

ACT 232

H.B. NO. 272

A Bill for an Act Relating to Captive Insurance Companies.

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 entity”, “association”, “member organization”, and “parent” to read as follows:

““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.~~] directly or indirectly controlled by the parent or an affiliate of the parent of a pure captive insurance company.

“Association” means any legal association of individuals, corporations, limited liability companies, partnerships, [or] associations, or other entities, except labor organizations, the member organizations of which [collectively:] or which does itself, whether or not in conjunction with some or all of the member organizations:

- (1) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; [or]
- (2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer[-]; or

- (3) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

“Member organization” means any individual, corporation, limited liability company, partnership, [or] association, or other entity that belongs to an association.

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

SECTION 2. Section 431:19-101.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be established within the office of the commissioner, a captive insurance administrator, who shall be solely responsible for assisting the commissioner in the monitoring, regulation, and development of captive insurance companies under this article. The commissioner, with the approval of the director of commerce and consumer affairs, shall appoint the administrator who shall be designated as a deputy commissioner and shall be exempt from chapter 76[-] notwithstanding section 431:2-105(b). The administrator shall serve at the pleasure of the director of commerce and consumer affairs and shall report directly to the commissioner.”

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

1. By amending subsections (a), (b), and (c) to read:

“(a) Any captive insurance company, when permitted by its articles of association [or], articles of incorporation, articles of organization, or other organizational document, 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 entities;
- (2) No association captive insurance company may insure any risks other than those of the member organizations of its association and their affiliated 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 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, subscribers’ advisory committee, or other governing body 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, or 428, as applicable, 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.

(c) Before receiving a certificate of authority, a captive insurance company shall file with the commissioner [a]:

- (1) A certified copy of its organizational documents, including but not limited to its articles of incorporation [or], articles of association [and], bylaws, [a] subscribers' agreement, articles of organization, and operating agreement, as applicable;
- (2) A statement under oath of [any]:
 - (A) Any two of its principal officers[–or its];
 - (B) Its attorney-in-fact in the case of a captive insurance company formed as a reciprocal insurer[;] or
 - (C) The duly authorized representative of its governing body, showing its financial condition[–and any]; and
- (3) Any other statements or documents required by the commissioner.”

2. By amending subsection (f) to read:

~~“(f) The commissioner may [establish a list of advisers to assist with the review of captive applications. The commissioner may appoint one adviser from the list] use independent advisers and consultants to assist in the review and analysis of a specific application[–] or business plan amendment. The [adviser’s] independent advisory and consulting fee, to be paid by the captive applicant, shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.”~~

SECTION 4. Section 431:19-102.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:~~

- (1) Compliance with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type, and any requirements that the commissioner may adopt by rule;
- (2) The articles of incorporation or other organizational document shall be amended in compliance with the laws of this State and restated in its entirety before submission to the commissioner. Before the amended and restated articles of incorporation or other organizational document is transmitted to the department of commerce and consumer affairs, the foreign or alien captive insurance company shall petition the commissioner to issue a certificate setting forth the commissioner’s finding that the redomestication and maintenance of the ~~[corporation] company~~ will promote the general good of the State. In arriving at the finding, the commissioner shall consider[:
 - (A) ~~The character, reputation, financial standing, and purposes of the foreign or alien captive insurance company;~~
 - (B) ~~The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and~~
 - (C) ~~Any other aspects as the commissioner deems advisable;] the factors set forth in section 431:19-106(b);~~
- (3) The following shall be transmitted to the department of commerce and consumer affairs for filing:
 - (A) Articles of redomestication;

- (B) Certificate of general good issued by the commissioner;
- (C) Certificate of good standing or comparable documentation duly authenticated by the proper officer of the state or country under the laws of which the foreign or alien captive insurance company is incorporated; provided that ~~[the]~~:
 - (i) The certificate or documentation shall be dated not earlier than thirty days prior to the filing of the articles of redomestication; and ~~[provided further that if]~~
 - (ii) If the certificate of good standing or documentation is in a foreign language, a translation under oath of the translator shall accompany the certificate~~;~~ or documentation;
- (D) Amendments to the articles of incorporation or other organizational document in compliance with the laws of this State;
- (E) Restatement of the articles of incorporation or other organizational document in its entirety; and
- (F) Organization fee; and
- (4) The articles of redomestication shall set forth the following:
 - (A) Name of the ~~[corporation;]~~ company;
 - (B) Date and location of incorporation ~~[and state or country of incorporation;]~~ or organization;
 - (C) Street address of the principal office in this State;
 - (D) Names and titles of the ~~[officers]~~:
 - (i) Officers and directors of the ~~[corporation;]~~ company; or
 - (ii) Members of the governing body;
 - (E) A statement that the ~~[corporation]~~ company is moving its domicile from its present state or country to this State;
 - (F) A statement that redomestication will occur upon filing the articles of redomestication and that the ~~[corporation]~~ company shall be subject to the laws of this State; and
 - (G) A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the state or country under the laws of which the ~~[corporation]~~ company is incorporated or organized are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents."

