

ACT 278

S.B. NO. 1676

A Bill for an Act Relating to the Hawaii Health Systems Corporation.

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

SECTION 1. The legislature finds that the cost of medical malpractice and hospital professional and general liability coverage continues to rise and that stability in risk financing is needed for the Hawaii health systems corporation and the physicians serving this entity. The escalating costs of premiums, lack of insurers providing coverage in Hawaii, decreased limits of available coverage, and coverage restrictions, make it important to establish a captive insurance company to insure and control exposure to the liability risks of the corporation.

The purpose of this Act is to:

- (1) Provide that if the Hawaii health systems corporation establishes a domestic captive insurance company to provide medical malpractice and hospital professional and general liability coverage for the corporation and its facilities and the physicians serving therein, it must submit a feasibility report to the legislature, a formalized financial plan to the director of finance for approval, and a business plan to the insurance commissioner; and
- (2) Ensure that the composition of the captive insurance board includes members with the appropriate knowledge and experience to oversee the establishment and operation of a captive insurance company.

SECTION 2. Chapter 323F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§323F- Captive insurance board.** (a) There is established a ten-member captive insurance board that shall carry out the corporation’s duties and responsibilities relating to the establishment of any captive insurance company pursuant to section 323F-7(a)(20) and the operation thereof.

(b) Eight members of the captive insurance board shall be appointed by the governor as follows:

- (1) Three members from a list of five persons submitted by the president of the senate; provided that at least one of these members shall have experience in the insurance industry and financial matters;
- (2) Three members from a list of five persons submitted by the speaker of the house of representatives; provided that at least one of these members shall have experience in the insurance industry and financial matters; and
- (3) Two members, one of whom shall be the chief executive officer or chief financial officer of an insurer licensed to do business in the State and shall serve as a nonvoting member.

The director of health or the director’s designee and the insurance commissioner or the commissioner’s designee shall serve as ex officio, nonvoting members.

Any vacancy shall be filled in the same manner provided for the original appointments. The captive insurance board shall elect its own chair from among its members.

(c) The selection, appointment, and confirmation of any appointed nominee shall be based on ensuring that captive insurance board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the insurance and/or finance sectors. Members of the captive insurance board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any appointed member of the captive insurance board may be removed for cause by the governor or for cause by vote of a two-thirds majority of the captive insurance board members then in office. For purposes of this section, cause shall include without limitation:

- (1) Malfeasance in office;
- (2) Failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-2; or
- (4) Any other cause that may render a member incapable or unfit to discharge the duties required under this chapter.

Filing nomination papers for elective office, appointment to elective office, or conviction of a felony consistent with section 831-3.1, shall automatically and immediately disqualify a board member from office.

(e) No member of the captive insurance board shall be an employee or vendor of the corporation, or an immediate family member thereof. For purposes of this subsection, “immediate family member” means a corporation board employee’s or vendor’s spouse, child, parent, grandparent, or any related individual who resides in the same household of the employee or vendor.”

SECTION 3. Section 323F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The corporation shall be governed by a thirteen-member board of directors which shall carry out the duties and responsibilities of the corporation other than those duties and responsibilities relating to the establishment of any captive insurance company pursuant to section 323F-7(a)(20) and the operation thereof.”<sup>1”</sup>

SECTION 4. No later than twenty days prior to the convening of the regular session of 2008, the board of directors of the Hawaii health systems corporation shall submit to the legislature a report on the feasibility of establishing a captive insurance company pursuant to section 323F-7(a)(20), Hawaii Revised Statutes, to provide medical malpractice and hospital professional and general liability coverage for Hawaii health systems corporation facilities and physicians.

SECTION 5. In organizing a captive insurance company pursuant to section 323F-7(a)(20), Hawaii Revised Statutes, to provide medical malpractice and hospital professional and general liability coverage for Hawaii health systems facilities and physicians, the Hawaii health systems corporation shall:

- (1) Submit a formalized financial plan to the director of finance for review and approval; and
- (2) Upon receiving the approval required by paragraph (1), in addition to the documents required to be submitted by article 19, chapter 431, Hawaii Revised Statutes, submit to the insurance commissioner a formalized business plan that includes the establishment of a captive insurer board of directors.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,739,000 or so much thereof as may be necessary for fiscal year 2007-2008 to be deposited into the health systems special fund.

SECTION 7. There is appropriated out of the health system special fund the sum of \$13,279,000 or so much thereof as may be necessary for fiscal year 2007-2008 to establish a captive insurance company as authorized by this Act.

The sums appropriated shall be expended by the Hawaii health systems corporation for the purposes of this Act.

SECTION 8. New statutory material is underscored.<sup>2</sup>

SECTION 9. This Act shall take effect on July 1, 2007.

(Became law on July 10, 2007, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

#### Notes

1. Period should not be underscored.
2. Edited pursuant to HRS §23G-16.5.