

ACT 7

S.B. NO. 2812

A Bill for an Act Relating to Captive Insurance Companies.

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

SECTION 1. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) The commissioner or any authorized 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.], provided that unless the commissioner requires otherwise:~~

- ~~(1) An examination shall be conducted at least once every five years for all captive insurance companies, except as provided in paragraph (2); and~~
- ~~(2) An examination of a class 3 risk retention captive insurance company shall be conducted no later than three years after its formation and at least once every five years thereafter.~~

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 2. Section 431:19-109, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The 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 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~~] pursuant to 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 certificate of authority; and
- (9) Failure otherwise to comply with the laws of this State.”

SECTION 3. Section 431:19-303, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:19-303**~~]]~~ **Protected cells.** A sponsored captive insurance company formed and licensed under this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following:

- (1) The shareholders or members of a sponsored captive insurance company shall be limited to its participants and sponsors; provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;
- (2) A protected cell shall be organized and operated in only those forms of business organization authorized by the commissioner, including an association, corporation, limited liability company, partnership, or trust;
- ~~[(2)]~~ (3) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner;
- ~~[(3)]~~ (4) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- ~~[(4)]~~ (5) No sale, exchange, or other transfer of assets may be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;
- ~~[(5)]~~ (6) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval, and in no event shall the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- ~~[(6)]~~ (7) Each sponsored captive insurance company shall annually file with the commissioner, financial reports as the commissioner shall require, that shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- ~~[(7)]~~ (8) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and
- ~~[(8)]~~ (9) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in business plan requiring the commissioner's prior written approval."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved March 17, 2010.)