

JAN 19 2007

A BILL FOR AN ACT

RELATING TO CAPTIVE INSURANCE COMPANIES.

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

1 SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is
2 amended by amending the definitions of "association", "member
3 organization", and "parent" to read as follows:

4 ""Association" means any legal association of individuals,
5 corporations, limited liability companies, partnerships, [~~or~~]
6 associations, or other entities, except labor organizations, the
7 member organizations of which [~~collectively~~] or which does
8 itself, whether or not in conjunction with some or all of the
9 member organizations:

- 10 (1) Own, control, or hold with power to vote all of the
11 outstanding voting securities of an association
12 captive insurance company incorporated as a stock
13 insurer; [~~or~~]
- 14 (2) Have complete voting control over an association
15 captive insurance company incorporated as a mutual
16 insurer[~~+~~]; or



1 (3) Constitute all of the subscribers of an association
 2 captive insurance company formed as a reciprocal
 3 insurer.

4 "Member organization" means any individual, corporation,
 5 limited liability company, partnership, [or] association, or
 6 other entity that belongs to an association.

7 "Parent" means a [~~company,~~] corporation, limited liability
 8 company, partnership, [person, or] other [legal] entity, or
 9 individual, that directly or indirectly owns, controls, or holds
 10 with power to vote more than fifty per cent of the outstanding
 11 voting [~~securities~~] interests of a pure captive insurance
 12 company[~~er~~] organized as a stock corporation, nonprofit
 13 corporation, or limited liability company."

14 SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is
 15 amended by amending subsections (a), (b), and (c) to read as
 16 follows:

17 "(a) Any captive insurance company, when permitted by its
 18 articles of association [~~or~~], articles of incorporation,
 19 articles of organization, or other organizational document, may
 20 apply to the commissioner for a certificate of authority to do
 21 any and all insurance set forth in subsection (h); provided
 22 that:

1 (1) No pure captive insurance company may insure any risks
2 other than those of its parent and affiliated
3 entities;

4 (2) No association captive insurance company may insure
5 any risks other than those of the member organizations
6 of its association and their affiliated entities;

7 (3) No captive insurance company may provide personal
8 motor vehicle or homeowner's insurance coverage or any
9 component thereof, other than as employee benefits for
10 the employees of a parent, association, or its
11 members, and their respective affiliated entities; or
12 as reinsurance as may be allowed under this article;
13 and

14 (4) No captive insurance company may accept or cede
15 insurance except as provided in section 431:19-111.

16 (b) No captive insurance company shall do any insurance
17 business in this State unless:

18 (1) It first obtains from the commissioner a certificate
19 of authority authorizing it to do insurance business
20 in this State;



- 1 (2) Its board of directors, committee of managers, or
2 subscribers' advisory committee, holds at least one
3 meeting each year in this State;
- 4 (3) It maintains its principal place of business and
5 registered office in this State, except that a branch
6 captive insurance company need only maintain the
7 principal place of a business unit in this State; and
- 8 (4) It designates a registered resident agent in
9 accordance with chapter 414 [~~e~~], 414D, or 428, as
10 applicable, to accept service of process and to
11 otherwise act on its behalf in this State. Whenever
12 the registered resident agent cannot, with reasonable
13 diligence, be found at the registered office of the
14 captive insurance company, the commissioner shall be
15 an agent of the captive insurance company upon whom
16 any process, notice, or demand may be served in
17 accordance with section 431:2-206.
- 18 (c) Before receiving a certificate of authority, a captive
19 insurance company shall file with the commissioner [~~a~~]:
- 20 (1) A certified copy of its organizational documents,
21 including but not limited to its articles of
22 incorporation [~~e~~], articles of association, or



1 articles of organization, and bylaws[~~7-a~~], as
2 applicable;

3 (2) A statement under oath of any two of its principal
4 officers, or its attorney-in-fact in the case of a
5 captive insurance company formed as a reciprocal
6 insurer, showing its financial condition[~~7 and any~~];
7 and

8 (3) Any other statements or documents required by the
9 commissioner."

