

ACT 190

H.B. NO. 841

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Company action level event” means any of the following events:

- (1) The filing of a risk-based capital report by an insurer which indicates that:
 - (A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;
 - (B) If a life or accident and health or sickness insurer, the insurer has total adjusted capital greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and [~~two and a half,~~] three, and has a negative trend;

- (C) If a property and casualty insurer, the insurer has a total adjusted capital greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three, and triggers the trend test determined in accordance with the trend test calculation included in the property and casualty risk-based capital instructions; or
- (D) If a benefit society or health maintenance organization, the benefit society or health maintenance organization has a total adjusted capital greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and three, and triggers the trend test determined in accordance with the trend test calculation included in the health risk-based capital instructions;
- (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge."

SECTION 2. Section 431:9A-153, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) No course shall be approved for more than ~~[twenty]~~ twenty-four credit hours."

SECTION 3. Section 431:15-103.5, Hawaii Revised Statutes, is amended to read as follows:

~~[[§431:15-103.5]]~~ **Standards and authority.** (a) The following standards, either singly or in a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting insurance business in this State may be deemed to be hazardous to ~~the~~ its policyholders, its creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports; audit reports, and actuarial opinions, reports, or summaries;
- (2) The National Association of Insurance Commissioners' insurance regulatory information system and its ~~[related]~~ other financial analysis solvency tools and reports;
- ~~[(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;~~
- ~~(4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;]~~
- (3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related ex-

penses of the insurer, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts;

- ~~(5)~~ (4) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the ~~company's~~ insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- ~~(6)~~ (5) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty per cent of [such] the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (6) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty per cent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) Whether [any affiliate, subsidiary, or] a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations[;] and which in the opinion of the commissioner may affect the solvency of the insurer;
- (8) Contingent liabilities, pledges, or guaranties that, either individually or collectively, involve a total amount that, in the opinion of the commissioner, may affect the solvency of the insurer;
- (9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to ~~such~~ the insurer;
- (10) The age and collectibility of receivables;
- (11) Whether management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of ~~such~~ the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position;
- (12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- (13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;
- ~~(13)~~ (14) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- ~~(14)~~ (15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; ~~and~~
- ~~(15)~~ (16) Whether the company has experienced, or will experience in the foreseeable future, cash flow or liquidity problems ~~or both~~;
- (17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regu-

lations, statutory accounting standards, sound actuarial principles, and standards of practice;

(18) Whether management persistently engages in material under reserving that results in adverse development;

(19) Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; and

(20) Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

(b) For the purposes of making a determination of an insurer's financial condition under this part, the commissioner may:

(1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(2) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates[;] consistent with the National Association of Insurance Commissioners' accounting practices and procedures manual, state laws, and rules;

(3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(c) If the commissioner determines that the continued operation of the insurer licensed to transact business in this State may be hazardous to [the] its policyholders, its creditors, or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend, or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured;

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such forms as approved by the commissioner[-];

(10) Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the commissioner;

- (11) Provide a business plan to the commissioner in order to continue to transact business in the State; or
- (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

(d) Any insurer subject to an order under subsection (c) may request a hearing to review that order pursuant to chapter 91."

SECTION 4. Section 431:19-102.3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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) Complying 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) Amending and restating its organizational documents in compliance with the laws of this State, and submitting the amended and restated organizational documents for the commissioner's review; and
- (3) Petitioning the commissioner to issue a certificate of general good, which sets forth the commissioner's finding that the redomestication and maintenance of the company will promote the general good of the State. In arriving at the finding, the commissioner shall consider the factors set forth in section 431:19-106(b). The petition shall include a nonrefundable application fee.

(b) Upon issuance of the certificate of general good by the commissioner pursuant to subsection (a)(3), the foreign or alien captive insurance company shall file the following with the department of commerce and consumer affairs:

- (1) Articles of redomestication, which shall include:
 - (A) Name of the company;
 - (B) Date and location of incorporation or organization;
 - (C) Street address of the principal office in this State;
 - (D) Names and titles of the:
 - (i) Officers and directors of the company; or
 - (ii) Members of the governing body;
 - (E) A statement that the company is moving its domicile to this State;
 - (F) A statement that redomestication will occur upon filing the articles of redomestication and that the 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 jurisdiction under the laws of which the 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;
- (2) Certificate of general good issued pursuant to subsection (a)(3);

- (3) Certificate of good standing or comparable documentation certified by the proper officer of the jurisdiction under which the foreign or alien captive insurance company is incorporated or organized; provided that:
- (A) The certificate or documentation shall be dated not earlier than thirty days prior to the date of the certificate of general good; and
 - (B) 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;
- and
- (4) The company's organizational documents, which shall be amended and restated in compliance with the laws of this State~~;~~and
- ~~(5) Nonrefundable application fee.~~"

SECTION 5. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Sections 431:3-302 to ~~[431:3-304 and]~~ 431:3-304.5, 431:3-307[5], 431:3-401 to 431:3-408, and 431:3-414; articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and chapter 431K shall apply to risk retention captive insurance companies."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2013.

(Approved June 25, 2013.)