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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. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to part I of article 19 two new sections to be  
3 appropriately designated and to read as follows:

4           "**§431:19-A Rules for controlled unaffiliated business.**

5           The commissioner may adopt rules pursuant to chapter 91  
6 establishing standards to ensure that a parent or its affiliated  
7 entity is able to exercise control of the risk management  
8 function of any controlled unaffiliated business to be insured  
9 or reinsured by a pure captive insurance company; provided that,  
10 until such time as rules under this section are adopted, the  
11 commissioner may approve the coverage of such risks by a pure  
12 captive insurance company.

13           "**§431:19-B Applicability of other laws to captive insurance**  
14 **companies writing direct workers' compensation insurance**

15 **policies.** Captive insurance companies writing direct workers'  
16 compensation insurance policies that are subject to chapter 386  
17 shall be subject to article 15. Captive insurance companies  
18 writing direct workers' compensation insurance policies shall



1 also be subject to the rules adopted, pursuant to chapter 91, by  
2 the commissioner to implement this section."

3 SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding nine new definitions to be appropriately  
6 inserted and to read as follows:

7 "Administrator" means the captive insurance administrator  
8 established in section 431:19-101.5.

9 "Class 1 company" means a pure captive insurance company  
10 that is designated and licensed in this State only to write  
11 business as a reinsurer in this State.

12 "Class 2 company" means a pure captive insurance company  
13 that is designated and licensed in this State to write business  
14 as a direct insurer, or as a direct insurer and reinsurer.

15 "Class 3 company" means an association captive insurance  
16 company or risk retention captive insurance company that is  
17 designated and licensed in this State.

18 "Class 4 company" means a sponsored captive insurance  
19 company that is designated and licensed in this State.

20 "Class 5 company" means a reinsurance or excess insurance  
21 company that is a captive insurance company designated and  
22 licensed in this State pursuant to section 431:19-111.5.



1       "Controlled unaffiliated business" means, in the case of a  
2 pure captive insurance company, any person:

3       (1) That is not in the corporate system of a parent and  
4 its affiliated entities;

5       (2) That has an existing contractual relationship, or  
6 other direct or indirect relationship, with a parent  
7 or one of its affiliated entities; and

8       (3) Whose risks are managed by the pure captive insurance  
9 company in accordance with section 431:19-A.

10       "Governing body" means the board of directors, subscriber's  
11 advisory committee, membership, or other entity responsible for  
12 the governance of a captive insurance company.

13       "Organizational document" means a captive insurance  
14 company's articles of association, articles of incorporation,  
15 articles of organization, subscribers' agreement, bylaws,  
16 operating agreement, or any other document that establishes the  
17 captive insurance company as a legal entity or prescribes its  
18 existence."

19       2. By amending the definitions of "affiliated entity",  
20 "association", "association captive insurance company", "captive  
21 insurance company", "outside captive insurance company",  
22 "participant", "protected cell", "pure captive insurance



1 company", "risk retention captive insurance company", and  
2 "sponsored captive insurance company" to read as follows:

3 "Affiliated entity" means any company, person, or other  
4 entity in the same corporate system as a parent or a member  
5 organization by virtue of common ownership, control, operation,  
6 or management [~~, or, in the case of a pure captive insurance~~  
7 ~~company, whose risks insured by the pure captive insurance~~  
8 ~~company are directly or indirectly controlled by the parent or~~  
9 ~~an affiliate of the parent of a pure captive insurance company]~~.

10 "Association" means any legal association of individuals,  
11 corporations, limited liability companies, partnerships,  
12 associations, or other entities, except labor organizations, the  
13 member organizations of which or which does itself, whether or  
14 not in conjunction with some or all of the member organizations:

15 (1) Own, control, or hold with power to vote all of the  
16 outstanding voting securities of an association  
17 captive insurance company incorporated as a stock  
18 insurer;

19 (2) Have complete voting control over an association  
20 captive insurance company incorporated as a mutual  
21 insurer; [ø]



1 (3) Constitute all of the subscribers of an association  
2 captive insurance company formed as a reciprocal  
3 insurer~~[ ]~~; or

4 (4) Have complete voting control over an association  
5 captive insurance company formed as a limited  
6 liability company.

