
A BILL FOR AN ACT

RELATING TO HEALTHCARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 323F, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART . MEDICAL MALPRACTICE CAPTIVE INSURANCE COMPANY**

5 **§323F-A Purpose.** The medical malpractice captive
6 insurance company is established to provide medical malpractice
7 insurance coverage to medical doctors employed by the Hawaii
8 health systems corporation at the highest level of service with
9 the lowest possible cost, consistent with reasonable and
10 applicable actuarial standards and the sound financial integrity
11 of the company.

12 **§323F-B Definitions.** As used in this part:

13 "Administrator" means the president and chief executive
14 officer of the medical malpractice captive insurance company.

15 "Board" means the board of directors of the medical
16 malpractice captive insurance company.

17 "Company" means the medical malpractice captive insurance
18 company established by this part.



1 "Council" means the medical malpractice captive insurance
2 company oversight council.

3 "Investment manager" means any fiduciary that has been
4 designated by the board to manage, acquire, or dispose of the
5 company's assets, a bank as defined by law, or an insurance
6 company qualified to perform services under the laws of more
7 than one state.

8 "Medical doctor" means a physician licensed under chapter
9 453 or 460 and employed by the Hawaii health systems
10 corporation.

11 "Qualified actuary" means a member of the American Academy
12 of Actuaries who is either a fellow of the Casualty Actuarial
13 Society or an Associate of the Casualty Actuarial Society who
14 has five or more years of experience.

15 **§323F-C Medical malpractice captive insurance company,**
16 **established.** (a) The medical malpractice captive insurance
17 company is established as an independent corporation to provide
18 medical malpractice insurance and related services to medical
19 doctors of the Hawaii health systems corporation. The company
20 may be reorganized as a nonprofit corporation under chapter
21 414D.



1 (b) The company shall be organized and operated as a
2 domestic mutual insurance company. The company shall comply
3 with, unless specifically excluded, all requirements of the
4 insurance code regarding a domestic mutual insurance company.
5 The company shall not be an agency of the State. The company or
6 its liabilities shall not be deemed to constitute debts or
7 liabilities of the State or pledges of the full faith and credit
8 of the State. The company shall write medical malpractice
9 insurance policies covering medical doctors to the same extent
10 as any other private insurer. The company shall not write other
11 lines of insurance, reinsurance, or excess insurance.

12 (c) The company shall also be designated and licensed as a
13 class 4 company under article 19 of chapter 431. The company
14 shall comply with, unless specifically excluded, all
15 requirements of the insurance code regarding a class 4 company.
16 No person shall be allowed to become a participant of the class
17 4 company unless the person is a medical doctor licensed and
18 practicing medicine in this state. The company may insure the
19 risks of its participants through participant contracts that
20 segregate each participant's or related participants'
21 liabilities through one or more protected cells pursuant to
22 section 431:19-106.3.



1 (d) The company's assets shall consist of real and
2 personal property and shall include all premiums and other
3 moneys paid to the company, all property, and other income
4 acquired, earned, or otherwise gained by the use of premiums and
5 other moneys paid to the company by deposits, investments,
6 exchanges, and other transactions. The company's assets shall
7 be the sole property of the company and shall be used
8 exclusively by the company for the operation and obligations of
9 the company.

10 (e) Notwithstanding any other law to the contrary, the
11 company shall be excluded from the surplus requirements of
12 domestic mutual insurers from January 1, 2009, through December
13 31, 2019.

14 (f) The company is exempt from participation, and shall
15 not join, contribute financially to, or be entitled to the
16 protection of, any plan, association, guaranty, insolvency fund,
17 or education and training fund authorized or required by chapter
18 431. Notwithstanding the foregoing exemptions, beginning
19 January 1, 2009, the company shall participate in the property
20 and liability insurance guaranty association, pursuant to
21 sections 431:16-101 to 431:16-117; provided that the company



1 shall meet the surplus requirements applicable to all other
2 domestic insurers under chapter 431 effective January 1, 2009.

3 (g) On or after January 1, 2009, the company shall provide
4 medical malpractice insurance coverage to medical doctors of the
5 Hawaii health systems corporation.

6 **§323F-D Board of directors, established.** (a) The board
7 of directors of the company shall be responsible for the
8 organization, management, policies, and activities of the
9 company. The board shall consist of nine voting members and one
10 nonvoting member. The voting members shall consist of the
11 following:

12 (1) Eight directors who shall be medical doctors licensed
13 and practicing in the state; and

14 (2) One director who shall be a public, at-large member
15 elected by the board.

16 The administrator shall be the nonvoting member of the board.

17 (b) The initial eight directors shall be appointed by the
18 governor within sixty days of July 1, 2008, and shall serve for
19 terms of one year each.

20 The public, at-large member initially elected by the board
21 shall serve for a term of one year.



1 The initial board of directors shall determine the
2 staggering and length of future directors' terms; provided that
3 no term shall exceed three years. Upon the expiration of the
4 terms of the initial directors, the company's policyholders
5 shall elect the directors. Each director shall serve for terms
6 as specified by the board unless sooner removed for cause
7 pursuant to rules adopted by the board. Each director shall
8 hold office until a successor is elected as provided in this
9 section. No person shall serve more than two full terms as
10 director. Any other law to the contrary notwithstanding, the
11 election and composition of the board of directors as provided
12 in this section shall be deemed adequate to qualify the company
13 as a mutual insurer under chapter 431.