10 SECTION 3. Section 431:19-102.3, Hawaii Revised Statutes,
11 is amended by amending subsection (a) to read as follows:

12 "(a) Any foreign or alien captive insurance company may
13 become a domestic captive insurance company by meeting the
14 following requirements:

15 (1) Compliance with all of the requirements relating to
16 the organization and licensing of a domestic captive
17 insurance company of the same type, and any
18 requirements that the commissioner may adopt by rule;

19 (2) The articles of incorporation or other organizational
20 document shall be amended in compliance with the laws
21 of this State and restated in its entirety before
22 submission to the commissioner. Before the amended



1 and restated articles of incorporation or other
2 organizational document is transmitted to the
3 department of commerce and consumer affairs, the
4 foreign or alien captive insurance company shall
5 petition the commissioner to issue a certificate
6 setting forth the commissioner's finding that the
7 redomestication and maintenance of the [~~corporation~~]
8 company will promote the general good of the State.
9 In arriving at the finding, the commissioner shall
10 consider:

11 (A) The character, reputation, financial standing,
12 and purposes of the foreign or alien captive
13 insurance company;

14 (B) The character, reputation, financial
15 responsibility, insurance experience, and
16 business qualifications of the officers and
17 directors[+], or manager or managers in the case
18 of a limited liability company; and

19 (C) Any other aspects as the commissioner deems
20 advisable;

21 (3) The following shall be transmitted to the department
22 of commerce and consumer affairs for filing:



- 1 (A) Articles of redomestication;
- 2 (B) Certificate of general good issued by the
- 3 commissioner;
- 4 (C) Certificate of good standing duly authenticated
- 5 by the proper officer of the state or country
- 6 under the laws of which the foreign or alien
- 7 captive insurance company is incorporated;
- 8 provided that the certificate shall be dated not
- 9 earlier than thirty days prior to the filing of
- 10 the articles of redomestication; and provided
- 11 further that if the certificate of good standing
- 12 is in a foreign language, a translation under
- 13 oath of the translator shall accompany the
- 14 certificate;
- 15 (D) Amendments to the articles of incorporation or
- 16 other organizational document in compliance with
- 17 the laws of this State;
- 18 (E) Restatement of the articles of incorporation or
- 19 other organizational document in its entirety;
- 20 and
- 21 (F) Organization fee; and



- 1 (4) The articles of redomestication shall set forth the
2 following:
- 3 (A) Name of the [~~corporation~~] company;
- 4 (B) Date of incorporation or organization and state
5 or country of incorporation[+] or organization;
- 6 (C) Street address of the principal office in this
7 State;
- 8 (D) Names and titles of the manager or managers,
9 officers, and directors of the [~~corporation~~]
10 company;
- 11 (E) A statement that the [~~corporation~~] company is
12 moving its domicile from its present state or
13 country to this State;
- 14 (F) A statement that redomestication will occur upon
15 filing the articles of redomestication and that
16 the [~~corporation~~] company shall be subject to the
17 laws of this State; and
- 18 (G) A statement that copies of the articles of
19 incorporation or other organizational document
20 and any amendments certified by the proper
21 officer of the state or country under the laws of
22 which the [~~corporation~~] company is incorporated



1 or organized are attached; provided that if any
2 of these documents are in a foreign language, a
3 translation under oath of the translator shall
4 accompany these documents."

5 SECTION 4. Section 431:19-102.4, Hawaii Revised Statutes,
6 is amended by amending subsection (c) to read as follows:

7 "(c) The notice of change in domicile, the certificate of
8 transfer issued by the commissioner, the proof of
9 redomestication, and the filing fee shall be transmitted to the
10 department of commerce and consumer affairs. The notice of
11 change in domicile shall set forth the following:

- 12 (1) Name of the [~~corporation,~~] company;
- 13 (2) Dates that notice of the [~~corporation's~~] company's
14 intent to transfer domicile from this State was
15 published, once in each of four successive weeks (four
16 publications) in a newspaper of general circulation
17 published in this State;
- 18 (3) Date of the transfer of its domicile; and
- 19 (4) State or country to which its domicile will be
20 transferred."

