, at a minimum, shall provide that:

20           (1) The reinsurer may terminate the contract for cause  
21           upon written notice to the reinsurance intermediary-





1 manager. The reinsurer may immediately suspend the  
2 authority of the reinsurance intermediary-manager to  
3 assume or cede business during the pendency of any  
4 dispute regarding the cause for termination;

5 (2) The reinsurance intermediary-manager shall render  
6 accounts to the reinsurer accurately detailing all  
7 material transactions, including information necessary  
8 to support all commissions, charges, and other fees  
9 received by or owing to the reinsurance intermediary-  
10 manager, and remit all funds due under the contract to  
11 the reinsurer on not less than a monthly basis;

12 (3) All funds collected for the reinsurer's account shall  
13 be held by the reinsurance intermediary-manager in a  
14 fiduciary capacity and deposited in a bank that is a  
15 qualified United States financial institution. The  
16 reinsurance intermediary-manager may retain no more  
17 than three months estimated claims payments and  
18 allocated loss adjustment expenses. The reinsurance  
19 intermediary-manager shall maintain a separate bank  
20 account for each reinsurer that it represents;



- 1           (4) For at least ten years after expiration of each  
2           contract of reinsurance transacted by the reinsurance  
3           intermediary-manager, the reinsurance intermediary-  
4           manager shall keep a complete record for each  
5           transaction showing:
- 6           (A) The type of contract, limits, underwriting  
7           restrictions, classes or risks, and territory;
  - 8           (B) Period of coverage, including effective and  
9           expiration dates, cancellation provisions and  
10          notice required for cancellation, and disposition  
11          of outstanding reserves on covered risks;
  - 12          (C) Reporting and settlement requirements of  
13          balances;
  - 14          (D) Rate used to compute the reinsurance premium;
  - 15          (E) Names and addresses of reinsurers;
  - 16          (F) Rates of all reinsurance commissions, including  
17          the commissions on any retrocessions handled by  
18          the reinsurance intermediary-manager;
  - 19          (G) Related correspondence and memoranda;
  - 20          (H) Proof of placement;



- 1 (I) Details regarding retrocessions handled by the
- 2 reinsurance intermediary-manager, as permitted by
- 3 section [~~431:9B-108(d),~~] 431:9B-108(e), including
- 4 the identity of retrocessionaires and percentage
- 5 of each contract assumed or ceded;
- 6 (J) Financial records, including but not limited to,
- 7 premium and loss accounts; and
- 8 (K) When the reinsurance intermediary-manager places
- 9 a reinsurance contract on behalf of a ceding
- 10 insurer:
- 11 (i) Directly from any assuming reinsurer,
- 12 written evidence that the assuming reinsurer
- 13 has agreed to assume the risk; or
- 14 (ii) If placed through a representative of the
- 15 assuming reinsurer, other than an employee,
- 16 written evidence that the reinsurer has
- 17 delegated binding authority to the
- 18 representative;
- 19 (5) The reinsurer shall have access and the right to copy
- 20 all accounts and records maintained by the reinsurance



- 1 intermediary-manager related to its business in a form  
2 usable by the reinsurer;
- 3 (6) The contract shall not be assigned in whole or in part  
4 by the reinsurance intermediary-manager;
- 5 (7) The reinsurance intermediary-manager shall comply with  
6 the written underwriting and rating standards  
7 established by the insurer for the acceptance,  
8 rejection, or cession of all risks;
- 9 (8) The contract sets forth the rates, terms, and purposes  
10 of commissions, charges, and other fees that the  
11 reinsurance intermediary-manager may levy against the  
12 reinsurer;
- 13 (9) If the contract permits the reinsurance intermediary-  
14 manager to settle claims on behalf of the reinsurer:
- 15 (A) All claims shall be reported to the reinsurer in  
16 a timely manner;
- 17 (B) A copy of the claim file shall be sent to the  
18 reinsurer at its request or as soon as it becomes  
19 known that the claim:



- 1 (i) Has the potential to exceed the lesser of an
- 2 amount determined by the commissioner or the
- 3 limit set by the reinsurer;
- 4 (ii) Involves a coverage dispute;
- 5 (iii) May exceed the reinsurance intermediary-
- 6 manager's claims settlement authority;
- 7 (iv) Is open for more than six months; or
- 8 (v) Is closed by payment of the lesser of an
- 9 amount set by the commissioner or an amount
- 10 set by the reinsurer;
- 11 (C) All claim files shall be the joint property of
- 12 the reinsurer and reinsurance intermediary-
- 13 manager. However, upon an order of liquidation
- 14 of the reinsurer, the files shall become the sole
- 15 property of the reinsurer or its estate; the
- 16 reinsurance intermediary-manager shall have
- 17 reasonable access to and the right to copy the
- 18 files on a timely basis; and
- 19 (D) Any settlement authority granted to the
- 20 reinsurance intermediary-manager may be
- 21 terminated for cause upon the reinsurer's written



