

A Bill for an Act Relating to Insurance.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CAPTIVE INSURANCE COMPANIES**

§ -1 **Definitions.** As used in this chapter:

“Affiliated company” means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management.

“Association” means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, that has been in continuous existence for at least one year, the member organizations of which collectively:

- (1) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or
- (2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

“Association captive insurance company” means any company that insures risks of the member organizations of the association, and their affiliated companies.

“Captive insurance company” means any pure captive insurance company or association captive insurance company formed or licensed under this chapter.

“Commissioner” means the insurance commissioner.

“Member organization” means any individual, corporation, partnership, or association that belongs to an association.

“Parent” means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty per cent of the outstanding voting securities of a pure captive insurance company.

“Pure captive insurance company” means any company that insures risks of its parent and affiliated companies.

§ -2 **Licensing; authority.** (a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commissioner for a license to do any and all insurance set forth in subsection (g); provided that:

- (1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies;

- (2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;
 - (3) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof; and
 - (4) No captive insurance company may accept or cede reinsurance except as provided in section -11.
- (b) No captive insurance company shall do any insurance business in this State unless:
- (1) It first obtains from the commissioner a license authorizing it to do insurance business in this State;
 - (2) Its board of directors holds at least one meeting each year in this State;
 - (3) It maintains its principal place of business in this State; and
 - (4) It appoints a resident registered broker or agent to accept service of process and to otherwise act on its behalf in this State. Whenever the registered broker or agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the director of commerce and consumer affairs shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.
- (c) Before receiving a license, a captive insurance company shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner.
- (d) In addition to the information required by subsection (c), each applicant captive insurance company shall file with the commissioner evidence of the following:
- (1) The amount and liquidity of its assets relative to the risks to be assumed;
 - (2) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (3) The overall soundness of its plan of operation;
 - (4) The adequacy of the loss prevention programs of its parent or member organizations as applicable; and
 - (5) Any other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.
- (e) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$1,000 for examining, investigating, and processing its application for license. In addition, it shall pay a license fee for the year of registration and a renewal fee for each year thereafter of \$300.
- (f) If the commissioner is satisfied that the documents and statements filed by the captive insurance company complies with this chapter, the commissioner may grant a license authorizing it to do insurance business in this State until April 1 thereafter, which license may be renewed.
- (g) A captive insurance company may engage in the business of any of the following types of insurance:
- (1) All casualty insurance;
 - (2) Marine and transportation insurance;
 - (3) Marine protection and indemnity insurance, which includes insurance against, or against legal liability of the insured for loss,

damage, or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death, or for loss of or damage to the property of another person;

- (4) Wet marine and transportation insurance, which is that part of marine and transportation insurance that includes only:
 - (A) Insurance upon vessels, crafts, hulls, and of interests therein or with relation thereto;
 - (B) Insurance of marine builder's risks, marine war risks and contracts, or marine protection and indemnity insurance;
 - (C) Insurance of freights and disbursements pertaining to a subject of insurance; and
 - (D) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment, or reshipment incident thereto;
- (5) Property insurance;
- (6) Surety insurance; and
- (7) Title insurance.

§ -3 **Names of companies.** No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State.

§ -4 **Minimum capital; letter of credit, security.** (a) No pure captive insurance company or association captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner. The amount for pure captive insurance companies may differ from the amount for association captive insurance companies.

(b) The capital may be in the form of cash or in the form of an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System or other security approved by the commissioner.

§ -5 **Minimum surplus; letter of credit, security.** (a) No captive insurance company shall be issued a license unless it shall possess and thereafter maintain a free surplus of an amount established and deemed appropriate by the commissioner. The amount for pure captive insurance companies may differ from the amount for association captive insurance companies. The amount for association captive insurance companies incorporated as stock insurers may differ from the amount for association captive insurers incorporated as mutual insurers.

(b) The surplus may be in the form of cash or in the form of an irrevocable letter of credit issued by a bank chartered by this State or member bank of the Federal Reserve System or other security approved by the commissioner.

§ -6 **Formation of captive insurance companies in this State.** (a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company may be incorporated:

- (1) As a stock insurer with its capital divided into shares and held by the stockholders; or
- (2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have not less than three incorporators of whom not less than two shall be residents of this State.