14 (c) A vacancy on the board shall be filled by appointment
15 of the governor or insurance commissioner in the case of
16 appointed directors, or by election by the company policyholders
17 or the board in the case of positions formerly occupied by a
18 director elected by the company policyholders or by the board,
19 respectively. The person appointed to fill a vacancy shall
20 serve for the remainder of the term of the person's predecessor.

21 (d) Each director shall receive necessary traveling and
22 board expenses incurred in the performance of duty as director



1 and a fee commensurate with the duties expected of actual
2 attendance at board meetings.

3 (e) No person shall be a director who has a direct and
4 substantial interest in a competing insurer as a stockholder
5 (excluding the holding of less than one per cent of the
6 outstanding shares in a publicly traded insurer).

7 **§323F-E Powers; generally.** Except as otherwise limited by
8 chapter 431, the company may:

- 9 (1) Sue, be sued, complain, and defend, in its corporate
10 name;
- 11 (2) Have a corporate seal, which may be altered at
12 pleasure, and use the seal by causing it, or a
13 facsimile thereof, to be impressed, affixed, or in any
14 other manner reproduced;
- 15 (3) Purchase, take, receive, lease, take by gift, devise,
16 or bequest, or otherwise acquire, own, hold, improve,
17 use, and otherwise deal in and with real or personal
18 property, or any interest therein, wherever situated;
- 19 (4) Sell, convey, mortgage, pledge, lease, exchange,
20 transfer, and otherwise dispose of all and any part of
21 its property and assets;



- 1 (5) Make contracts and incur liabilities, borrow money at
2 rates of interest as the board may determine, issue
3 guaranty capital shares and surplus notes, require
4 capital contributions, issue its notes, debenture
5 bonds, and other obligations, secure any of its
6 obligations by mortgage or pledge of all or any
7 portion of its property or income, and secure
8 financing by any board-approved mechanism;
- 9 (6) Allocate fiduciary responsibilities among the
10 directors and designate other persons to carry out
11 fiduciary responsibilities;
- 12 (7) Collect, receive, hold, and disburse all money payable
13 to or by the company;
- 14 (8) Deposit the company's money in banks or depositories
15 selected by the board and withdraw the company's money
16 from those banks or depositories; provided that the
17 withdrawal shall be made or authorized only upon the
18 signatures of at least two persons approved by the
19 board;
- 20 (9) Pay money from the company to effectuate the company's
21 purpose and administration, including amounts for
22 costs incurred to establish the company; and



1 (10) Exercise all powers necessary or convenient to effect
2 the purposes of the company.

3 **§323F-F Duties and responsibilities.** (a) All corporate
4 powers shall be exercised by or under the authority of the
5 board, unless otherwise provided in this part or in the articles
6 of incorporation.

7 (b) The board shall discharge its duties:

8 (1) In accordance with the company's purpose;

9 (2) With the care, skill, prudence, and diligence under
10 the circumstances that a prudent director, acting in a
11 like capacity and familiar with those matters would
12 use in conducting a similar enterprise and purpose;

13 (3) By diversifying the company's investments to minimize
14 the risk of losses, unless it is prudent not to do so;

15 (4) In accordance with governing legal documents;

16 (5) By having an annual audit of the company by an
17 independent certified public accountant;

18 (6) By securing a fidelity bond for the administrator and
19 in its discretion for other agents dealing with the
20 company's assets at the company's expense;

21 (7) By purchasing liability insurance for errors and
22 omissions for the board, each director, and any other



- 1 fiduciary employed or contracted by the company to
2 cover liability or losses caused by the act or
3 omission of a fiduciary;
- 4 (8) By maintaining proper books of accounts and records of
5 the company's administration;
- 6 (9) By carrying out the reporting and disclosure
7 requirements required by law;
- 8 (10) By appointing a qualified actuary to develop and
9 recommend a responsible schedule of premium rates with
10 consideration of the company's investment income or
11 refunds, or both, and to provide actuarial
12 certification of the company's loss reserves; and
- 13 (11) By cooperating with and assisting the council in its
14 duties and responsibilities.
- 15 (c) Except as otherwise provided by law, the board may:
- 16 (1) Transact workers' compensation insurance policies
17 required or authorized by state law to the same extent
18 as any other insurer;
- 19 (2) Provide the terms and conditions of an insurance
20 policy;



- 1 (3) Provide that any written instrument be executed for
2 the company by the administrator or the
3 administrator's agent;
- 4 (4) Enter into agreements to reinsure all or part of the
5 company's exposure to loss and to limit the risk to
6 the company; and
- 7 (5) Employ persons to administer the company, including
8 legal counsel, accountants, insurance consultants,
9 administrators, qualified actuaries, investment
10 managers, adjustors, other experts, and clerical
11 employees, and pay compensation and expenses in
12 connection therewith.

13 **§323F-G Administrator; appointment; duties.** (a) The
14 board shall hire an administrator, who shall serve at the
15 pleasure of the board. The administrator shall be the president
16 of the company and the chief executive officer, who shall be
17 responsible for the day-to-day operations and management of the
18 company.