1 notice to the reinsurance intermediary-manager or  
2 upon the termination of the contract. The  
3 reinsurer may suspend the settlement authority  
4 during the pendency of the dispute regarding the  
5 cause of termination;

6 (10) If the contract provides for a sharing of interim  
7 profits by the reinsurance intermediary-manager,  
8 interim profits shall not be paid until one year after  
9 the end of each underwriting period for property  
10 business and five years after the end of each  
11 underwriting period for casualty business (or a later  
12 period set by the commissioner for specified lines of  
13 insurance) and not until the adequacy of reserves on  
14 remaining claims has been verified pursuant to section  
15 431:9B-108(c);

16 (11) The reinsurance intermediary-manager shall annually  
17 provide the reinsurer with a statement of its  
18 financial condition prepared by an independent  
19 certified accountant;

20 (12) The reinsurer shall, at a minimum, semiannually  
21 conduct an on-site review of the underwriting and



1           claims processing operations of the reinsurance  
2           intermediary-manager;  
3       (13) The reinsurance intermediary-manager shall disclose to  
4           the reinsurer any relationship it has with any insurer  
5           prior to ceding or assuming any business with the  
6           insurer pursuant to the contract; and  
7       (14) Within the scope of its actual or apparent authority  
8           the acts of the reinsurance intermediary-manager shall  
9           be deemed to be the acts of the reinsurer on whose  
10          behalf it is acting."

11       SECTION 6. Section 431:9B-108, Hawaii Revised Statutes, is  
12       amended to read as follows:

13           "~~§~~431:9B-108~~§~~ **Duties of reinsurers utilizing the**  
14 **services of a reinsurance intermediary-manager.** (a) A  
15 reinsurer shall not engage the services of any person, firm,  
16 association, or corporation to act as a reinsurance  
17 intermediary-manager on its behalf unless the person, firm,  
18 association, or corporation is licensed as required by section  
19 431:9B-102 (b) .

20           (b) The reinsurer shall annually obtain a copy of  
21 statements of the financial condition of each reinsurance



1 intermediary-manager [~~which~~] that the reinsurer has engaged  
2 prepared by an independent certified accountant in a form  
3 acceptable to the commissioner.

4 (c) If a reinsurance intermediary-manager establishes loss  
5 reserves, the reinsurer shall annually obtain the opinion of an  
6 actuary attesting to the adequacy of loss reserves established  
7 for losses incurred and outstanding on business produced by the  
8 reinsurance intermediary-manager. This opinion shall be in  
9 addition to any other required loss reserve certification.

10 (d) The reinsurer shall require the reinsurance  
11 intermediary-manager to:

12 (1) File a bond for the protection of the reinsurer from  
13 an insurance company licensed to do business within  
14 the State or with an insurance company approved by the  
15 commissioner, in an amount equal to \$500,000 or ten  
16 per cent of the annual reinsurance premiums managed by  
17 the reinsurance intermediary-manager, whichever is  
18 greater, except that the bond amount under this  
19 paragraph shall not exceed \$10,000,000; and

20 (2) Maintain an errors and omissions policy with an  
21 insurance company licensed to do business within the





1           State or with an insurance company approved by the  
2           commissioner, in an amount equal to \$250,000 or  
3           twenty-five per cent of the annual reinsurance  
4           premiums managed by the reinsurance  
5           intermediary-manager, whichever is greater, except  
6           that the policy limits under this paragraph shall not  
7           exceed \$10,000,000.

8   At the commissioner's request, the reinsurance  
9   intermediary-manager shall provide the commissioner with proof  
10 of the required bond and policy, and appropriate documentation  
11 to show that the bond and policy continue to be in effect, or  
12 that a new bond and new policy have been secured.

13           ~~[(d)]~~ (e) Binding authority for all retrocessional  
14 contracts or participation in reinsurance syndicates shall rest  
15 with an officer of the reinsurer who shall not be affiliated  
16 with the reinsurance intermediary-manager.

17           ~~[(e)]~~ (f) Within thirty days of termination of a contract  
18 with a reinsurance intermediary-manager, the reinsurer shall  
19 provide written notification of the termination to the  
20 commissioner.



