

## ACT 67

H.B. NO. 2219

A Bill for an Act Relating to 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- Confidential treatment.** (a) All nonpublic financial information of a captive insurance company, its parent, or the parent’s member organizations, or a risk retention captive insurance company, disclosed to the commissioner pursuant to this article shall be given confidential treatment and shall not be made public by the commissioner without the prior written consent of the captive insurer, its parent company, or the member organization, or risk retention captive insurer to which it pertains.

(b) The commissioner may disclose nonpublic financial information of a captive insurance company, its parent, or the parent’s member organizations, or a risk retention captive insurance company, to insurance departments of other states without prior consent of the captive insurer, its parent company, or the parent’s member organization, or the risk retention captive insurer to which it pertains.

(c) In the event the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or the parent’s member organizations, or the risk retention captive insurer that would be affected thereby, three days notice of intent, the commissioner may make public all or any part of the nonpublic financial information in a manner that the commissioner deems appropriate.

(d) For purposes of this section:

“Equity securities” means:

- (1) A share in a corporation, whether or not transferable or denominated a “stock”, or similar security evidencing an ownership interest in the person;
- (2) The interest of a limited partner in a limited partnership;
- (3) The interest of a partner in a partnership, including a joint venture; or
- (4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in paragraph (1), (2), or (3).

“Nonpublic financial information” means information regarding a person’s financial condition that prior to disclosure to the commissioner pursuant to this article is not a public record as defined in rule 1001(5) of section 626-1; provided that in the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, “nonpublic financial information” does not include financial information disclosed to owners and holders of equity securities.”

SECTION 2. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each [pure] captive insurance company other than a class 3 captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles, or other comprehensive basis of accounting as may be deemed appropriate by the commissioner, and audited by an independent certified public accountant, or other qualified professional as deemed appropriate by the commissioner, on or before the last day of the sixth month following the end of the company’s fiscal year.

(b) Each [captive insurance company that is not a pure] class 3 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 a class 3 [association] captive insurance [companies and class 4 captive insurance companies] company shall not be required to file [their] risk-based capital reports with the National Association of Insurance Commissioners."

SECTION 3. Section 431:19-102.5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved April 27, 2000.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.