

**ACT 120**

S.B. NO. 2882

A Bill for an Act Relating to Alien Insurers.

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

SECTION 1. As a result of various advancements in science and technology, businesses and industries have expanded their boundaries so that Hawaii is now part of a global economy. The State of Hawaii has been aggressive in keeping up with these global trends by pursuing initiatives to establish itself as a preeminent center for business in the Pacific Rim.

One such successful initiative has been the establishment of the captive insurance branch within the insurance division of the department of commerce and consumer affairs. Through the efforts of the captive insurance branch, the State of Hawaii has become the second most successful domicile for captive insurance companies in the United States and ranked in the top ten of captive insurance company domiciles worldwide. Because of Hawaii's track record as a leader in the area of captive insurance, insurance companies from nations in the Pacific Rim continue to express interest in conducting business in Hawaii.

Enabling alien insurance companies to use the State of Hawaii as a state of entry to transact insurance in the United States would help to maintain Hawaii's status as a preeminent center of business in the Pacific Rim, and strengthen and expand relationships established by the captive insurance branch. Moreover, establishing Hawaii as a port of entry for alien insurers would boost Hawaii's economy through the generation of revenue and creation of employment opportunities.

The purpose of this Act is to establish Hawaii as a state of entry for alien insurers.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE  
STATE OF ENTRY FOR ALIEN INSURERS**

**§431: -101 Definitions.** As used in this article, unless the context requires otherwise:

“Alien insurer” has the same meaning as set forth in section 431:3-101.

431: -104. “Trusteed assets” mean the assets in a trust account required by section

431: -105, plus accrued investment income thereon where such interest is collected by the states for trustees, less the aggregate net amount of all of the insurer’s reserves and other liabilities in the United States as determined in accordance with section 431: -106.

“United States branch” means the business unit through which business is transacted within the United States by an alien insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

**§431: -102 Scope.** This article applies to a United States branch using this State as a state of entry to transact insurance in the United States. The United States branch shall be subject to all state laws applicable to an insurer domiciled in this State, unless otherwise provided.

**§431: -103 Authorization of entry.** (a) An alien insurer may use this State as a state of entry to transact insurance in the United States through a United States branch by:

- (1) Qualifying as an insurer licensed to do business in this State; and
- (2) Establishing a trust account, pursuant to a trust agreement approved by the commissioner with a United States financial institution approved by the commissioner, in an amount at least equal to the minimum capital and surplus or authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to do the same kind of insurance.

(b) Before authorizing the entry of a United States branch of any alien insurer through this State, the commissioner shall in addition to the requirements of section 431: -105 and any other requirement of this chapter, require the alien insurer to:

- (1) Comply with the requirements of section 431:3-212;
- (2) Submit an English language translation, as necessary, of any of the documents required in paragraph (1); and
- (3) Submit to an examination of the insurer’s affairs at its principal office within the United States.

**§431: -104 Maintenance of trust account.** The trusteed assets, or the assets of the trust account of an alien insurer, as required by section 431: -103, shall at all times be in an amount equal to the United States branch’s reserves and other liabilities plus the minimum capital and surplus or authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to do the same kind of insurance.

**§431: -105 Requirements for trust agreement.** (a) The terms of the trust agreement required by section 431: -103 shall be set forth in a deed of trust. The

deed of trust and all subsequent amendments shall be authenticated in a form and manner as the commissioner may prescribe and shall not be effective unless approved by the commissioner upon a finding that:

- (1) A deed of trust or its amendments are sufficient in form and in conformity with law;
- (2) The trustee or trustees are eligible as such; and
- (3) The deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If at any time after reasonable notice and hearing, the commissioner finds that the requisites for the approval no longer exist, the commissioner may withdraw approval.

(c) The commissioner may approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are not prejudicial to the interests of the people of this State or policyholders and creditors in the United States, of the United States branch.

(d) The deed of trust shall contain provisions that:

- (1) Vest legal title to trustee assets in the trustee or trustees, and their lawfully appointed successors;
- (2) Require that all assets deposited in the trust shall be continuously kept within Hawaii;
- (3) Provide for substitution of a new trustee or trustees in case of a vacancy by death, resignation, or otherwise, subject to the approval of the commissioner;
- (4) Require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of such fund;
- (5) Require that the trustee assets shall consist of cash or investments, or both, as permitted by article 6 for investment of the funds of domestic insurers and accrued interest thereon if collectable by the trustee;
- (6) Require that the trust shall be for the exclusive benefit, security, and protection of the policyholders, or policyholders and creditors in the United States, of the United States branch;
- (7) Require that the trust shall be maintained as long as there is any outstanding liability of the alien insurer arising out of its insurance transactions in the United States; and
- (8) Provide, in substance, that no withdrawals of assets, other than income as specified in subsection (e) shall be made or permitted by the trustee or trustees without the approval of the commissioner except to:
  - (A) Make deposits required by law in any state for the security or benefit of all policyholders, or policyholders and creditors in the United States, of the United States branch;
  - (B) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the United States branch manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or
  - (C) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(e) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States branch manager of the United States branch upon request; provided that the total trustee assets shall not be less than the amount required to be maintained pursuant to section 431: -104.

