

ACT 302

S.B. NO. 1262

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

“§431:19- Classes of captive insurance. Each captive insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

- (1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;
- (2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;
- (3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company; and
- (4) A class 4 company shall be a leased capital facility formed under this article.”

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

1. By adding a new definition to be appropriately inserted and to read:
““Leased capital facility” means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its members, but whose owner or owners may, subject to approval of the commissioner, be persons or entities other than the members.”

2. By amending the definition of “captive insurance company” to read as follows:

““Captive insurance company” means any pure captive insurance company, risk retention captive insurance company, [or] association captive insurance company, or leased capital facility formed or licensed under this article.”

SECTION 3. Section 431:19-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-104 Minimum capital; letter of credit, security. (a) [No pure captive insurance company, association captive insurance company, or risk retention captive insurance company] Subject to subsection (c), no 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 and risk retention captive insurance companies.]

(b) The capital may be in the form of cash, 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.

(c) Minimum capital or surplus requirements for captive insurance companies shall be as follows:

(1) Class 1: \$100,000;

(2) Class 2: \$250,000;

(3) Class 3: \$500,000 for risk retention captive insurance companies, and \$750,000 for association captive insurance companies; and

(4) Class 4: \$1,000,000.

The foregoing requirements do not limit the commissioner’s discretionary authority to require a captive insurance company to possess and maintain a greater amount of capital or surplus in order to preserve the solvency of the company, nor do such requirements limit or diminish any other applicable provision of law that may require a captive insurance company to maintain a particular level of capital, surplus, assets, or investments.”

SECTION 4. Section 431:19-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [No captive insurance company] Subject to section 431:19-104(c), no captive insurance company formed other than as a stock insurer 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 and risk retention captive insurance companies. The amount for association captive insurance companies and risk retention captive insurance companies incorporated as stock insurers may differ from the amount for association

captive insurance companies or risk retention captive insurance companies formed as mutual or reciprocal insurers.]”

SECTION 5. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) [An association captive insurance company, including a risk retention] A captive insurance company, which is other than a pure captive insurance company, may be:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
- (2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association; or
- (3) Organized as a reciprocal insurer, for other than credit life and credit disability insurance and group term life insurance, without capital stock, whose affairs shall be coordinated through an attorney-in-fact as provided in the power of attorney or other agreement given to the attorney-in-fact by the subscribers.

(c) A captive insurance company other than one that is formed as a reciprocal insurer shall have [not less] no fewer than three incorporators of whom [not less] no fewer than two shall be residents of this State.”

SECTION 6. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Each [association captive and risk retention] captive insurance company that is not a pure captive insurance company shall annually file with the commissioner the following:

- (1) Annual statement and audit:
 - (A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners’ annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive’s principal officers;
 - (B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive;
 - (C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners’ annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners’ practices and procedures manuals. Each risk retention group shall also comply with section 431:3-302; and
- (2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402[.]; provided that class 3 association captive insurance companies and class 4 captive

insurance companies shall not be required to file their risk-based capital reports with the National Association of Insurance Commissioners.

(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 statements, except that the actuarial opinion for [association captive insurance companies and risk retention] captive insurance companies other than pure captive insurance companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year. 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.”

SECTION 7. Section 431:19-115,¹ Hawaii Revised Statutes, is amended to read as follows:

“(a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to [pure captive insurance companies, association captive insurance companies, and risk retention] captive insurance companies[,] formed under this article.

In addition to this article, article 1, article 2, part III of article 3, article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter shall apply to [association captive insurance companies and risk retention] captive insurance companies[,] other than pure captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies licensed under this article.

(b) The application of the foregoing provisions shall not diminish the commissioner’s authority for exemption as may be contained therein or as may be deemed appropriate under the circumstances.

In addition, the commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary in connection with the financial oversight and regulation of [association captive insurance companies, including risk retention] captive insurance companies.”

SECTION 8. Section 431:19-116, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each [association captive insurance company licensed to do business in this State and each risk retention] captive insurance company chartered in this State as other than a pure captive insurance company shall pay a tax of one per cent on gross premiums for insurance written on 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 1 of each year.”

SECTION 9. Act 190, Session Laws of Hawaii 1994, as amended by Acts 61 and 232, Session Laws of Hawaii 1995, and as amended by Act 358, Session Laws of Hawaii 1997, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on June 21, 1994; provided that on June 30, 2000, sections 1 through [4] 3 of this Act and section 431:2-307, Hawaii Revised Statutes, shall be repealed, and sections 431:3-302[,] and 431:5-307, [and 431:19-107,] Hawaii Revised Statutes, are reenacted in the form in which they read on June 20, 1994.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 11. This Act shall take effect upon its approval.

(Approved July 6, 1999.)

Notes

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