

ACT 31

S.B. NO. 1802

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 definitions of “affiliated company”, “parent”, “pure captive insurance company”, and “pure nonprofit captive insurance company” to read as follows:

~~“[“Affiliated company”]~~ “Affiliated entity” means any company, person, or other legal entity in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management, or, in the case of a pure captive insurance company, that maintains a working relationship with, and whose business risks insured by the pure captive insurance company are similar or related to the business risks of, the parent insured by the pure captive insurance company.

“Parent” means a company, corporation, partnership, person, or ~~[individual]~~ other legal entity that directly or indirectly owns, controls, or holds with power to vote more than fifty per cent of the outstanding voting securities of a pure captive insurance company.

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

“Pure nonprofit captive insurance company” means a pure captive insurance company formed without capital stock as a nonprofit corporation under chapter 414D, whose voting of membership interest is held by a parent organization formed under a nonprofit law or by such nonprofit parent and its affiliated ~~[companies.]~~ entities.”

SECTION 2. 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;
- (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 431:19-111.5.]~~ this article.”

SECTION 3. Section 431:19-102, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) Any captive insurance company, when permitted by its articles of association or articles of incorporation, may apply to the commissioner for a 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;]~~ entities;
- (2) No association captive insurance company may insure any risks other than those of the member organizations of its association and their affiliated ~~[companies;]~~ entities;
- (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;]~~ entities; 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 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 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[.] in accordance with section 431:2-206.”

2. By amending subsection (h) to read as follows:

“(h) A captive insurance company may engage in the business of any of the following types of insurance:

- (1) All casualty insurance;
- (2) Marine and transportation insurance;
- (3) Marine protection and indemnity insurance, which includes insurance against, or against legal liability of the insured for loss, damage, or expense arising out of or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, death, or for loss of or damage to the property of another person;
- (4) Wet marine and transportation insurance, which is that part of marine and transportation insurance that includes only:
 - (A) Insurance upon vessels, crafts, hulls, and of interests therein or with relation thereto;
 - (B) Insurance of marine builder’s risks, marine war risks and contracts, or marine protection and indemnity insurance;
 - (C) Insurance of freights and disbursements pertaining to a subject of insurance; and
 - (D) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, with respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment, or reshipment incident thereto;
- (5) Property insurance;
- (6) Surety insurance;
- (7) Title insurance;
- (8) Credit life insurance and credit disability insurance offered as part of, or relating directly to the business or operations of its parent or affiliated [~~companies;~~] entities; and
- (9) Other lines of insurance that the commissioner may allow.”

SECTION 4. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-106 Formation of captive insurance companies in this State.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) 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 no fewer than three incorporators of whom no fewer than two shall be residents of this State.

(d) Before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner’s finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:

- (1) The character, reputation, financial standing, and purposes of the incorporators;
- (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
- (3) Other aspects as the commissioner deems advisable.

(e) The articles of incorporation, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this State shall be a resident of this State.

(h) Captive insurance companies formed under this article, except for pure nonprofit captive insurance companies, shall have the privileges and be subject to the general corporation law as well as this article. In the event of conflict between the general corporation law and this article, the latter shall control.

(i) Pure nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law as well as this article. In the event of conflict between the nonprofit corporation law and this article, the latter shall control.

~~[(j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no 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 stockholder shall vote more than ten per cent of the outstanding stock.]”~~

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

“(e) The commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents or reports required by [~~subsections (a) and (b)-~~] this section. The fine shall be not more than \$500 per day past the due date.”

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner or any examiner authorized by the commissioner may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner, upon application by a captive insurance company, may allow an examination to be conducted every five years; provided that the commissioner shall have completed at least one triennial examination of the company. The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company’s affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article.”

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

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

(Approved April 26, 2005.)