21 SECTION 5. Section 431:19-104, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) The minimum capital requirements prescribed in
2 subsection (c)(1) through (5) may be in the form of cash, in the
3 form of an irrevocable letter of credit issued by a bank
4 chartered by this State or a member bank of the Federal Reserve
5 System, or other security approved by the commissioner. Any
6 additional capital required by this section shall be invested in
7 accordance with section 431:19-110."

8 SECTION 6. Section 431:19-105, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The minimum surplus requirements prescribed in
11 section 431:19-104(c)(1) through (5) may be in the form of cash,
12 in the form of an irrevocable letter of credit issued by a bank
13 chartered by this State or member bank of the Federal Reserve
14 System, or other security approved by the commissioner. Any
15 additional surplus required by section 431:19-104 shall be
16 invested in accordance with section 431:19-110."

17 SECTION 7. Section 431:19-106, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§431:19-106 Formation of captive insurance companies in**
20 **this State.** (a) A pure captive insurance company [~~shall~~] may
21 be incorporated as a stock insurer with its capital divided into
22 shares and held by the stockholders[-], as a nonprofit



1 corporation with one or more members, or as a member-managed or
2 manager-managed limited liability company.

3 (b) A captive insurance company, which is other than a
4 pure captive insurance company, may be:

5 (1) Incorporated as a stock insurer with its capital
6 divided into shares and held by the stockholders;

7 (2) Incorporated as a mutual insurer without capital
8 stock, the governing body of which is elected by the
9 member organization of its association; [~~e~~]

10 (3) Organized as a reciprocal insurer, for other than
11 credit life and credit disability insurance and group
12 term life insurance, without capital stock, whose
13 affairs shall be coordinated through an attorney-in-
14 fact as provided in the power of attorney or other
15 agreement given to the attorney-in-fact by the
16 subscribers [~~+~~]; or

17 (4) Organized as a member-managed or manager-managed
18 limited liability company.

19 (c) A captive insurance company other than one that is
20 formed as a reciprocal insurer shall have no fewer than three
21 incorporators or three organizers of whom no fewer than two
22 shall be residents of this State.



- 1 (d) [~~Before~~] In the case of a captive insurance company:
- 2 (1) Formed as a corporation, before the articles of
- 3 incorporation are transmitted to the department of
- 4 commerce and consumer affairs, the incorporators shall
- 5 petition the commissioner to issue a certificate
- 6 setting forth the commissioner's finding that the
- 7 establishment and maintenance of the proposed
- 8 corporation will promote the general good of the
- 9 State. In arriving at such a finding, the
- 10 commissioner shall consider:
- 11 [~~+1~~] (A) The character, reputation, financial standing,
- 12 and purposes of the incorporators;
- 13 [~~+2~~] (B) The character, reputation, financial
- 14 responsibility, insurance experience, and
- 15 business qualifications of the officers and
- 16 directors; and
- 17 [~~+3~~] (C) Other aspects as the commissioner deems
- 18 advisable.
- 19 (2) Formed as a reciprocal insurer, the organizers shall
- 20 petition the commissioner to issue a certificate
- 21 setting forth the commissioner's finding that the
- 22 establishment and maintenance of the proposed company



1 will promote the general good of the State. In
2 arriving at such a finding the commissioner shall
3 consider:

4 (A) The character, reputation, financial standing,
5 and purposes of the organizers and attorney-in-
6 fact;

7 (B) The character, reputation, financial
8 responsibility, insurance experience, and
9 business qualifications of the subscribers,
10 advisory committee, and attorney-in-fact; and

11 (C) Other aspects as the commissioner deems
12 advisable.