1           ~~(f)~~ (g) A reinsurer shall not appoint to its board of  
2 directors any officer, director, employee, controlling  
3 shareholder, or subagent of its reinsurance intermediary-  
4 manager; provided that this subsection shall not apply to  
5 relationships governed by article 11."

6           SECTION 7. Section 431:9J-103, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "**§431:9J-103 Surety bond required.** (a) Before the  
9 issuance of the administrator license, the administrator shall  
10 file with the commissioner, and maintain in force while so  
11 licensed, a surety bond of at least \$100,000~~(7)~~ during the  
12 administrator's first licensing biennial, and at least \$300,000  
13 for every licensing renewal thereafter, in the form and penal  
14 sum acceptable to the commissioner, and shall provide that the  
15 bond may not be canceled or otherwise terminated until two years  
16 have elapsed from the last day the applicant was an  
17 administrator, unless the commissioner has given prior written  
18 consent. The surety bond shall be undertaken and may be  
19 enforced in the name of "Commissioner of Insurance, State of  
20 Hawaii".



1 (b) For each licensing renewal, [~~subsequent annual report~~  
2 ~~filing,~~] the surety bond [~~amount~~] shall be [~~at least \$100,000~~  
3 ~~and~~] filed in accordance with section 431:9J-112."

4 SECTION 8. SECTION 431:9J-112, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§431:9J-112 Annual report required[-]; audited financial**  
7 **statement required.** (a) An administrator shall file an annual  
8 report for the preceding calendar year with the commissioner on  
9 or before March 1 of each year, in a form and manner prescribed  
10 by the commissioner.

11 (b) The annual report shall include:

12 (1) The names and addresses of all insurers with which the  
13 administrator had an agreement during the preceding  
14 calendar year; and

15 (2) A renewal certificate for the surety bond required in  
16 section 431:9J-103 and an updated surety bond form, if  
17 needed[~~;~~ and

18 ~~(3) An audited financial statement prepared by an~~  
19 ~~independent certified public accountant].~~

20 (c) An administrator shall file with the commissioner an  
21 audited financial statement for the preceding calendar year by



1 an independent certified public accountant on or before June 1  
2 of each year.

3 (d) An audited financial statement and annual report  
4 prepared on a consolidated basis shall include a columnar  
5 consolidating or combining worksheet filed with the report and  
6 shall include the following:

7 (1) Worksheet showing the amounts shown on the  
8 consolidated audited financial report;

9 (2) Amounts for each entity that shall be stated  
10 separately; and

11 (3) Explanations of consolidating and eliminating entries.

12 (e) The annual report shall be in the form, and contain  
13 such matters, as the commissioner prescribes and shall be  
14 verified by at least two officers of the administrator."

15 SECTION 9. Section 431:19-101, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By amending the definition of "controlled unaffiliated  
18 business" to read:

19 ""Controlled unaffiliated business" means, in the case of a  
20 pure captive insurance company, any person[+], or in the case of  
21 a sponsored captive insurance company, any participant:



- 1           (1) That is not in the corporate system of a parent or
- 2                     sponsor, and its affiliated entities;
- 3           (2) That has an existing contractual relationship with a
- 4                     parent or sponsor, or one of its affiliated entities;
- 5                     and
- 6           (3) Whose risks are managed by the pure captive insurance
- 7                     company[-] or the sponsored captive insurance
- 8                     company."

9           2. By amending the definition of "participant" to read:

10            ""Participant" means an entity that meets the requirements

11 of section 431:19-305, and any affiliated entities or controlled

12 unaffiliated business entities thereof that are insured by a

13 sponsored captive insurance company where the losses of the

14 participant may be limited through a participant contract to the

15 participant's pro rata share of the assets of one or more

16 protected cells identified in the participant contract."

17           SECTION 10. Statutory material to be repealed is bracketed

18 and stricken. New statutory material is underscored.



1 SECTION 11. This Act shall take effect on July 1, 3000;  
2 provided that sections 5 and 6 shall take effect on July 1,  
3 2025.



**Report Title:**

Insurance Code; Captive Insurers; Producers; Trade Name; Third Party Administrators; Surety Bond; Reinsurance Intermediary-Managers; Reinsurers

**Description:**

Amends various provisions of the Insurance Code to update and improve existing provisions. Defines "dormant captive insurance company" and sets out a procedure to apply for the certificate of dormancy. Adds the term "doing business as" to "trade name" statutory references. Clarifies continuing education provider filing requirements. Clarifies reinsurance intermediary-manager filing requirements. Amends the surety bond threshold requirement for third party administrators and clarifies the audited financial statements requirements. Amends the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies. Effective 7/1/3000. (HD1)

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