7 "Association captive insurance company" means ~~[any]~~ a  
8 captive insurance company that insures risks of the member  
9 organizations of the association, and ~~[their]~~ that may also  
10 insure the risks of affiliated ~~[companies]~~ entities of the  
11 member organizations and the risks of the association itself.

12 "Captive insurance company" means a class 1~~[ ]~~ company,  
13 class 2~~[ ]~~ company, class 3~~[ ]~~ company, class 4~~[ ]~~ company, or  
14 class 5 ~~[captive insurance]~~ company formed or authorized under  
15 this article.

16 "Outside captive insurance company" means an insurance  
17 company licensed under the laws of a jurisdiction other than  
18 this State and not otherwise admitted to do business as an  
19 insurance company in this State, that insures the risks of its  
20 parent or any affiliated ~~[companies]~~ entities.

21 "Participant" means an entity that meets the requirements  
22 of section 431:19-305, and any ~~[affiliates]~~ affiliated entities



1 thereof that are insured by a sponsored captive insurance  
2 company where the losses of the participant may be limited  
3 through a participant contract to the participant's pro rata  
4 share of the assets of one or more protected cells identified in  
5 the participant contract.

6 "Protected cell" means a separate account established by a  
7 sponsored captive insurance company formed or licensed under  
8 this ~~[part]~~ article in which assets are maintained for one or  
9 more participants in accordance with the terms of one or more  
10 participant contracts to fund the liability of the sponsored  
11 captive insurance company assumed on behalf of the participants  
12 as set forth in the participant contracts.

13 "Pure captive insurance company" means ~~[any]~~ a captive  
14 insurance company that only insures or reinsures risks of its  
15 parent and affiliated entities~~[-]~~ or of a controlled  
16 unaffiliated business.

17 "Risk retention captive insurance company" means a captive  
18 insurance company ~~[which]~~ that is formed as a "risk retention  
19 group" as defined in chapter 431K.

20 "Sponsored captive insurance company" means ~~[any]~~ a captive  
21 insurance company ~~[is]~~ :



- 1        (1) In which the minimum required capital and surplus is
- 2                provided by one or more sponsors [~~and~~];
- 3        (2) That is formed or licensed under this article[~~—A~~
- 4                ~~sponsored captive insurance company~~];
- 5        (3) That insures the risks only of its participants
- 6                through separate participant contracts; and [~~may fund~~]
- 7        (4) That may fund its liability to each participant
- 8                through one or more protected cells. A sponsored
- 9                captive insurance company segregates the assets of
- 10               each protected cell from the assets of other protected
- 11               cells and from the assets of the sponsored captive
- 12               insurance company's general account."

13        SECTION 3. Section 431:19-101.2, Hawaii Revised Statutes,

14 is amended to read as follows:

15        "**§431:19-101.2 Confidential treatment.** (a) Except as

16 otherwise provided in [~~subsection (b),~~] this section, all

17 nonpublic information in a captive insurance company's

18 application for licensure, its business plan, or of its parent

19 or the parent's member organizations, and all other nonpublic

20 information disclosed to the commissioner pursuant to this

21 article, shall be given confidential treatment and shall not be

22 made public by the commissioner.



1 (b) If the commissioner determines that the interest of  
2 the policyholders, shareholders, or the public will be served by  
3 making the information public, then after giving the captive  
4 insurance company and its parent or the parent's member  
5 organizations that would be affected thereby, three days written  
6 notice of intent, and unless otherwise contrary to law, the  
7 commissioner may make public all or any part of the nonpublic  
8 information in a manner that the commissioner deems appropriate;  
9 provided that the commissioner may disclose nonpublic  
10 information to courts of competent jurisdiction, and insurance  
11 departments or regulatory agencies of other competent  
12 jurisdictions without prior notification to the person to whom  
13 the information pertains.

