

SB 2812

JAN 25 2010

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:

John J. Goh

Ronald H. Paul

John J. Goh

David Y. Lee

Norman Sakamoto

Will Eyo

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David Y. Lee

Charles Fukushima



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.





LINDA LINGLE
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LAWRENCE M. REIFURTH
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TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Tuesday, February 2, 2010
9:00 a.m.

TESTIMONY ON SENATE BILL No. 2812 – RELATING TO CAPTIVE INSURANCE COMPANIES.

TO THE HONORABLE ROSALYN H. BAKER, 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. 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 2nd and 9th, 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 § 431:19-19(a) to repealed HRS § 431:19-105.

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
RELATING TO CAPTIVE INSURANCE COMPANIES

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn H. Baker, Chair

Sen. David Y. Ige, Vice Chair

Tuesday, February 2, 2010, 9:00 a.m.
State Capitol, Conference Room 229

My name is Fay Okamoto, Vice Chairman of the Hawai'i Captive Insurance Council (HCIC), a trade organization of captive insurance companies and service providers who support Hawai'i's captive insurance industry. I am also the branch manager of Artex Risk Solution, Inc.'s Hawaii office and serve as the authorized captive manager for a number of captive insurance companies domiciled in the State of Hawaii.

HCIC strongly supports S.B. No. 2812, 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 changes the interval for examination of captive insurance companies, bringing the examination schedule on par with that of other domestic insurers. This change allows for the efficient use of regulatory resources without sacrificing the quality of regulatory oversight.

The bill also clarifies the form that protected cells of sponsored cell captive insurance companies may take. HCIC believes 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 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.

Respectfully submitted:



Fay Okamoto
Division Senior Vice President
Artex Risk Solutions, Inc.
1132 Bishop Street, Suite 1600
Honolulu, HI 96813

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

SENATE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Sen. Rosalyn H. Baker, Chair
Sen. David Y. Ige, Vice Chair

Tuesday, February 2, 2010, 9:00 a.m.
State Capitol, Conference Room 229

My name is Matthew Takamine, Senior Vice President and Head of Office for Beecher Carlson and President of the Hawaii Captive Insurance Council. Beecher Carlson is one of the largest captive management firms in the State of Hawaii, representing 30 captive insurance companies with assets in excess of \$1 billion. We thank you for the opportunity to provide this written testimony.

We strongly support S.B. No. 2812, 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 3 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 § 431:19-19(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, including specifically 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.

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

Testimony on S.B. No. 2812
Senate Committee on Consumer Protection & Commerce
February 2, 2010
Page 2

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.

Respectfully submitted:

Matthew D. R. Takamine, CPA
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TESTIMONY ON S.B. NO. 2812
RELATING TO CAPTIVE INSURANCE COMPANIES

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn H. Baker, Chair

Sen. David Y. Ige, Vice Chair

Tuesday, February 2, 2010, 9:00 a.m.
State Capitol, Conference Room 229

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, 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.

Testimony on S.B. No. 2812
Senate Committee on Commerce and Consumer Protection
February 2, 2010
Page 2

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.

Respectfully submitted:

Gerald C. Yoshida
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TESTIMONY OF JASON PALMER, CPA

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

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y Ige, Vice Chair

Tuesday, February 2, 2010, 9:00 a.m.
State Capitol, Conference Room 229

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, 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.

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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 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.

Respectfully submitted:



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