(d) Before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:

- (1) The character, reputation, financial standing, and purposes of the incorporators;
- (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
- (3) Such other aspects as the commissioner deems advisable.

(e) The articles of incorporation, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this State shall be a resident of this State.

(h) Captive insurance companies formed under this chapter shall have the privileges and be subject to the general corporation laws as well as this chapter. In the event of conflict between the general corporation laws and this chapter, the latter shall control.

§ -7 **Financial statements and other reports.** (a) Each captive insurance company shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the company's fiscal year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for:

- (1) Known claims and expenses associated therewith;
- (2) Claims incurred but not reported and expenses associated therewith;
- (3) Unearned premiums; and
- (4) Bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(b) The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, summary loss reports and quarterly financial statements.

§ -8 **Examinations and investigations.** At least once a year, and whenever the commissioner determines it to be prudent, the commissioner, or a designated agent, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this chapter. The commissioner, upon application, may enlarge the one-year period to three years; provided the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner. The expenses and charges of the examination shall be paid to the State by the company or companies examined and the director of finance shall issue warrants for the proper charges incurred in all examinations.

§ -9 **Grounds and procedures for suspension or revocation of license.**
(a) The license of a captive insurance company to do business in this State may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section -4 or -5;
- (3) Refusal or failure to submit an annual report, as required by section -7 or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with the provisions of its own charter or bylaws;
- (5) Failure to submit to examination or any legal obligation relative thereto, as required by section -8;
- (6) Refusal or failure to pay the cost of examination as required by section -8;
- (7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (8) Failure to maintain actuarially appropriate loss reserves as determined by the commissioner; provided that the commissioner shall provide at least one warning to the captive insurance company to correct the problem prior to suspending or revoking the license; and
- (9) Failure otherwise to comply with the laws of this State.

(b) If the commissioner, upon examination, hearing, or other evidence, finds that any captive insurance company has committed any of the acts specified in subsection (a), the commissioner may suspend or revoke the license if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other law.

§ -10 **Legal investments.** Each pure captive insurance company shall be subject to the restrictions on allowable investments provided under sections 431-281 to 431-312.

§ -11 **Reinsurance.** (a) Any captive insurance company may provide reinsurance, as provided in section 431-109, on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for reserves on risks ceded to a reinsurer; provided that no captive insurance company shall reinsure a risk or part thereof with an insurer unless the insurer has been approved by the commissioner and, prior to approval, has:

- (1) Filed with the commissioner a power of attorney executed by reinsurer proposing to accept reinsurance, in a form approved by the commissioner, authorizing the director of commerce and consumer affairs to accept service of process on behalf of a reinsurer. The power of attorney shall be and remain effective as to all cases of reinsurance by a reinsurer;
- (2) Paid to the commissioner an initial fee of \$100 and thereafter an annual fee of \$100 payable before April 1 of each year;
- (3) Filed a certified copy of its charter and bylaws with the commissioner; and
- (4) Filed a statement under oath of its president and secretary showing its financial condition and any other statements and materials required by the commissioner.

§ -12 **Rating organizations; memberships.** No captive insurance company shall be required to join a rating organization.

§ -13 **Exemption from compulsory associations.** No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any captive insurance company, or its insured, or its parent or any affiliated company, or any member organization of its association, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

§ -14 **Rules.** The commissioner may adopt rules pursuant to chapter 91 to implement this chapter.

§ -15 **Laws applicable.** No insurance laws of this State, other than those contained in this chapter, or contained in specific references contained in this chapter, shall apply to captive insurance companies.”

SECTION 2. The insurance commissioner shall submit to the legislature proposed legislation to amend this Act, including proposed legislation concerning the merger, liquidation, or rehabilitation of insolvent captive insurance companies, if deemed necessary to provide further protection for persons insured by captive insurance companies and persons to whom the insureds may be liable. The proposed legislation shall be submitted prior to the Regular Session of 1987.

SECTION 3. This Act shall take effect upon its approval; except that section 1 shall take effect on July 1, 1987.

(Approved May 29, 1986.)