14 (c) This section shall not apply to risk retention captive  
15 insurance companies. The confidentiality provisions of section  
16 431:2-209 shall apply to risk retention captive insurance  
17 companies.

18 [~~e~~] (d) For purposes of this section:

19 "Equity securities" means:

20 (1) A share in a corporation, whether or not transferable  
21 or denominated a "stock", or similar security  
22 evidencing an ownership interest in the person;





- 1           (2) The interest of a limited partner in a limited
- 2           partnership;
- 3           (3) The interest of a partner in a partnership, including
- 4           a joint venture; or
- 5           (4) A warrant or right, other than a right to convert, to
- 6           purchase, sell, or subscribe to a share, security, or
- 7           interest of a kind specified in paragraph (1), (2), or
- 8           (3).

9           "Nonpublic information" means information that, prior to  
10 disclosure to the commissioner pursuant to this article is, or  
11 was:

- 12           (1) Not a public record as defined in rule 1001(5) of
- 13           section 626-1; or
- 14           (2) Not a government record that must be disclosed under
- 15           section 92F-12;

16 provided that in the case of a person whose equity securities  
17 are collectively owned and held by thirty-six or more persons,  
18 "nonpublic information" does not include financial information  
19 disclosed to owners and holders of equity securities."

20           SECTION 4. Section 431:19-101.5, Hawaii Revised Statutes,  
21 is amended to read as follows:



1           "§431:19-101.5 Captive insurance administrator. [~~(a)~~]  
2 There shall be established within the [~~office of the~~  
3 ~~commissioner,~~] insurance division a captive insurance  
4 administrator, who shall be solely responsible for assisting the  
5 commissioner in [~~the~~] monitoring, [~~regulation, and development~~  
6 ~~of~~] regulating, and developing captive insurance companies under  
7 this article. The commissioner, with the approval of the  
8 director of commerce and consumer affairs, shall appoint the  
9 administrator who shall be designated as a deputy commissioner  
10 and shall be exempt from chapter 76, notwithstanding section  
11 431:2-105(b) [~~-~~] to the contrary. The administrator shall serve  
12 at the pleasure of the director of commerce and consumer affairs  
13 and shall report directly to the commissioner.

14           [~~(b) "Administrator", where used in this article, means~~  
15 ~~the captive insurance administrator.~~]"

16           SECTION 5. Section 431:19-101.8, Hawaii Revised Statutes,  
17 is amended as follows:

18           (1) By amending subsection (a) to read as follows:

19           "(a) The commissioner may establish a separate fund  
20 designated as the captive insurance administrative fund to be  
21 expended by the commissioner to carry out the commissioner's  
22 duties and obligations under this article [~~19 of chapter 431~~]."



1 (2) By amending subsection (d) to read as follows:

2 "(d) Sums from the fund expended by the commissioner shall  
3 be used to defray any administrative costs, including personnel  
4 costs~~[7]~~ associated with the captive programs of the insurance  
5 division, and costs incurred by supporting offices, branches,  
6 divisions, and departments. ~~[Any]~~ Notwithstanding any law to  
7 the contrary ~~[notwithstanding]~~, the commissioner may use the  
8 moneys in the fund to employ or retain, by contract or  
9 otherwise~~[7]~~ and without regard to chapter 76, hearings  
10 officers, attorneys, investigators, accountants, examiners, and  
11 other necessary professional, technical, and support personnel  
12 to implement and carry out the purposes of this article ~~[19 of~~  
13 ~~chapter 431]~~; provided that any position, except any attorney  
14 position, that is subject to chapter 76 prior to July 1, 1999,  
15 shall remain subject to chapter 76."

