

STAND. COM. REP. NO. 826

Honolulu, Hawaii

March, 2007

RE: H.B. No. 272
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 272 entitled:

"A BILL FOR AN ACT RELATING TO CAPTIVE INSURANCE COMPANIES,"

begs leave to report as follows:

The purpose of this bill is to make Hawaii more competitive as a captive domicile by:

- (1) Allowing Hawaii captive insurance companies to be formed as limited liability companies (LLCs) and clarifying that LLCs may be parents or owners of Hawaii captive insurance companies;
- (2) Clarifying how statutorily-prescribed minimum capital and surplus requirements for captive insurance companies may be invested; and
- (3) Providing greater investment flexibility for pure captive insurance companies while giving the Insurance Commissioner (Commissioner) discretion to prohibit, limit, or require divestiture of an investment that threatens the solvency or liquidity of the company.

Arthur J. Gallagher Captive Services (Hawaii), Willis Management (Hawaii), Marsh Management Services Inc., Aon Insurance Managers (USA), Inc., and several concerned individuals testified



in support of this bill. The Department of Commerce and Consumer Affairs (DCCA) supported the intent of this measure.

DCCA expressed concerns over this bill and suggested further amendments with regard to investments to ensure compliance with regulatory principles adopted by the National Association of Insurance Commissioners and International Association of Insurance Supervisors. DCCA also suggested amendments to enhance the ability of captive insurance companies to organize and operate as LLCs.

Upon further consideration, your Committee has amended this bill by:

- (1) Amending the definition of "affiliated entity" in the captive insurance law to clarify that the risks insured by a pure captive insurance company are directly or indirectly controlled in some manner by the company's parent or an affiliate of the parent;
- (2) Removing the requirement that the Commissioner establish a list of advisors and appoint an advisor from the list to review a specific application, and allowing the Commissioner to use independent advisors and consultants to assist in the review and analysis of a specific application or business plan amendment;
- (3) Consolidating minimum capital and surplus requirements into a single section and requiring that:
 - (A) The Commissioner take into account the nature and volume of business transacted and any other factors deemed appropriate by the Commissioner;
 - (B) Class 3 risk retention captive insurance companies be subject to additional capital and surplus requirements; and
 - (C) Minimum requirements follow the existing schedule per class, except that for class 3 association captive insurance companies and risk retention captive insurance companies minimums would both be set at \$500,000, instead of \$750,000 for class 3 association captive insurance companies;




- (4) Allowing amounts in excess of minimum capital and surplus requirements to be invested in accordance with a strategic investment policy approved by the Commissioner;
- (5) Clarifying captive formation requirements;
- (6) Deleting the requirement that reciprocal insurers have no fewer than three incorporators of which two must be Hawaii residents;
- (7) Deleting the requirement that at least one of the members of the board of directors of a captive insurance company must be a Hawaii resident;
- (8) Setting forth the procedures by which a nonprofit corporation or LLC must approve a plan of conversion or merger;
- (9) Revising the framework for the regulation of investments of captive insurance companies to provide greater flexibility to captive insurance companies; and
- (10) Making other technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

Your Committee finds that as the second largest captive insurance domicile in the United States, Hawaii faces increasing competition from other states that have recognized the value of implementing captive insurance enabling regulations. The changes proposed in this measure would ensure that Hawaii remains a viable and competitive captive domicile.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 272, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 272, H.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