19 (b) The administrator shall have proven, successful
20 experience as an executive at the general management level in
21 the insurance business. The administrator shall manage and
22 conduct the business of the company according to the board's



1 direction and policies. The administrator shall receive
2 compensation authorized by the board.

3 (c) Before entering the duties of office, the
4 administrator shall give a fidelity bond in an amount and with
5 sureties approved by the board. The premium for the bond shall
6 be paid by the company.

7 (d) The administrator shall be an ex officio, nonvoting
8 member of the board.

9 **§323F-H Financial management.** (a) The board shall select
10 a custodial trustee to collect, receive, hold, or disburse
11 moneys payable to or by the company.

12 (b) The board shall invest the company's principal and
13 income without distinction between principal and income and keep
14 the company's assets invested in real or personal property or
15 other securities. The board may retain cash temporarily
16 awaiting investment or to meet contemplated payments without
17 liability for interest thereon.

18 (c) The board shall manage the company's assets, except to
19 the extent that the authority to manage the company's assets is
20 delegated to other qualified investment managers. The board may
21 appoint investment managers to manage, acquire, or dispose of
22 any of the company's assets. An investment manager may be



1 designated as an "investment agent." The investment manager
2 shall acknowledge in writing that the investment manager is a
3 fiduciary under the company.

4 (d) The board may:

- 5 (1) Sell the company's securities. No purchaser of the
6 company's securities is bound to see to the
7 application of the purchase money or inquire as to the
8 validity of such sale;
- 9 (2) Vote on behalf of any stocks, bonds, or securities of
10 any corporation or issuer held in the company or
11 request any action to such corporation or issuer. The
12 board may give general or special proxies or powers of
13 attorney with or without powers of substitution;
- 14 (3) Participate in reorganizations, recapitalization,
15 consolidations, mergers, and similar transactions for
16 stocks, bonds, or other securities of any corporation
17 that are held by the company, and accept and retain
18 any property received thereunder for the company;
- 19 (4) Exercise any subscription rights and conversion
20 privileges for the company's stocks or securities;
- 21 (5) Compromise, compound, and settle any debt or
22 obligation due to or from the company; reduce the



1 amount of principal and interest, damages, and costs
2 of collection in settling such debts;

3 (6) Cause securities held by it to be registered in its
4 own name or in the name of a nominee without
5 indicating that the securities are held in a fiduciary
6 capacity and to hold any securities in bearer form.
7 The company's records, however, shall show that such
8 investments are part of the company;

9 (7) Delegate its investment powers to investment managers
10 of the company to expedite the purchase and sale of
11 securities. The purchase or sale of securities by
12 these managers shall be in the name selected by the
13 board. The authority of these managers to purchase or
14 sell securities for the company shall be evidenced by
15 written authority executed by the administrator. The
16 board shall require these managers to keep it
17 currently informed as to the nature and amount of the
18 investments made for the company by them. The board
19 may enter into appropriate agreements with these
20 managers setting forth their investment powers and
21 limitations. The board may terminate the services of



1 these managers. These managers shall be subject to
2 the board's instructions;

3 (8) Pay taxes or assessments that are assessed against the
4 company;

5 (9) Require any applicant or policyholder to furnish the
6 board with information necessary for the company's
7 administration; and

8 (10) Delegate its authority to the administrator or any
9 authorized representative to maintain any legal
10 proceedings necessary to protect the company or the
11 directors or to secure payment due to the company. In
12 connection with this delegation, the board or the
13 administrator or their representative may compromise,
14 settle, or release claims on behalf of or against the
15 company or the board.

16 **§323F-I Oversight council.** (a) There is established the
17 medical malpractice captive insurance company oversight council
18 which shall meet at least once annually. For administrative
19 purposes only, the council shall be assigned to the department
20 of commerce and consumer affairs. The council shall oversee the
21 activities of the company to ensure that the company fulfills
22 its purpose as set forth in this part.



1 (b) The council shall consist of five members who shall
2 include:

3 (1) A member of the senate appointed by the president of
4 the senate;

5 (2) A member of the house of representatives appointed by
6 the speaker of the house of representatives;

7 (3) The director of health;

8 (4) The director of commerce and consumer affairs; and

9 (5) An at-large member who is an owner, officer, or
10 employee of the company policyholder appointed by the
11 governor;

12 provided that if any designee under paragraphs (1) to (4) does
13 not meet the test in subsection (c), the president of the
14 senate, speaker of the house of representatives, or governor, as
15 applicable, shall designate an appropriate representative.

16 Section 26-34 shall not apply to appointments under this
17 section.

18 (c) No person shall serve on the council, who within the
19 second degree of consanguinity or affinity, has a direct and
20 substantial interest in an insurer that competes with the
21 company, including but not limited to:



- 1 (1) A stockholder of a competing company (excluding a
2 holder of less than one per cent of the outstanding
3 shares in a publicly traded company);
- 4 (2) An employee of a competing company;
- 5 (3) An attorney who represents a competing company; or
- 6 (4) A party who contracts with a competing company
7 (excluding an independent contractor or business owner
8 who does less than twenty-five per cent of its total
9 annual volume of business per year with competing
10 insurers).
- 11 (d) Members of the council shall serve without
12 compensation, but shall be reimbursed for reasonable expenses
13 necessary for the performance of their duties.
- 14 (e) The administrator shall serve as liaison officer to
15 the council. Not later than sixty days after July 20, 2010, and
16 every June 15 thereafter, the board shall provide to the council
17 any and all data and information the council may require,
18 including but not limited to:
- 19 (1) The company's statutorily-required annual financial
20 statement;



1 (2) Copies of any reports issued by the insurance division
2 in connection with the triennial examination of the
3 company; and

4 (3) Actuarial certification of loss reserves.

