

ACT 209

S.B. NO. 1200

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of “captive insurance company” to read as follows:

““Captive insurance company” means a class 1, class 2, class 3, class 4, or class 5 captive insurance company formed or [licensed] authorized under this article.”

SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) to (c) to read:

“§431:19-102 [Licensing; authority.] Certificate of authority.

(a) Any captive insurance company, when permitted by its articles of association or ~~[charter,]~~ articles of incorporation, may apply to the commissioner for a [license] certificate of authority to do any and all insurance set forth in subsection (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 captive insurance company may provide personal motor vehicle or homeowner’s insurance coverage or any component thereof, other than as employee benefits for the employees of a parent, association, or its members, and their respective affiliated companies; or as reinsurance as may be allowed under this article; and
- (4) No captive insurance company may accept or cede insurance 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] certificate of authority 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 and registered office in this State, except that a branch captive insurance company need only maintain the principal place of a business unit in this State; and
- (4) It ~~[appoints-a]~~ designates a registered resident agent in accordance with chapter 414 or 414D, to accept service of process and to otherwise act on its behalf in this State. Whenever the registered resident agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the commissioner shall be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(c) Before receiving a [~~license,~~] certificate of authority, a captive insurance company shall file with the commissioner a certified copy of its [~~charter~~] articles of incorporation or articles of association and bylaws, a statement under oath of [~~its president and secretary~~] any two of its principal officers, or its attorney-in-fact in the case of a captive insurance company formed as a reciprocal insurer, showing its financial condition, and any other statements or documents required by the commissioner.”

2. By amending subsections (e) to (g) to read:

“(e) Each captive insurance company applying for a certificate of authority under this article shall pay to the commissioner a nonrefundable fee for examining, investigating, and processing its application for the [~~license,~~] certificate of authority. In addition, each captive insurance company receiving a [~~license~~] certificate of authority from the commissioner shall pay an annual [~~license~~] fee therefor for the year of registration and for each annual renewal thereafter. The amount of the application fee and the annual [~~license~~] certificate of authority fee shall be set forth in rules adopted by the commissioner. In addition, the commissioner may adopt rules with respect to fees for the issuance of other documents as may be deemed necessary or requested by captive insurance companies.

(f) The commissioner shall establish a list of advisors to assist with the review of captive applications. The commissioner ~~[shall]~~ may appoint one advisor from the list to review a specific application. The advisor’s fee, ~~[to] if any,~~ shall be paid by the captive applicant, and shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.

(g) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this article, the commissioner may ~~[grant a license]~~ issue a certificate of authority authorizing it to do insurance business in this State until April 1 thereafter, which [~~license~~] certificate of authority may be renewed.”

SECTION 3. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to subsection (c), no captive insurance company incorporated as a stock insurer shall be issued a [~~license~~] certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner.”

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

“(a) Subject to section 431:19-104(c), no captive insurance company formed other than as a stock insurer shall be issued a [~~license~~] certificate of authority unless it shall possess and thereafter maintain a free surplus of an amount established and deemed appropriate by the commissioner.”

SECTION 5. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no ~~[member]~~ stockholder shall own more than ten per cent of the risk retention captive insurance company’s outstanding stock; provided that as an alternative, the commissioner, if the commissioner deems it in the best interest of the risk retention captive, the policyholders, and the public, may permit the articles of incorporation to state that no ~~[member]~~ stockholder shall vote more than ten per cent of the outstanding stock.”

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

“(b) Each 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 captive insurance company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners.”

SECTION 7. Section 431:19-109, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-109 Grounds and procedures for suspension and revocation of ~~[license.]~~ certificate of authority.** (a) The ~~[license]~~ certificate of authority of a captive insurance company to do business in this State may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 431:19-104 or section 431:19-105;
- (3) Refusal or failure to submit an annual report, as required by section 431:19-107 or any other report or statement required by law or by lawful order of the commissioner;

- (4) Failure to comply with the provisions of its own [~~charter~~] articles of incorporation, articles of association, or bylaws;
- (5) Failure to submit to examination or any legal obligation relative thereto, as required by section 431:19-108;
- (6) Refusal or failure to pay the cost of examination as required by section 431:19-108;
- (7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (8) Failure to maintain actuarially appropriate loss reserves as determined by the commissioner; provided that the commissioner shall issue at least one warning to the captive insurance company to correct the problem prior to suspending or revoking the [~~license~~] certificate of authority; and
- (9) Failure otherwise to comply with the laws of this State.

(b) If the commissioner, upon examination, hearing, or other evidence, finds that any captive insurance company has committed any of the acts specified in subsection (a), the commissioner may suspend or revoke the [~~license~~] certificate of authority if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other law.”

SECTION 8. Section 431:19-111.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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~~] authorized under this article may reinsure or provide excess insurance, or both, for the risks and lines of insurance approved by the commissioner.”

SECTION 9. 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,~~] sections 431:3-302 to 431:3-304, section 431:3-307, 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 and branch 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~~] authorized under this article.”

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

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

(Approved June 26, 2003.)