13 (3) Formed as a limited liability company, before the
14 organizational documents are transmitted to the
15 department of commerce and consumer affairs, the
16 organizers shall petition the commissioner to issue a
17 certificate setting forth the commissioner's finding
18 that the establishment and maintenance of the proposed
19 company will promote the general good of the State.
20 In arriving at such a finding the commissioner shall
21 consider:



- 1 (A) The character, reputation, financial standing,
2 and purposes of the organizers;
- 3 (B) The character, reputation, financial
4 responsibility, insurance experience, and
5 business qualifications of the members, managers,
6 and officers; and
- 7 (C) Other aspects as the commissioner deems
8 advisable.

9 (e) The articles of incorporation~~[7]~~ or other
10 organizational documents, certificate, and the organization fee
11 shall be transmitted to the department of commerce and consumer
12 affairs, which shall record both the articles of incorporation
13 or other organizational documents and the certificate.

14 (f) The capital stock of a captive insurance company
15 incorporated as a stock insurer shall be issued at not less than
16 par value.

17 (g) ~~[A*]~~ In the case of a captive insurance company:

18 (1) Formed as a corporation, at least one of the members
19 of the board of directors ~~[of a captive insurance~~
20 ~~company incorporated in this State]~~ shall be a
21 resident of this State~~[7]~~;



- 1 (2) Formed as a reciprocal insurer, at least one of the
2 members of the subscriber's advisory committee shall
3 be a resident of this State;
- 4 (3) Formed as a limited liability company, at least one of
5 the managers shall be a resident of this State.
- 6 (h) [~~Captive insurance companies formed under this~~
7 ~~article, except for pure nonprofit captive insurance companies,~~
8 Other than captive insurance companies formed as limited
9 liability companies pursuant to the limited liability company
10 law of this State or as nonprofit corporations pursuant to the
11 nonprofit corporation law of this State, captive insurance
12 companies formed as corporations under the provisions of this
13 chapter shall have the privileges and be subject to the general
14 corporation law of this State, as well as this article. In the
15 event of conflict between [~~the general corporation law~~] any of
16 the foregoing applicable laws of this State and this article,
17 the latter shall control.
- 18 (i) [~~Pure~~] Captive insurance companies formed under the
19 provisions of this chapter:
- 20 (1) As limited liability companies shall have the
21 privileges and be subject to the provisions of the
22 limited liability company law of this State as well as



1 the applicable provisions contained in this chapter.
2 In the event of a conflict between the limited
3 liability company law and this article, the latter
4 shall control; or

5 (2) As nonprofit captive insurance companies formed under
6 this article shall have the privileges and be subject
7 to the nonprofit corporation law of this State as well
8 as this article. In the event of conflict between the
9 nonprofit corporation law and this article, the latter
10 shall control."

11 SECTION 8. Section 431:19-106.5, Hawaii Revised Statutes,
12 is amended by amending subsections (b) and (c) to read as
13 follows:

14 "(b) A plan of conversion or merger shall be submitted to
15 and be approved by the commissioner in advance of the proposed
16 conversion or merger. The commissioner shall not approve the
17 plan unless:

18 (1) The commissioner finds that it is fair, equitable, and
19 consistent with law;

20 (2) The plan has been approved:

21 (A) In the case of a stock corporation, by at least
22 two-thirds of the shares entitled to vote at a



1 duly called regular or special meeting of the
2 shareholders at which a quorum is present, or by
3 unanimous written consent of the shareholders;
4 ~~[or]~~

5 (B) In the case of a mutual insurer, by at least two-
6 thirds of the voting interest of the members of
7 the mutual insurer at a duly called regular or
8 special meeting of the membership at which a
9 quorum is present, or by unanimous written
10 consent of the members of the mutual insurer;
11 ~~[or]~~

12 (C) In the case of a reciprocal insurer, by at least
13 two-thirds of the voting interest of the
14 subscribers of the reciprocal insurer at a duly
15 called meeting of the subscribers of the
16 reciprocal insurer, or by unanimous written
17 consent of the subscribers;