5 (f) After receipt of the data and information required
6 pursuant to subsection (e), the council shall review the
7 activities of the company and determine whether the company is
8 fulfilling its purpose as set forth in this part. The council
9 shall promptly, but in no event later than October 15, 2010, and
10 every October 15 thereafter, submit a report to the governor
11 with a copy to the board of directors, stating whether the
12 company is fulfilling its purpose as set forth in this part. If
13 the council determines that there are any deficiencies in the
14 company's fulfillment of its purposes as set forth in this part,
15 it shall include in its report a detailed description of any
16 deficiencies. Within a period established by the council, but
17 in no event later than six months after delivery of the
18 council's report in accordance with this section, the company
19 shall respond in writing to any deficiencies identified in the
20 council's report. The medical malpractice captive insurance
21 company shall provide staff support to the council.



1 (g) If the governor determines that corrective action is
2 appropriate after reviewing the council's report and the
3 company's response, the governor shall inform the legislature,
4 and the legislature shall consider what action is needed.

5 **§323F-J Premium rates, determination.** (a) The board
6 shall establish the premium rates to be charged for insurance
7 sold by the company. The company shall comply with the
8 requirements set forth in articles 14 and 19 of chapter 431.
9 Premium rates shall be set at levels sufficient, when invested,
10 to carry all claims to maturity, to meet the reasonable expenses
11 for administering the company, and to maintain a reasonable
12 surplus.

13 (b) The board shall hire a qualified actuary to assist
14 with the development of sound premium rates.

15 **§323F-K Reserves, investment.** The board may invest or
16 reinvest any surplus or reserves within the limitations
17 established for insurance companies under chapter 431.

18 **§323F-L Financial statements and other reports.** (a) The
19 company shall submit to the commissioner an annual statement of
20 financial condition audited by an independent certified
21 accountant. The audit report shall contain an actuarial opinion
22 prepared by a qualified actuary on the company's claims reserves



1 and expenses. The financial statement shall be on a form
2 prescribed by the commissioner and shall include actuarially
3 appropriate reserves for:

- 4 (1) Known claims and associated expenses;
- 5 (2) Claims incurred but not reported and associated
6 expenses;
- 7 (3) Unearned premiums; and
- 8 (4) Bad debts, reserves for which shall be shown as
9 liabilities.

10 (b) The company shall compile and maintain statistical and
11 actuarial data relating to the determination of premium rate
12 levels, the incidence of medical malpractice claims, the cost of
13 medical malpractice claims, and other data relating to medical
14 malpractice. The compiled information shall be submitted
15 annually to the commissioner.

16 **§323F-M Audits.** The administrator, or designated
17 representative, shall have reasonable access to any
18 policyholder's payroll and employment records during regular
19 working hours to carry out audits of payroll reported, the
20 number of employees on the payroll, and other information
21 necessary for the administration of this part.



1 **§323F-N Wilful misrepresentation and fraud.** (a) Any
2 person who wilfully makes a false statement or representation
3 for the purpose of directly obtaining any compensation or
4 payment or for the purpose of avoiding any compensation or
5 payment under this part shall be subject to the penalties in
6 article 13 of chapter 431.

7 (b) The company shall develop and implement a program to
8 identify and investigate fraudulent insurance acts."

9 SECTION 2. Section 323F-3, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) The corporation shall be governed by a fifteen-member
12 board of directors that shall carry out the duties and
13 responsibilities of the corporation [~~other than those duties and~~
14 ~~responsibilities relating to the establishment of any captive~~
15 ~~insurance company pursuant to section [323F-7(c)(20)] and the~~
16 ~~operation thereof~~]."

17 SECTION 3. Section 323F-7, Hawaii Revised Statutes, is
18 amended by amending subsection (c) to read as follows:

19 "(c) Notwithstanding any other law to the contrary, the
20 corporation and any of the regional system boards shall exercise
21 the following duties and powers:



- 1 (1) Developing corporation-wide policies, procedures, and
2 rules necessary or appropriate to plan, operate,
3 manage, and control the system of public health
4 facilities and services without regard to chapter 91;
5 provided that each regional system board shall be
6 responsible for its own policies, procedures, and
7 rules necessary or appropriate to plan, operate,
8 manage, and control the public health facilities
9 within its own regional system consistent with
10 corporate policies;
- 11 (2) Evaluating the need for additional health facilities
12 and services; provided that each regional system board
13 shall be responsible for the evaluation within its own
14 regional system;
- 15 (3) Entering into and performing any contracts, leases,
16 cooperative agreements, partnerships, or other
17 transactions whatsoever that may be necessary or
18 appropriate in the performance of its purposes and
19 responsibilities, and on terms the corporation, or
20 regional system boards, may deem appropriate, with
21 either:



1 (A) Any agency or instrumentality of the United
2 States, or with any state, territory, or
3 possession, or with any subdivision thereof; or
4 (B) Any person, firm, association, partnership, or
5 corporation, whether operated on a for-profit or
6 not-for-profit basis;
7 provided that the transaction furthers the public
8 interest; and provided further that if any dispute
9 arises between any contract, lease, cooperative
10 agreement, partnership, or other transaction entered
11 into by the corporation and a regional system board
12 with regard to matters solely within that regional
13 system, after July 1, 2007, the contract, lease,
14 cooperative agreement, partnership, or other
15 transaction entered into by the regional system board
16 shall prevail; and provided further that such
17 agreements are consistent with corporation policies;
18 (4) Conducting activities and entering into business
19 relationships as the corporation board, or any
20 regional system board, deems necessary or appropriate,
21 including but not limited to:

- 1 (A) Creating nonprofit corporations, including but
2 not limited to charitable fund-raising
3 foundations, to be controlled wholly by the
4 corporation, any regional system board, or
5 jointly with others;
 - 6 (B) Establishing, subscribing to, and owning stock in
7 business corporations individually or jointly
8 with others; and
 - 9 (C) Entering into partnerships and other joint
10 venture arrangements, or participating in
11 alliances, purchasing consortia, health insurance
12 pools, or other cooperative arrangements, with
13 any public or private entity; provided that any
14 corporation, venture, or relationship entered
15 into under this section furthers the public
16 interest; provided further that this paragraph
17 shall not be construed to authorize the
18 corporation or a regional system board to
19 abrogate any responsibility or obligation under
20 paragraph (15);
- 21 provided that each regional system board shall be
22 responsible for conducting the activities under this



- 1 paragraph in its own regional system consistent with
2 policies established by the corporation board;
- 3 (5) Participating in and developing prepaid health care
4 service and insurance programs and other alternative
5 health care delivery programs, including programs
6 involving the acceptance of capitated payments or
7 premiums that include the assumption of financial and
8 actuarial risk; provided that each regional system
9 board shall be responsible for conducting the
10 activities under this paragraph in its own regional
11 system consistent with policies established by the
12 corporation board;
- 13 (6) Executing, in accordance with all applicable bylaws,
14 rules, and laws, all instruments necessary or
15 appropriate in the exercise of any powers of the
16 corporation or regional system boards;
- 17 (7) Preparing and executing all corporation-wide budgets,
18 policies, and procedures or any regional system
19 budgets, policies, and procedures; provided that the
20 regional system boards shall submit their regional and
21 facility budgets to the corporation to be consolidated
22 into a corporation-wide budget for purposes of



1 corporation-wide planning and appropriation requests.
2 Regional system and facility budgets shall be received
3 by the corporation and shall be included in the
4 corporation-wide budget upon submittal to the
5 corporation;

6 (8) Setting rates and charges for all services provided by
7 the corporation without regard to chapter 91; provided
8 that the duty and power of the corporation board shall
9 be limited to approving the rates and charges
10 developed by the regional system boards for the
11 regional system's facilities and services. Rates and
12 charges may vary among regional systems and facilities
13 and may be consolidated with the rates of other
14 regional systems into one charge master. Third-party
15 payer contracts may be negotiated at the corporation-
16 wide level with input from the regional systems,
17 taking into consideration the rates set by the
18 regional system boards. For purposes of securing
19 revenue bonds, the corporation or regional system
20 board may covenant to set, and if necessary increase,
21 rates and charges as needed to pay debt service and
22 related obligations plus a coverage factor;



1 (9) Developing a corporation-wide hospital system that is
2 subject to chapters 76 and 89; provided that
3 employment of regional system and facility personnel
4 shall be the responsibility of the regional system
5 boards pursuant to corporation-wide policies and
6 procedures, applicable laws, rules, regulations, and
7 collective bargaining agreements;

8 (10) Developing the corporation's corporation-wide capital
9 and strategic plans or any regional system board's
10 capital and strategic plans; provided that each
11 regional system board shall be responsible for
12 development of capital and strategic plans in its own
13 regional system that shall be consistent with, and
14 incorporated into, the overall corporation-wide plans;
15 and provided further that the corporation and each
16 regional system board shall be entitled to undertake
17 the acquisition, construction, and improvement of
18 property, facilities, and equipment to carry out these
19 capital and strategic plans;

20 (11) Suing and being sued; provided that only the
21 corporation may sue or be sued; and provided further
22 that the corporation and regional system boards shall



1 enjoy the same sovereign immunity available to the
2 State;

3 (12) Making and altering corporation board and regional
4 system board bylaws for its organization and
5 management without regard to chapter 91 and consistent
6 with this chapter; provided that each regional system
7 board shall be responsible for the final approval of
8 its regional system board bylaws;

9 (13) Adopting rules without regard to chapter 91 governing
10 the exercise of the corporation's or regional system
11 boards' powers and the fulfillment of its purpose
12 under this chapter;

13 (14) Entering into any contract or agreement whatsoever,
14 not inconsistent with this chapter or the laws of this
15 State, and authorizing the corporation, regional
16 system boards, and chief executive officers to enter
17 into all contracts, execute all instruments, and do
18 all things necessary or appropriate in the exercise of
19 the powers granted in this chapter, including securing
20 the payment of bonds; provided that the corporation
21 board shall delegate to a regional system board its
22 authority to enter into and execute contracts or