(f) Upon withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner; provided that the total trustee assets shall not be less than the amount required to be maintained pursuant to section 431: -104. In all such cases, the United States branch shall notify the commissioner in writing of the nature and extent of the withdrawal.

(g) The commissioner may:

- (1) Make examinations of the trustee assets of any authorized United States branch at the insurer's expense; and
- (2) Require the trustee or trustees to file a statement, in such form as the commissioner may prescribe, certifying the assets of the trust fund and the amounts thereof.

(h) Refusal or neglect of any trustee to comply with this section shall be grounds for the revocation of the insurer's license or the liquidation of its United States branch.

**§431: -106 Reporting requirements for United States branches of alien insurers.** (a) In addition to other requirements of the insurance code, every authorized United States branch shall complete and file the report required of a domestic insurer in article 3, including:

- (1) Annual and quarterly statements of the business transacted within the United States and the assets held by or for it within the United States for the protection of policyholders and creditors within the United States, and of the liabilities incurred against such assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in Hawaii and licensed to write the same kinds of insurance; and
- (2) A statement of trustee surplus, in such form as the commissioner may prescribe, as of the end of the same period covered by the statement filed pursuant to paragraph (1). In determining the net amount of the United States branch's liabilities in the United States to be reported in the statement of trustee surplus, the United States branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:
  - (A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement, and:
  - (B) Deduct:
    - (i) Unearned premiums on agent's balances or uncollected premiums not more than ninety days past due not exceeding unearned premium reserves carried thereon;
    - (ii) Reinsurance on losses with authorized insurers, less unpaid reinsurance premiums;
    - (iii) Reinsurance recoverables on paid losses from unauthorized insurers that are included as assets in the annual or quarterly statement; but only to the extent a liability for such unauthorized recoverables is included in the liabilities report in the trustee surplus statement;
    - (iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reported for that state;
    - (v) Secured accrued retrospective premiums;

- (vi) If a life insurer, the amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each such policy;
  - (vii) If a life insurer, the net amount of uncollected and deferred premiums; and
  - (viii) Any other non-trusted asset that the commissioner determines secures liabilities in a substantially similar manner; and
- (C) Provide any additional information that the commissioner may require relating to the total business or assets, or any portion thereof, of the alien insurer.

(b) The annual statement and trusted surplus statement shall be signed and verified by the United States branch manager, attorney-in-fact, or a duly empowered assistant United States branch manager, of the United States branch. The items of securities and other property held under trust deeds shall be certified in the trusted surplus statement by the United States trustee or trustees.

(c) Every report on examination of a United States branch shall include a trusted surplus statement as of the date of examination in addition to the general statement of the financial condition of the United States branch.

**§431: -107 Additional requirements for United States branch license.**

(a) Before issuing any new or renewal license to any United States branch, the commissioner may require satisfactory proof, either in the alien insurer's charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the commissioner may require, that the insurer will not engage in any insurance business in contravention of this section or not authorized by its charter.

(b) The commissioner shall issue a renewal license to any United States branch if satisfied, by such proof as required, that the insurer is not delinquent with respect to any requirement imposed by this chapter and that its continuance in business in this State will not be hazardous or prejudicial to the best interests of the people of this State.

(c) No United States branch shall be licensed to do any kind of insurance business in this State, or any combination of kinds of insurance business, that are not permitted to be done by domestic insurers licensed under this chapter. No United States branch shall be authorized to do an insurance business in this State if it does anywhere within the United States any kind of business other than an insurance business and the business necessarily or properly incidental to the kind or kinds of insurance business that it is authorized to do in this State.

(d) Except as otherwise specifically provided, no United States branch, entering through this State or another state, shall be or continue to be authorized to do an insurance business in this State if it fails to comply substantially with any requirement or limitation of this chapter, applicable to similar domestic insurers hereafter organized, which in the judgment of the commissioner is reasonably necessary to protect the interest of the policyholders.

(e) No United States branch that, outside of this State, does any kind or combination of kinds of insurance business not permitted to be done in this State by similar domestic insurers hereafter organized, shall be or continue to be authorized to do an insurance business in this State, unless in the judgment of the commissioner the doing of that kind or combination of kinds of insurance business will not be prejudicial to the best interests of the people of this State.

(f) No United States branch shall be or continue to be authorized to do an insurance business in this State if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by

law with the rights of inspection and be maintained in its principal office within this State.

**§431: -108 Authority of commissioner.** Whenever it appears to the commissioner from any annual statement, quarterly statement, trustee surplus statement, or any other report that a United States branch's trustee surplus is reduced below minimum capital and surplus or the authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the commissioner may proceed against the insurer pursuant to articles 5 and 15 as an insurer whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors, or the public in the United States.''

SECTION 3. This Act shall take effect upon its approval.

(Approved June 15, 2004.)