SECTION 5. Section 431:19-102.4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The notice of change in domicile, the certificate of transfer issued by the commissioner, the proof of redomestication, and the filing fee shall be transmitted to the department of commerce and consumer affairs. The notice of change in domicile shall set forth the following:

- (1) Name of the ~~[corporation;]~~ company;
- (2) Dates that notice of the ~~[corporation's]~~ company's intent to transfer domicile from this State was published~~[, once in each of four successive weeks (four publications) in a newspaper of general circulation published in this State;]~~ pursuant to the publication requirements of section 1-28.5;
- (3) Date of the transfer of its domicile; and
- (4) State or country to which its domicile will be transferred."

SECTION 6. Section 431:19-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-104 Minimum capital[; letter of credit, security.] and surplus.

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

~~(b) The capital may be in the form of cash, in the form of an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other security approved by the commissioner.~~

~~(c) The minimum capital or surplus requirements for captive insurance companies 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;~~
- ~~(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 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.] (a) Each captive insurance company licensed pursuant to this article shall possess and thereafter maintain unimpaired capital and surplus in the amount established by the commissioner; provided that:~~

- ~~(1) The commissioner shall take into account the nature and volume of business transacted by each captive insurance company, and any other factors deemed appropriate by the commissioner;~~
- ~~(2) Class 3 captive insurance companies shall be subject to other applicable provisions of this chapter that may require capital and surplus in excess of those established by the commissioner;~~
- ~~(3) Minimum capital and surplus established by the commissioner shall be no less than the following amounts:~~
 - ~~(A) Class 1: \$100,000;~~
 - ~~(B) Class 2: \$250,000;~~
 - ~~(C) Class 3: \$500,000;~~
 - ~~(D) Class 4: \$1,000,000; and~~
 - ~~(E) Class 5: An amount as determined by the commissioner on a case by case basis.~~

~~(b) Minimum required capital and surplus established by the commissioner pursuant to subsection (a) shall be in any one or combination of the following forms: cash, irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, public obligations as defined in section 431:6-301, or other form approved by the commissioner; provided that minimum required capital and surplus in excess of the amounts listed in subsection (a)(3) shall be allowed to be invested in accordance with a strategic investment policy adopted and monitored by the captive insurance company's governing body, and approved by the commissioner.~~

~~[(d)] (c) In the case of a branch captive insurance company, and in lieu of minimum capital [or] and surplus under this section [or section 431:19-105], the~~

commissioner shall determine the amount and form of security to be maintained by the branch captive insurance company in this State after taking into consideration:

- (1) The amount and nature of risk written through and retained by the branch captive insurance company in this State;
- (2) The financial condition of the outside captive insurance company whose branch office is located in this State;
- (3) Trusts or other security posted for ceding insurers; and
- (4) Any other factors the commissioner deems appropriate.

The security required by the commissioner may be in the form of cash [or investments], an irrevocable letter of credit issued by a bank chartered in this State or a member bank of the Federal Reserve System, a trust, public obligations as defined in section 431:6-301, or any other forms of security deemed appropriate by the commissioner."

SECTION 7. 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] shall be:~~

(1) Incorporated pursuant to chapter 414 as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated pursuant to chapter 414D as a nonprofit insurer;

~~[(2)] (3) Incorporated pursuant to chapter 414 as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association; [or~~

~~(3)] (4) Organized in the State 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.] in accordance with sections 431:3-107, 431:3-108, 431:4-404, 431:4-405 (provided that the principal office of the attorney-in-fact for the domestic reciprocal insurer shall not be required to be maintained in this State), 431:4-406 (excluding 431:4-406(b)(3)), 431:4-407, and 431:4-415(a); or~~

~~(5) Organized pursuant to chapter 428 as a member-managed or manager-managed limited liability company.~~

~~[(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)] (b) Before the [articles of incorporation] required organizational documents are transmitted to the department of commerce and consumer affairs, the incorporators or organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed [corporation] company 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] objectives of the [incorporators;] organizers;~~

~~(2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the captive insurance company's officers and directors[;], or members of its governing body, and its service providers; and~~

(3) Other aspects as the commissioner deems advisable.

~~[(e)]~~ (c) The ~~[articles of incorporation, certificate, and the organization fees]~~ required organizational documents and fees shall be transmitted to the department of commerce and consumer affairs ~~[- which shall record both the articles of incorporation and the certificate.]~~ for filing and recordation, as may be necessary.

~~[(f)]~~ (d) 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.]

(e) Captive insurance companies formed under this article shall have the privileges and be subject to the general corporation law, nonprofit corporation law, or limited liability law of this State as may be applicable, as well as this article. In the event of conflict between any of the foregoing applicable laws of this State and this article, this article shall control."

