

ACT 108

H.B. NO. 3441

A Bill for an Act Relating to Nonprofit Corporations.

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

SECTION 1. Section 415B-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§415B-4]** **Purposes.** A corporation may be organized under this chapter for any lawful purpose or purposes; provided that labor unions, cooperative organizations other than limited equity housing cooperatives, and organizations subject to any of the provisions of the insurance laws of this State, other than a pure captive insurance company with a nonprofit parent company, shall not be organized under this chapter.”

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

“**§431:19-101 Definitions.** As used in this article:

[(1)] “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.

[(2)] “Association” means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, the [[member]]

organizations of which collectively:

[(A)] (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

[(B)] (2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

[(3)] "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

[(4)] "Captive insurance company" means any pure captive insurance company or association captive insurance company formed or licensed under this article.

[(5)] "Member organization" means any individual, corporation, partnership, or association that belongs to an association.

[(6)] "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.

[(7)] "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

"Pure nonprofit captive insurance company" means a pure captive insurance company formed without capital stock as a nonprofit corporation under Chapter 415B, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated companies.

[(8)]<sup>1</sup> "Risk retention captive insurance company" means a captive insurance company which is formed as a "risk retention group" as defined in chapter 431K."

SECTION 3. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

**"§431:19-106 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 organization 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 article,<sup>2</sup> except for pure nonprofit captive insurance companies, shall have the privileges and be subject to the general corporation law as well as this article. In the event of conflict between the general corporation law and this article, the latter shall control.

(i) Pure nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law as well as this article. In the event of conflict between the nonprofit corporation law and this article, the latter shall control."

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 27, 1992.)

**Notes**

1. So in original.

2. Comma should be underscored.