1 agreements relating to matters exclusively affecting
2 that regional system; provided further that a regional
3 system board shall exercise this power consistent with
4 corporation-wide policies; and provided further that
5 contracts or agreements executed by a regional system
6 board shall encumber only the regional subaccounts of
7 that regional system board;

8 (15) Issuing revenue bonds up to \$100,000,000 subject to
9 the approval of the governor or the director of
10 finance; provided that:

11 (A) All revenue bonds shall be issued pursuant to
12 part III, chapter 39;

13 (B) The corporation and any regional system board
14 shall have the power to issue revenue bonds in
15 any amount without regard to any limitation in
16 chapter 39; and

17 (C) The corporation shall have the power to incur
18 debt, including the issuance of revenue bonds in
19 any amount, and the regional system boards shall
20 have the power to issue revenue bonds in any
21 amount upon approval by the corporation board;



- 1 (16) Reimbursing the state general fund for debt service on
2 general obligation bonds or reimbursable general
3 obligation bonds issued by the State for the purposes
4 of the corporation or any regional system board;
- 5 (17) Pledging or assigning all or any part of the receipts,
6 revenues, and other financial assets of the
7 corporation or the regional system boards for purposes
8 of meeting or securing bond or health systems
9 liabilities; provided that each regional system board
10 shall be responsible for conducting the activities
11 under this paragraph in its own regional system. Any
12 pledge or assignment by the corporation or any
13 regional system board to secure revenue bonds or
14 health system liabilities shall be valid and binding
15 in accordance with its terms against the pledgor,
16 creditors, and all others asserting rights thereto
17 from the time the pledge or assignment is made,
18 without the need of physical delivery, recordation,
19 filing, or further act. The corporation shall not
20 take or omit to take any act that would interfere
21 with, impair, or adversely affect any pledge of
22 assignment by a regional system board pursuant to this



1 chapter. In connection with issuing revenue bonds or
2 related obligations, consistent with corporation
3 policies and procedures, any regional system board may
4 make such other covenants, binding on the regional
5 system board and the corporation, that the regional
6 system board determines to be necessary or appropriate
7 to establish and maintain security for the revenue
8 bonds or related obligations;

9 (18) Owning, purchasing, leasing, exchanging, or otherwise
10 acquiring property, whether real, personal or mixed,
11 tangible or intangible, and of any interest therein,
12 in the name of the corporation, which property is not
13 owned or controlled by the State but is owned or
14 controlled by the corporation; provided that:

15 (A) Regional system boards shall have custodial
16 control over facilities and physical assets in
17 their respective regional systems. A regional
18 system board may own, purchase, lease, exchange,
19 or otherwise acquire property, whether real,
20 personal or mix, tangible or intangible, and of
21 any interest therein, other than property owned
22 or controlled by the corporation, in the name of



1 the regional system board; provided further that
2 a regional system board shall be subject to
3 section 323F-3.5; and

4 (B) Each regional system board shall be responsible
5 for conducting the activities under this
6 paragraph in its own regional system;

7 (19) Maintaining, improving, pledging, mortgaging, selling,
8 or otherwise holding or disposing of property, whether
9 real, personal or mixed, tangible or intangible, and
10 of any interest therein, at any time and manner, in
11 furtherance of the purposes and mission of the
12 corporation or any regional system board; provided
13 that the corporation or any regional system board
14 legally holds or controls the property in its own
15 name; provided further that other than to secure
16 revenue bonds and related obligations and agents, the
17 corporation or any regional system board shall not
18 sell, assign, lease, hypothecate, mortgage, pledge,
19 give, or dispose of all or substantially all of its
20 property; and provided further that each regional
21 system board shall be responsible for conducting the
22 activities under this paragraph in its own regional



- 1 system, and control over such property shall be
2 delegated to each regional system board;
- 3 (20) [~~Purchasing~~] Except for the formation of a captive
4 insurer to provide medical malpractice insurance to
5 medical doctors employed by the corporation pursuant
6 to part of this chapter, purchasing insurance and
7 creating captive insurers in any arrangement deemed in
8 the best interest of the corporation, including but
9 not limited to funding and payment of deductibles and
10 purchase of reinsurance; provided that only the
11 corporation shall have the power to create captive
12 insurers to benefit public health facilities and
13 operations in all regional systems; and provided
14 further that a regional system board may purchase
15 insurance for its regional system in collaboration
16 with the other regional systems and the corporation
17 until captive coverage is provided by the corporation;
- 18 (21) Acquiring by condemnation, pursuant to chapter 101,
19 any real property required by the corporation to carry
20 out the powers granted by this chapter;
- 21 (22) Depositing any moneys of the corporation or any
22 regional system board in any banking institution



1 within or without the State, and appointing, for the
2 purpose of making deposits, one or more persons to act
3 as custodians of the moneys of the corporation; or any
4 regional system board; provided that regional system
5 boards may deposit moneys in banking institutions
6 pursuant to corporation-wide guidelines established by
7 the corporation board;