18 (D) In the case of a nonprofit corporation, by at
19 least two-thirds of the voting interest of the
20 members at a duly called meeting of the members
21 of the corporation, or by unanimous written
22 consent of all the members; or



1 (E) In the case of a limited liability company, by at
2 least two-thirds of the voting interest of the
3 members at a duly called meeting of the members
4 of the limited liability company, or by unanimous
5 written consent of the members;

6 (3) The plan provides for:

7 (A) The conversion of existing stockholder, member,
8 or subscriber interests into equal or
9 proportionate interests in the new converted or
10 merged insurer, or such other method and basis
11 for the conversion of the stockholder, member, or
12 subscriber interests that is fair and equitable;

13 (B) The purchase or other disposition of the shares
14 of any nonconsenting shareholder of a stock
15 insurer [~~or the~~], policyholder interest of any
16 nonconsenting member of a mutual insurer or
17 limited liability company, or the subscriber
18 surplus account interest, if any, of a subscriber
19 of a reciprocal insurer, in accordance with
20 either an agreement with any nonconsenting
21 stockholder, member, or subscriber or with the
22 existing articles or bylaws of the insurer



1 relating to the buyback buyout, or the
2 termination of the stockholder, member, or
3 subscriber interests, if any, or if no such
4 provisions exist, then in accordance with the
5 laws of this State relating to the rights of
6 dissenting shareholders; and

7 (C) The novation, assignment, transfer, run-off, or
8 other disposition of in force policies insuring
9 any nonconsenting shareholder, member, or
10 subscriber;

11 (4) The conversion or merger will leave the resulting
12 converted insurer or surviving insurer of the merger
13 with capital or surplus funds reasonably adequate to
14 preserve the security of its policyholders and an
15 ability to continue to transact business in the
16 classes of insurance in which it is then authorized to
17 transact; and

18 (5) The commissioner finds that the conversion or merger
19 will promote the general good of the State.

20 (c) After approval of the plan of conversion or merger by
21 the commissioner, the converting or merging insurer shall file
22 with the director of commerce and consumer affairs, appropriate



1 articles of amendment, articles of conversion, or articles of
2 merger, as the case may be; provided that in the case of the
3 conversion of a reciprocal insurer or limited liability company
4 insurer to a stock or mutual insurer, the existing reciprocal or
5 limited liability company insurer shall file articles of
6 incorporation [~~in order~~] to commence the corporate existence of
7 the company in the form of a stock or mutual insurer. Documents
8 filed with the director of commerce and consumer affairs
9 pursuant to this subsection shall comply with all applicable
10 requirements for such documents as may be contained in this
11 article and chapter 414 [~~e~~], 414D[-], or 428, as to the extent
12 that these laws are applicable to the conversion or merger."

13 SECTION 9. Section 431:19-110, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§431:19-110 Legal investments.** (a) Each captive
16 insurance company shall be subject to the restrictions on
17 allowable investments provided under sections 431:6-101 to
18 431:6-501; provided that the commissioner may approve other
19 investments and investment provisions as the commissioner deems
20 appropriate for each captive insurance company licensed under
21 this article.



1 (b) Notwithstanding subsection (a) to the contrary, a pure
2 captive insurance company shall not be subject to any
3 restrictions on allowable investments; provided that the
4 commissioner may prohibit, limit, or require divestiture of, any
5 investment that threatens the solvency or liquidity of the pure
6 captive insurance company.

7 (c) A pure captive insurance company may make a loan to or
8 an investment in its parent or affiliated company; provided that
9 the loan shall:

- 10 (1) Receive prior written approval from the commissioner;
11 (2) Be evidenced by documentation that it is in a form
12 that is approved by the commissioner; and
13 (3) Not include any money that has been set aside as
14 capital or surplus as required by section 431:19-104."

15 SECTION 10. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect on July 1, 2007.

18

INTRODUCED BY:

R. J. J. J.
by request



Report Title:

Captives

Description:

Allows captive insurance companies to be formed as limited liability companies. Clarifies minimum capital and surplus requirements. Increases investment flexibility for pure captives.

