

ACT 36

S.B. NO. 3192

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 be appropriately designated and to read as follows:

“§431:19- Class 5 companies. (a) A class 5 company under this article is one that is not a class 1, class 2, class 3, or class 4 company, and acts only as a reinsurer or excess insurer, or both. Notwithstanding any other provision of this article, a class 5 company licensed under this article may reinsure or provide excess insurance, or both, for the risks and lines of insurance approved by the commissioner.

(b) Notwithstanding section 431:19-107(a), reserves for risks located outside of the United States reinsured or insured by a class 5 company, upon approval of the commissioner, may be determined in accordance with the required or approved reserve standards of the country in which the ceding insurer is domiciled or the excess insurance risks are located.

(c) Notwithstanding article 6 of this chapter and section 431:19-110, where the risks reinsured or insured by a class 5 company are located outside of the United States, the class 5 company, upon approval of the commissioner, may invest its funds in accordance with the laws and regulations applicable to insurers or reinsurers domiciled in the jurisdictions in which the risks are located, in proportion to the reserves held for the risks.”

SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definitions of “captive insurance company” and “pure captive insurance company,” to read as follows:

““Captive insurance company” means [any pure captive insurance company, risk retention captive insurance company, association captive insurance company, or leased capital facility] a class 1, class 2, class 3, class 4, or class 5 captive insurance company formed or licensed under this article.

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

SECTION 3. Section 431:19-101.3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:19-101.3]]~~ **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[.]; and
- (5) A class 5 company shall be a reinsurance or excess insurance company formed under section 431:19-_____.”

SECTION 4. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [Minimum] The minimum capital or surplus requirements for captive insurance companies [shall be] are 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[.]; and
- (5) Class 5: An amount as determined by the commissioner on a case by case basis, after giving due regard to the company’s business plan, including the nature of the risks insured.

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] the 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 5. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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.]

the business underwritten. An actuarial opinion regarding reserves for [known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith] the business underwritten by the company shall be included in the audited statements, except that the actuarial opinion for [captive insurance companies other than pure captive insurance] class 3 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[.]; provided that all captive insurance companies, other than a class 3 company, may, alternatively, utilize an actuarial opinion prepared by a loss reserve specialist deemed appropriate by the commissioner.”

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SECTION 6. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (a) 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 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 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 except as otherwise provided in this article, article 1, article 2, article 6, article 11, and article 15 of this chapter shall apply to class 5 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.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved April 20, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.