8 (23) Contracting for and accepting any gifts, grants, and
9 loans of funds, property, or any other aid in any form
10 from the federal government, the State, any state
11 agency, or any other source, or any combination
12 thereof, and complying, subject to this chapter, with
13 the terms and conditions thereof; provided that the
14 regional system boards shall be responsible for
15 contracting for and accepting any gifts, grants,
16 loans, property, or other aid if intended to benefit
17 the public health facilities and operations
18 exclusively in their respective regional systems; and
19 provided further that all contracting for or
20 acceptance of gifts, grants, loans, property, or other
21 aid shall be consistent with corporation-wide policies
22 established by the corporation board;



1 (24) Providing health and medical services for the public
2 directly or by agreement or lease with any person,
3 firm, or private or public corporation, partnership,
4 or association through or in the health facilities of
5 the corporation or regional system boards or
6 otherwise; provided that the regional system boards
7 shall be responsible for conducting the activities
8 under this paragraph in their respective regional
9 systems;

10 (25) Approving medical staff bylaws, rules, and medical
11 staff appointments and reappointments for all public
12 health facilities of the corporation or any regional
13 system board, including but not limited to determining
14 the conditions under which a health professional may
15 be extended the privilege of practicing within a
16 health facility, as determined by the respective
17 regional system board and consistent with corporate-
18 wide policies, and adopting and implementing
19 reasonable rules, without regard to chapter 91, for
20 the credentialing and peer review of all persons and
21 health professionals within the facility; provided
22 that regional system boards shall be the governing



1 body responsible for all medical staff organization,
2 peer review, and credentialing activities to the
3 extent allowed by law;

4 (26) (A) Investing any funds not required for immediate
5 disbursement in property or in securities that
6 meet the standard for investments established in
7 chapter 88 as provided by the corporation board
8 or any regional system board; provided that
9 proceeds of bonds and moneys pledged to secure
10 bonds may be invested in obligations permitted by
11 any document that authorizes the issuance or
12 securing of bonds; and provided further that the
13 investment assists the corporation or any
14 regional system board in carrying out its public
15 purposes; selling from time to time securities
16 thus purchased and held, and depositing any
17 securities in any bank or financial institution
18 within or without the State. Any funds deposited
19 in a banking institution or in any depository
20 authorized in this section shall be secured in a
21 manner and subject to terms and conditions as the
22 corporation board or a regional system board may



1 determine, with or without payment of any
2 interest on the deposit, including without
3 limitation time deposits evidenced by
4 certificates of deposit. Any bank or financial
5 institution incorporated under the laws of this
6 State may act as depository of any funds of the
7 corporation or a regional system board and may
8 issue indemnity bonds or may pledge securities as
9 may be required by the corporation or regional
10 system board; provided that regional system
11 boards may exercise the powers under this
12 subsection with respect to financial assets of
13 the regional system consistent with corporation-
14 wide policies; and

15 (B) Notwithstanding subparagraph (A), contracting
16 with the holders of any of its notes or bonds as
17 to the custody, collection, securing, investment,
18 and payment of any moneys of the corporation or
19 regional system board and of any moneys held in
20 trust or otherwise for the payment of notes or
21 bonds and carrying out the contract. Moneys held
22 in trust or otherwise for the payment of notes or

1 bonds or in any way to secure notes or bonds, and
2 deposits of such moneys, may be secured in the
3 same manner as moneys of the corporation or
4 regional system board, and all banks and trust
5 companies are authorized to give security for the
6 deposits;

7 (27) Entering into any agreement with the State, including
8 but not limited to contracts for the provision of
9 goods, services, and facilities in support of the
10 corporation's programs or the regional system boards'
11 programs, and contracting for the provision of
12 services to or on behalf of the State; provided that
13 the regional system boards shall be responsible for
14 entering into agreements to provide goods, services,
15 and facilities in support of programs in their
16 respective regional systems consistent with
17 corporation-wide policies;

18 (28) Having a seal and altering the same at pleasure;

19 (29) Waiving, by means that the corporation or regional
20 system board deems appropriate, the exemption from
21 federal income taxation of interest on the
22 corporation's or regional system boards' bonds, notes,



1 or other obligations provided by the Internal Revenue
2 Code of 1986, as amended, or any other federal statute
3 providing a similar exemption;

4 (30) Developing internal policies and procedures for the
5 procurement of goods and services, consistent with the
6 goals of public accountability and public procurement
7 practices, and subject to management and financial
8 legislative audits; provided that the regional system
9 boards shall be responsible for developing internal
10 policies and procedures for each of their regional
11 systems consistent with the corporation's policies and
12 procedures; and further provided that:

13 (A) The regional system boards and the corporate
14 board shall enjoy the exemption under section
15 103-53(e);

16 (B) The regional system boards shall enjoy the
17 exemption under chapter 103D; and

18 (C) The corporation shall be subject to chapter 103D;

19 (31) Authorizing and establishing positions; provided that
20 regional system boards shall be responsible for hiring
21 and firing regional and facility personnel consistent
22 with corporation policies, except a regional chief



1 executive officer and regional chief financial officer
2 shall only be hired or dismissed upon the approval of
3 the regional system board and the corporation board as
4 further set forth in section 323F-8.5;

5 (32) Having and exercising all rights and powers necessary
6 or incidental to or implied from the specific powers
7 granted in this chapter, which specific powers shall
8 not be considered as a limitation upon any power
9 necessary or appropriate to carry out the purposes and
10 intent of this chapter; provided that the regional
11 system boards shall be responsible for having and
12 exercising all powers and rights with respect to
13 matters in their regional systems consistent with the
14 law; and

15 (33) Each regional system, through its regional system
16 board, shall:

17 (A) Develop policies and procedures necessary or
18 appropriate to plan, operate, manage, and control
19 the day-to-day operations of facilities within
20 the regional system that are consistent with
21 corporation-wide policies;



1 (B) Exercise custodial control over and use of all
2 assets of the corporation that are located in the
3 regional system pursuant to this chapter; and

4 (C) Expend funds within its approved regional system
5 budget and expend additional funds in excess of
6 its approved regional system budget upon approval
7 of the corporation board."

