

ACT 187

H.B. NO. 2035

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Chapter 431J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431J- Taxation. (a) Each pure captive insurance company licensed to

do business in this State shall pay to the director of finance through the commissioner a tax of .25 per cent on gross premiums received from all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(b) Each association captive insurance company licensed to do business in this State and each risk retention captive insurance company chartered in this State shall pay a tax of one per cent on gross premiums received from all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(c) The tax imposed by this section when paid shall be in settlement of and in lieu of all demands for taxes of every character imposed by the laws of this State, the ordinances or other laws, rules, or regulations of any county or any city and county of this State, except taxes on real property, and taxes on the purchase, use or ownership of tangible personal property."

SECTION 2. Act 347, Session Laws of Hawaii 1987, Section 2, is amended by adding a new section to chapter 431:19 to be appropriately designated and to read as follows:

"§431:19- Taxation. (a) Each pure captive insurance company licensed to do business in this State shall pay to the director of finance through the commissioner a tax of .25 per cent on gross premiums received from all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(b) Each association captive insurance company licensed to do business in this State and each risk retention captive insurance company chartered in this State shall pay a tax of one per cent on gross premiums received from all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(c) The tax imposed by this section when paid shall be in settlement of and in lieu of all demands for taxes of every character imposed by the laws of this State, the ordinances or other laws, rules, or regulations of any county or any city and county of this State, except taxes on real property, and taxes on the purchase, use or ownership of tangible personal property."

SECTION 3. 431J-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Risk retention captive insurance company” means a captive insurance company which is formed as a “risk retention group” as defined in Chapter 431K.”

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

"[§431J-2]] Licensing; authority. (a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commis-

sioner 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 risk retention captive insurance company may insure any risks other than those of the insureds that comprise the risk retention group;
 - (4) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof; and
 - [(4)] (5) No captive insurance company may accept or cede reinsurance except as provided in section 431J-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] commissioner 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 non-refundable 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) The commissioner shall establish a list of advisors to assist with the review of captive applications. The commissioner shall appoint an advisor from the list to review a specific application. The advisor's fee, to be paid by the captive applicant, shall not exceed \$3,500 for a pure captive application and \$7,500 for an association captive or a risk retention captive application. This provision shall be repealed on July 1, 1990.

(g) 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)] (h) 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, transit¹ 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[.]; and
- (8) Credit life insurance and credit disability insurance."

SECTION 5. Section 431J-7, Hawaii Revised Statutes, is amended to read as follows:

“[[§431J-7]] Financial statements and other reports. (a) Each captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and 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]

(b) In addition, each association captive and risk retention captive shall file an annual statement in accordance with statutory accounting practices, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, in general form and context as approved by the National Association of Insurance Commissioners, verified by oaths of at least two of the insurer's principal officers.

(c) The statements required to be filed in subsections (a) and (b) 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.] statements. 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)] (d) 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."

SECTION 6. Section 431J-10, Hawaii Revised Statutes, is amended to read as follows:

"[§431J-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[.] except that pure captive insurance companies may obtain approval from the commissioner for investments that are not specified in the insurance code."

SECTION 7. Chapter [§431J-11]¹ Hawaii Revised Statutes, is amended to read as follows:

"[§431J-11] Reinsurance. (a) Any captive insurance company may provide reinsurance[, as provided in section 431-109,] on risks ceded by any other insurer[.] only upon approval of the reinsurance agreement by the commissioner.

(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.] cede risks without the approval of the commissioner."

SECTION 8. Act 347, Session Laws of Hawaii 1987, Section 2 is amended by adding a new definition to section 431:19-101 be appropriately inserted and to read as follows:

"“Risk retention captive insurance company” means a captive insurance company which is formed as a “risk retention group” as defined in Chapter 431K.”

SECTION 9. Act 347, Session Laws of Hawaii 1987, Section 2, is amended to read as follows:

“§431:19-102 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);] [(h);] 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 risk retention captive insurance company may insure any risks other than those of the insureds that comprise the risk retention group;
- (4) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof; and
- [(4)] (5) No captive insurance company may accept or cede reinsurance except as provided in section 431:19-111.

(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] commissioner 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 non-refundable 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) The commissioner shall establish a list of advisors to assist with the review of captive applications. The commissioner shall appoint one advisor from the list to review a specific application. The advisor's fee, to be paid by the captive

applicant, shall not exceed \$3,500 for a pure captive application and \$7,500 for an association captive or a risk retention captive application. This provision shall be repealed on July 1, 1990.

(g) If the commissioner is satisfied that the documents and statements filed by the captive insurance company [complies] comply with this article, 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)] (h) 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, 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, with 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[.]; and
- (8) Credit life insurance and credit disability insurance relating to specific loans or other credit transactions between its parent or affiliated companies and any of their directors, officers, and employees."

SECTION 10. Act 347, Session Laws of Hawaii 1987, Section 2, is amended by amending section 431:19-107 to read as follows:

"§431:19-107 Financial statements and other reports. (a) Each captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and 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]

(b) In addition, each association captive and risk retention captive shall file an annual statement in accordance with statutory accounting practices, which shall be a true statement of its financial condition, transactions, and affairs as of the

immediately preceding December 31, in general form and context as approved by the National Association of Insurance Commissioners, verified by oaths of at least two of the insurer's principal officers.

(c) The statements required to be filed in subsections (a) and (b) 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] statements. 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)] (d) 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."

SECTION 11. Act 347, Session Laws of Hawaii 1987, Section 2, is amended by amending section 431:19-110 to read as follows:

"§431:19-110 Legal investments. Each [pure] captive insurance company shall be subject to the restrictions on allowable investments provided under [article 6.] sections 431:6-101 to 431:6-501, except that pure captive insurance companies may obtain approval from the commissioner for investments that are not specified in the insurance code.¹

SECTION 12. Act 347, Session Laws of Hawaii 1987, Section 2, is amended by amending 431:19-111 to read as follows:

"§431:19-111 Reinsurance. (a) Any captive insurance company may provide reinsurance on risks ceded by any other insurer[.] only upon approval of the reinsurance agreement by the commissioner.

(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.] cede risks without the approval of the commissioner."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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SECTION 14. This Act shall take effect upon its approval.

(Approved June 7, 1988.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.