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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION  
& COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 24, 2010  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2812, S.D. 1 – RELATING TO CAPTIVE  
INSURANCE COMPANIES.**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports this bill.

The purpose of this bill is to: (1) amend Hawaii Revised Statutes (“HRS”) § 431:19-108(a) to allow examination of captive insurers every five years or as often as the Commissioner deems appropriate, except that class 3 risk retention captive insurers must be examined within three years of formation; (2) amend HRS § 431:19-109(a)(2) to delete the reference to a repealed section, HRS § 431:19-105; (3) amend HRS § 431:19-303 to add a new paragraph allowing protected captive cells to be organized in any business form.

Captive insurance companies are set up by large companies to insure their own risk and are a form of self insurance. This bill makes amendments to Hawaii’s captive insurance laws to enable Hawaii to maintain its position as a leading captive insurance domicile in the United States and throughout the world (currently 2<sup>nd</sup> and 9<sup>th</sup>,

respectively). In 2008, Hawaii captives had combined assets of approximately \$7.0 billion with \$1.1 billion being invested through Hawaii financial institutions. The captive industry spent approximately \$16.2 million for Hawaii professional services and Board of Directors meetings; it is an extraordinary industry and very beneficial to the State of Hawaii.

Section 1 of this bill changes captive examination requirements to once every five years for most captives. For risk retention group captives; the first exam must be conducted no later than three years after formation and thereafter, at least once every five years. The Commissioner would still retain his authority to examine a captive as often as deemed appropriate. This will reduce time and costs for both the State and companies that are well managed. It also aligns the examinations to what the examination law is for the traditional insurance companies.

Section 2 of this bill removes the reference in HRS § 431:19-109(a)(2) to repealed HRS § 431:19-105. The Department notes that this amendment is also contained in section 26 of House Bill No. 2544 and Senate Bill No. 2697.

Section 3 of this bill clarifies what type of business entities may form a protected cell for a sponsored captive insurance company. These forms would include associations, corporations, limited liability companies, partnerships, or trusts. Current law does not indicate what type of entities may be formed as a cell and this clarification will increase our competitiveness.

Ten years ago, there were two main domiciles in the United States: Vermont and Hawaii; today, there are approximately 30 domiciles. Passing this bill will increase Hawaii's ability to compete in this industry.

We thank this Committee for the opportunity to present testimony on this matter.

TESTIMONY ON S.B. NO. 2812, S.D. 1  
RELATING TO CAPTIVE INSURANCE COMPANIES

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Glenn Wakai, Vice Chair

Wednesday, February 24, 2010, 2:00 p.m.  
State Capitol, Conference Room 325

My name is Jason Palmer, CPA, Managing Director of Willis Management (Hawaii), a division of Willis, the third largest global insurance broker in the world. Willis Management (Hawaii) serves as a consultant and captive manager to several captive insurance companies domiciled in Hawaii and in other US jurisdictions.

I strongly support S.B. No. 2812 SD1, which makes housekeeping and clarifying amendments to Hawaii's captive insurance laws to enable Hawaii to maintain its position as a leading captive insurance domicile in the United States and throughout the world.

Specifically, this bill:

1. Changes the interval for examination of captive insurance companies to once every five years subject, however, to a requirement that the first exam for risk retention group captives be conducted no later than three years after formation. The Insurance Commissioner would still retain his authority to examine a captive as often as deemed appropriate;
2. Removes reference to repealed Hawaii Revised Statutes ("HRS") § 431:19-105 in HRS 431:19-109(a); and
3. Clarifies that the protected cell of a sponsored cell captive insurance company may be organized and operated in such forms of business organizations authorized by the Commissioner, specifically including associations, corporations, limited liability companies, partnerships, or trusts.

The change in the examination interval to five years brings the examination of captives on par with that of other domestic insurers, and allows for efficient use of regulatory resources without sacrificing the quality of regulatory oversight. Other US captive domiciles

**Willis**

have elected to not conduct routine examinations on captives, other than risk retention captives, at all unless the Commissioner deems necessary. We believe the proposed amendment allows for prudent regulatory oversight.

Existing law does not specify what kinds of business entities may form a protected cell for a sponsored captive insurance company. I believe this clarification will encourage companies wishing to form sponsored captives to consider Hawaii as a suitable domicile.

With increasing competition from other U.S. domiciles, it is critical that Hawai'i continue to attract new captive formations by reputable business entities. Passing this measure, will enable Hawaii to continue its position as a preferred domicile in the increasingly competitive captive insurance marketplace.

Thank you for this opportunity to submit testimony in support of S.B. No. 2812 SD1.

Respectfully submitted:



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TESTIMONY ON S.B. NO. 2812, S.D. 1  
RELATING TO CAPTIVE INSURANCE COMPANIES

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Glenn Wakai, Vice Chair

Wednesday, February 24, 2010, 2:00 p.m.  
State Capitol, Conference Room 325

My name is Gerald C. Yoshida, Chairman of the Legislative Committee of the Hawai'i Captive Insurance Council (HCIC), a trade organization of captive insurance companies and service providers who comprise and support Hawai'i's captive insurance industry.

HCIC strongly supports S.B. No. 2812, S.D. 1, which makes housekeeping and clarifying amendments to Hawai'i's captive insurance laws to enable Hawaii to maintain its position as a leading captive insurance domicile in the United States and throughout the world.

Specifically, this bill:

1. Changes the interval for examination of captive insurance companies to once every five years subject, however, to a requirement that the first exam for risk retention group captives be conducted no later than three years after formation. The Insurance Commissioner would still retain his authority to examine a captive as often as deemed appropriate;
2. Removes reference to repealed Hawaii Revised Statutes ("HRS") § 431:19-105 in HRS 431:19-109(a); and
3. Clarifies that the protected cell of a sponsored cell captive insurance company may be organized and operated in such forms of business organizations authorized by the Commissioner, specifically including associations, corporations, limited liability companies, partnerships, or trusts.

The change in the examination interval to five years brings the examination of captives on par with that of other domestic insurers and allows for the efficient use of regulatory resources without sacrificing the quality of regulatory oversight.

Existing law does not specify what kinds of business entities may form a protected cell for a sponsored captive insurance company. HCIC believes this clarification will encourage companies wishing to form sponsored captives to consider Hawaii as a suitable domicile.

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House Committee on Consumer Protection & Commerce  
February 24, 2010  
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With increasing competition from other U.S. domiciles, it is critical that Hawai'i continue to attract new captive formations by reputable business entities. Passing this measure, will enable Hawaii to continue compete as a preferred domicile in the increasingly competitive captive insurance marketplace.

Thank you for this opportunity to submit testimony in support of S.B. No. 2812, S.D. 1.

Respectfully submitted:

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