8 SECTION 4. Section 323F-4.5, Hawaii Revised Statutes, is
9 repealed.

10 [~~§323F-4.5~~ ~~Captive insurance board.~~ (a) ~~There is~~
11 ~~established a ten member captive insurance board that shall~~
12 ~~carry out the corporation's duties and responsibilities relating~~
13 ~~to the establishment of any captive insurance company pursuant~~
14 ~~to section [323F-7(c)(20)] and the operation thereof.~~

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

17 (1) ~~Three members from a list of five persons submitted by~~
18 ~~the president of the senate; provided that at least~~
19 ~~one of these members shall have experience in the~~
20 ~~insurance industry and financial matters;~~

21 (2) ~~Three members from a list of five persons submitted by~~
22 ~~the speaker of the house of representatives; provided~~



1 ~~that at least one of these members shall have~~
2 ~~experience in the insurance industry and financial~~
3 ~~matters; and~~

4 ~~(3) Two members, one of whom shall be the chief executive~~
5 ~~officer or chief financial officer of an insurer~~
6 ~~licensed to do business in the State and shall serve~~
7 ~~as a nonvoting member.~~

8 ~~The director of health or the director's designee and the~~
9 ~~insurance commissioner or the commissioner's designee shall~~
10 ~~serve as ex officio, nonvoting members.~~

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

14 ~~(c) The selection, appointment, and confirmation of any~~
15 ~~appointed nominee shall be based on ensuring that captive~~
16 ~~insurance board members have diverse and beneficial perspectives~~
17 ~~and experiences and that they include, to the extent possible,~~
18 ~~representatives of the insurance and/or finance sectors.~~

19 ~~Members of the captive insurance board shall serve without~~
20 ~~compensation but may be reimbursed for actual expenses,~~
21 ~~including travel expenses incurred in the performance of their~~
22 ~~duties.~~



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

6 ~~(1) Malfeasance in office;~~

7 ~~(2) Failure to attend regularly called meetings;~~

8 ~~(3) Sentencing for conviction of a felony, to the extent~~
9 ~~allowed by section 831-2; or~~

10 ~~(4) Any other cause that may render a member incapable or~~
11 ~~unfit to discharge the duties required under this~~
12 ~~chapter.~~

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

17 ~~(e) No member of the captive insurance board shall be an~~
18 ~~employee or vendor of the corporation, or an immediate family~~
19 ~~member thereof. For purposes of this subsection, "immediate~~
20 ~~family member" means a corporation board employee's or vendor's~~
21 ~~spouse, child, parent, grandparent, or any related individual~~
22 ~~who resides in the same household of the employee or vendor."]~~



1 SECTION 5. Act 278, Session Laws of Hawaii 2007, is
2 amended as follows:

3 1. By amending section 1 to read:

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

14 ~~[The purpose of this Act is to:~~

15 ~~(1) Provide that if the Hawaii health systems corporation~~
16 ~~establishes a domestic captive insurance company to~~
17 ~~provide medical malpractice and hospital professional~~
18 ~~and general liability coverage for the corporation and~~
19 ~~its facilities and the physicians serving therein, it~~
20 ~~must submit a feasibility report to the legislature, a~~
21 ~~formalized financial plan to the director of finance~~



1 ~~for approval, and a business plan to the insurance~~
2 ~~commissioner; and~~

3 ~~(2) Ensure that the composition of the captive insurance~~
4 ~~board includes members with the appropriate knowledge~~
5 ~~and experience to oversee the establishment and~~
6 ~~operation of a captive insurance company.]~~

7 The purpose of this Act is to facilitate the establishment
8 of a captive insurance company to provide medical malpractice
9 insurance coverage for medical doctors of the Hawaii health
10 systems corporation."

11 2. By repealing section 5:

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

17 ~~(1) Submit a formalized financial plan to the director of~~
18 ~~finance for review and approval; and~~

19 ~~(2) Upon receiving the approval required by paragraph (1),~~
20 ~~in addition to the documents required to be submitted~~
21 ~~by article 19, chapter 431, Hawaii Revised Statutes,~~
22 ~~submit to the insurance commissioner a formalized~~



1 ~~business plan that includes the establishment of a~~
2 ~~captive insurer board of directors."]~~

3 SECTION 6. In codifying the new sections added by section
4 1 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 7. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Healthcare; Universal

Description:

Forms a captive insurance company to provide medical malpractice insurance to medical doctors employed by the Hawaii Health Systems Corporation. (HB1598 HD2)