SECTION 8. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A plan of conversion or merger shall be submitted to and be approved by the commissioner in advance of the proposed conversion or merger. The commissioner shall not approve the plan unless:

- (1) The commissioner finds that it is fair, equitable, and consistent with law;
- (2) The plan has been approved:
 - (A) In the case of a stock corporation, by at least two-thirds of the shares entitled to vote at a duly called regular or special meeting of the shareholders at which a quorum is present, or by unanimous written consent of the shareholders; ~~[or]~~
 - (B) In the case of a mutual insurer, by at least two-thirds of the voting interest of the members of the mutual insurer at a duly called regular or special meeting of the membership at which a quorum is present, or by unanimous written consent of the members of the mutual insurer; ~~[or]~~
 - (C) In the case of a reciprocal insurer, by at least two-thirds of the voting interest of the subscribers of the reciprocal insurer at a duly called meeting of the subscribers of the reciprocal insurer, or by unanimous written consent of the subscribers;
 - (D) In the case of a nonprofit corporation, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the corporation, or by unanimous written consent of the members; or
 - (E) In the case of a limited liability company, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the limited liability company, or by unanimous written consent of the members;
- (3) The plan provides for:

- (A) The conversion of existing stockholder, member, or subscriber interests into equal or proportionate interests in the new converted or merged insurer, or such other method and basis for the conversion of the stockholder, member, or subscriber interests that is fair and equitable;
- (B) The purchase or other disposition of the shares of any nonconsenting shareholder of a stock insurer ~~[or the]~~, policyholder interest of any nonconsenting member of a mutual insurer, membership interest of a limited liability company, or ~~[the]~~ subscriber surplus account interest, if any, of a subscriber of a reciprocal insurer, in accordance with either an agreement with any nonconsenting stockholder, member, or subscriber or with the existing articles or bylaws of the insurer relating to the buyback buyout, or the termination of the stockholder, member, or subscriber interests, if any, or if no such provisions exist, then in accordance with the laws of this State relating to the rights of dissenting shareholders; and
- (C) The novation, assignment, transfer, run-off, or other disposition of in force policies insuring any nonconsenting shareholder, member, or subscriber;
- (4) The conversion or merger will leave the resulting converted insurer or surviving insurer of the merger with capital or surplus funds reasonably adequate to preserve the security of its policyholders and an ability to continue to transact business in the classes of insurance in which it is then authorized to transact; and
- (5) The commissioner finds that the conversion or merger will promote the general good of the State.

(c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and consumer affairs, appropriate articles of amendment, articles of conversion, or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer or limited liability company insurer to a stock or mutual insurer, the existing reciprocal or limited liability company insurer shall file articles of incorporation ~~[in order]~~ to commence the corporate existence of the company in the form of a stock or mutual insurer. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter 414 ~~[or]~~, 414D~~[-]~~, or 428, as to the extent that these laws are applicable to the conversion or merger.”

SECTION 9. Section 431:19-110, Hawaii Revised Statutes, is amended to read as follows:

~~“§431:19-110 [Legal investments. Each captive insurance company shall be subject to the restrictions on allowable investments provided under sections 431:6-101 to 431:6-501; provided that the commissioner may approve other investments and investment provisions as the commissioner deems appropriate for each captive insurance company licensed under this article.] Investments. (a) Except for class 3 risk retention captive insurance companies, captive insurance companies licensed under this article shall be allowed to maintain investments in accordance with a strategic investment policy adopted and monitored by the captive insurance company’s governing body, and approved by the commissioner; provided that in addition to the minimum capital and surplus requirements prescribed in section 431:19-104(b), and the requirements prescribed in subsection (b), each captive~~

insurance company shall maintain investments in one or more of the following forms, which aggregate not less than one hundred per cent of reserves as required by this code or the commissioner:

- (1) Cash;
- (2) Irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System;
- (3) Investments in accordance with a strategic investment policy adopted and monitored by the captive insurance company's governing body, and approved by the commissioner;
- (4) Premiums in the course of collection; or
- (5) Other forms approved by the commissioner.

(b) Each captive insurance company that does not maintain a strategic investment policy as described in subsection (a) and class 3 risk retention captive insurance companies shall be subject to the restrictions on allowable investments provided under sections 431:6-101 to 431:6-501; provided that the commissioner may approve other assets, investments, and investment provisions as the commissioner deems appropriate.

(c) The commissioner may require a captive insurance company to file a complete disclosure of the identity, background, and experience of the key individuals or staff that are involved with its investment activities and administration, if deemed necessary.

(d) Each captive insurance company shall maintain in its principal office in this State a written record documenting its investment transactions, as well as documents evidencing the authorization or approval of the investments by the captive insurance company's governing body or its designated representative.

(e) The commissioner may prohibit or limit any investments or investible assets if the captive insurance company is not in compliance with this article or applicable rules."

SECTION 10. Section 431:19-105, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 2007.

(Approved June 29, 2007.)

Note

1. Edited pursuant to HRS §23G-16.5.