
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 not
10 less than ninety days before the certificate expiration date.
11 The issuance of a certificate of dormancy shall automatically
12 cause the certificate of authority of the captive insurance
13 company to 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 not less than \$25,000;



1 (2) Before 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.



1 (e) A certificate of dormancy shall be revoked if a
2 dormant captive insurance company violates any provisions of
3 subsections (a) through (c).

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

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

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

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

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

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



1 (b) Upon registration of the trade name with the
2 department of commerce and consumer affairs, the licensee may
3 apply, on a form approved by the commissioner, to add or remove
4 a trade name on a license. The applicant shall provide proof of
5 registration of a trade name to the commissioner.

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

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

16 (e) For purposes of this article, "trade name" shall
17 include the name under which an individual or business entity is
18 conducting business or doing business as."

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



1 "§431:9A-154 Self-study courses. (a) In addition to the
2 requirements of courses generally, an approved continuing
3 education course provider shall also require for self-study
4 courses, including computer-based courses, a written or
5 computer-based examination at the conclusion of the self-study
6 course. The examination shall:

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



1 (7) If the course is a computer-based course with a
2 computer-based examination, be designed to prevent the
3 licensee from taking the examination without reviewing
4 the course materials.

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

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

10 (1) Is related to, or is a business associate of, the
11 licensee taking the examination; or

12 (2) Has a financial interest in the success or failure of
13 a licensee taking the examination.

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



1 (e) The written or computer-based examination and contents
2 shall be made available by the continuing education course
3 provider, upon request, to the commissioner, and shall not be
4 required to be submitted for filing."

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

7 "(c) The commissioner may require a reinsurance
8 intermediary-manager subject to subsection (b) to[-

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

18 ~~(2) Maintain an errors and omissions policy with an~~
19 ~~insurance company licensed to do business within the~~
20 ~~State or with an insurance company approved by the~~
21 ~~commissioner, in an amount equal to \$250,000 or~~



1 ~~twenty five per cent of the annual reinsurance~~
2 ~~premiums managed by the reinsurance~~
3 ~~intermediary manager, whichever is greater, except~~
4 ~~that the policy limits under this paragraph shall not~~
5 ~~exceed \$10,000,000; and~~
6 (3) Provide] provide any [other] report required by the
7 commissioner.

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

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

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



- 1 (1) The reinsurer may terminate the contract for cause
2 upon written notice to the reinsurance intermediary-
3 manager. The reinsurer may immediately suspend the
4 authority of the reinsurance intermediary-manager to
5 assume or cede business during the pendency of any
6 dispute regarding the cause for termination;
- 7 (2) The reinsurance intermediary-manager shall render
8 accounts to the reinsurer accurately detailing all
9 material transactions, including information necessary
10 to support all commissions, charges, and other fees
11 received by or owing to the reinsurance intermediary-
12 manager, and remit all funds due under the contract to
13 the reinsurer on not less than a monthly basis;
- 14 (3) All funds collected for the reinsurer's account shall
15 be held by the reinsurance intermediary-manager in a
16 fiduciary capacity and deposited in a bank that is a
17 qualified United States financial institution. The
18 reinsurance intermediary-manager may retain no more
19 than three months estimated claims payments and
20 allocated loss adjustment expenses. The reinsurance



1 intermediary-manager shall maintain a separate bank
2 account for each reinsurer that it represents;

3 (4) For at least ten years after expiration of each
4 contract of reinsurance transacted by the reinsurance
5 intermediary-manager, the reinsurance intermediary-
6 manager shall keep a complete record for each
7 transaction showing:

8 (A) The type of contract, limits, underwriting
9 restrictions, classes or risks, and territory;

10 (B) Period of coverage, including effective and
11 expiration dates, cancellation provisions and
12 notice required for cancellation, and disposition
13 of outstanding reserves on covered risks;

14 (C) Reporting and settlement requirements of
15 balances;

16 (D) Rate used to compute the reinsurance premium;

17 (E) Names and addresses of reinsurers;

18 (F) Rates of all reinsurance commissions, including
19 the commissions on any retrocessions handled by
20 the reinsurance intermediary-manager;

21 (G) Related correspondence and memoranda;



- 1 (H) Proof of placement;
- 2 (I) Details regarding retrocessions handled by the
3 reinsurance intermediary-manager, as permitted by
4 section [~~431:9B-108(d)~~], 431:9B-108(e), including
5 the identity of retrocessionaires and percentage
6 of each contract assumed or ceded;
- 7 (J) Financial records, including but not limited to,
8 premium and loss accounts; and
- 9 (K) When the reinsurance intermediary-manager places
10 a reinsurance contract on behalf of a ceding
11 insurer:
- 12 (i) Directly from any assuming reinsurer,
13 written evidence that the assuming reinsurer
14 has agreed to assume the risk; or
- 15 (ii) If placed through a representative of the
16 assuming reinsurer, other than an employee,
17 written evidence that the reinsurer has
18 delegated binding authority to the
19 representative;
- 20 (5) The reinsurer shall have access and the right to copy
21 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 the reinsurer has engaged prepared by
2 an independent certified accountant in a form acceptable to the
3 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 bond and policy required, 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]~~ At the first licensing renewal, and each
2 subsequent ~~[annual report filing,]~~ year, the surety bond amount
3 shall be at least ~~[\$100,000]~~ \$300,000 and filed in accordance
4 with section 431:9J-112."

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

7 "**§431:9J-112 Annual report required.** (a) An
8 administrator shall file an annual report for the preceding
9 calendar year with the commissioner on or before March 1 of each
10 year, in a form and manner prescribed 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 or worksheets showing the amounts shown on
8 the 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 the 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 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.

19 SECTION 11. This Act shall take effect upon its approval;
20 provided that section 6 shall take effect on July 1, 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. (SD1)

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