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## 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 431:19-108, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) The commissioner or any authorized examiner  
4 [~~authorized by the commissioner~~] may conduct an examination of  
5 any captive insurance company as often as the commissioner deems  
6 appropriate [~~; provided that an examination shall be conducted at~~  
7 ~~least once every three years. The commissioner, upon~~  
8 ~~application by a captive insurance company, may allow an~~  
9 ~~examination to be conducted every five years; provided that the~~  
10 ~~commissioner shall have completed at least one triennial~~  
11 ~~examination of the company.], and unless the commissioner  
12 requires otherwise:~~

13           (1) An examination shall be conducted at least once every  
14           five years for all captive insurance companies, except  
15           as provided in paragraph (2); and

16           (2) An examination of a class 3 risk retention captive  
17           insurance company shall be conducted no later than  
18           three years after its formation; thereafter, an



1           examination shall be conducted at least once every  
2           five years.

3           The commissioner or any authorized examiner shall  
4 thoroughly inspect and examine the captive insurance company's  
5 affairs to ascertain its financial condition, its ability to  
6 fulfill its obligations, and whether it has complied with this  
7 article."

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

10          "(a) The certificate of authority of a captive insurance  
11 company to do business in this [State] state may be suspended or  
12 revoked by the commissioner for any of the following reasons:

- 13           (1) Insolvency or impairment of capital or surplus;
- 14           (2) Failure to meet the requirements of section 431:19-104  
15           ~~[or section 431:19-105]~~;
- 16           (3) Refusal or failure to submit an annual report, as  
17           required by section 431:19-107 or any other report or  
18           statement required by law or by lawful order of the  
19           commissioner;
- 20           (4) Failure to comply with the provisions of its own  
21           articles of incorporation, articles of association, or  
22           bylaws;



- 1           (5) Failure to submit to examination or any legal
- 2                   obligation relative thereto, as required by section
- 3                   431:19-108;
- 4           (6) Refusal or failure to pay the cost of examination as
- 5                   required by section 431:19-108;
- 6           (7) Use of methods that, although not otherwise
- 7                   specifically prohibited by law, nevertheless render
- 8                   its operation detrimental or its condition unsound
- 9                   with respect to the public or to its policyholders;
- 10          (8) Failure to maintain actuarially appropriate loss
- 11                   reserves as determined by the commissioner; provided
- 12                   that the commissioner shall issue at least one warning
- 13                   to the captive insurance company to correct the
- 14                   problem prior to suspending or revoking the
- 15                   certificate of authority; and
- 16          (9) Failure otherwise to comply with the laws of this
- 17                   State."

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

20           "[-] §431:19-303 [+] Protected cells. A sponsored captive  
21 insurance company formed and licensed under this article may



1 establish and maintain one or more protected cells to insure  
2 risks of one or more participants, subject to the following:

3 (1) The shareholders or members of a sponsored captive  
4 insurance company shall be limited to its participants  
5 and sponsors; provided that a sponsored captive  
6 insurance company may issue nonvoting securities to  
7 other persons on terms approved by the commissioner;

8 (2) A protected cell shall be organized and operated in  
9 only those forms of business organization authorized  
10 by the commissioner, including an association,  
11 corporation, limited liability company, partnership,  
12 or trust;

13 [~~2~~] (3) Each protected cell shall be accounted for  
14 separately on the books and records of the sponsored  
15 captive insurance company to reflect the financial  
16 condition and results of operations of the protected  
17 cell, net income or loss, dividends or other  
18 distributions to participants, and other factors as  
19 may be provided in the participant contract or  
20 required by the commissioner;

21 [~~3~~] (4) The assets of a protected cell shall not be  
22 chargeable with liabilities arising out of any other



1 insurance business the sponsored captive insurance  
2 company may conduct;

3 ~~[(4)]~~ (5) No sale, exchange, or other transfer of assets  
4 may be made by a sponsored captive insurance company  
5 between or among any of its protected cells without  
6 the consent of the protected cells;

7 ~~[(5)]~~ (6) No sale, exchange, transfer of assets, dividend,  
8 or distribution may be made from a protected cell to a  
9 sponsor or participant without the commissioner's  
10 approval, and in no event shall the approval be given  
11 if the sale, exchange, transfer, dividend, or  
12 distribution would result in insolvency or impairment  
13 with respect to a protected cell;

14 ~~[(6)]~~ (7) Each sponsored captive insurance company shall  
15 annually file with the commissioner, financial reports  
16 as the commissioner shall require, that shall include,  
17 without limitation, accounting statements detailing  
18 the financial experience of each protected cell;


19 ~~[(7)]~~ (8) Each sponsored captive insurance company shall  
20 notify the commissioner in writing within ten business  
21 days of any protected cell that is insolvent or



1 otherwise unable to meet its claim or expense  
2 obligations; and  
3 ~~[(8)]~~ (9) No participant contract shall take effect without  
4 the commissioner's prior written approval, and the  
5 addition of each new protected cell and withdrawal of  
6 any participant or termination of any existing  
7 protected cell shall constitute a change in business  
8 plan requiring the commissioner's prior written  
9 approval."

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

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

13  
INTRODUCED BY: \_\_\_\_\_ 

JAN 21 2010

**Report Title:**

Captive Insurance Companies

**Description:**

Amends the frequency of statutorily required captive insurance company examinations from once every three years to once every five years, unless otherwise required by the Insurance Commissioner. Requires risk retention captive insurance companies to undergo examination within three years of formation. Eliminates reference to a repealed provision on minimum surplus requirements for captive insurance companies. Requires protected cell accounts established by sponsored captive insurance companies to be operated only under the forms of business organizations authorized by the Insurance Commissioner.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