16 SECTION 6. Section 431:19-102, Hawaii Revised Statutes, is  
17 amended by amending subsections (a) through (f) to read as  
18 follows:

19 "(a) ~~[Any captive insurance company, when]~~ When permitted  
20 by an applicant captive insurance company's ~~[its articles of~~  
21 ~~association, articles of incorporation, articles of~~  
22 ~~organization, or other]~~ organizational ~~[document,]~~ documents,



1 the applicant captive insurance company may apply to the  
2 commissioner for a certificate of authority to do any and all  
3 insurance set forth in subsection (h); provided that:

4 (1) No pure captive insurance company may insure or  
5 reinsure any risks other than those of its parent  
6 ~~[and]~~, affiliated entities~~[+]~~, and controlled  
7 unaffiliated businesses;

8 (2) No association captive insurance company may insure  
9 any risks other than those of ~~[the member~~  
10 ~~organizations of its association and their affiliated~~  
11 ~~entities;]~~ its association, those of the member  
12 organizations of its association, and those of a  
13 member organization's affiliated entities;

14 (3) ~~[No]~~ Unless otherwise allowed under section 431:19-  
15 102.2, no captive insurance company may provide  
16 personal motor vehicle or homeowner's insurance  
17 coverage or any component thereof, other than as  
18 [employee]:

19 (A) Employee benefits for the employees of a parent,  
20 association, or its members, and their respective  
21 affiliated entities; or ~~[as reinsurance]~~



1 (B) Reinsurance as may be allowed under this article;

2 and

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

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

7 (1) It first obtains from the commissioner a certificate  
8 of authority authorizing it to do insurance business  
9 in this State;

10 (2) Its [~~board of directors, subscribers' advisory~~  
11 ~~committee, or other~~] governing body holds at least one  
12 meeting each year in this State;

13 (3) It maintains its principal place of business and  
14 registered office in this State, except that a branch  
15 captive insurance company need only maintain the  
16 principal place of a business unit in this State; and

17 (4) It designates a registered resident agent in  
18 accordance with chapter 414, 414D, or 428, as  
19 applicable, to accept service of process and to  
20 otherwise act on its behalf in this State. Whenever  
21 the registered resident agent cannot, with reasonable  
22 diligence, be found at the registered office of the



1 captive insurance company, the commissioner shall be  
2 an agent of the captive insurance company upon whom  
3 any process, notice, or demand may be served in  
4 accordance with section 431:2-206.

5 (c) Before [~~receiving~~] an applicant captive insurance  
6 company receives a certificate of authority, [~~a captive~~  
7 ~~insurance company~~] the applicant captive insurance company shall  
8 file with the commissioner:

9 (1) A certified copy of its organizational documents [~~7~~  
10 ~~including but not limited to its articles of~~  
11 ~~incorporation, articles of association, bylaws,~~  
12 ~~subscribers' agreement, articles of organization, and~~  
13 ~~operating agreement, as applicable~~];

14 (2) A statement under oath of:

15 (A) Any two of its principal officers;

16 (B) Its attorney-in-fact in the case of a captive  
17 insurance company formed as a reciprocal insurer;  
18 or

19 (C) The duly authorized representative of its  
20 governing body,

21 showing its financial condition; and



1 (3) Any other statements or documents required by the  
2 commissioner.

3 (d) In addition to the information required by subsection  
4 (c), each applicant captive insurance company shall file with  
5 the commissioner evidence of the following:

6 (1) The amount and liquidity of its assets relative to the  
7 risks to be assumed;

8 (2) The adequacy of the expertise, experience, and  
9 character of the person or persons who will manage it;

10 (3) The overall soundness of its plan of operation~~(+)~~,  
11 including the net retained risk on any one subject of  
12 insurance;

13 (4) The adequacy of the loss prevention programs of its  
14 parent or member organizations as applicable; and

15 (5) Any other factors deemed relevant by the commissioner  
16 in ascertaining whether the proposed captive insurance  
17 company will be able to meet its policy obligations.

18 (e) Each [~~captive insurance company applying for a~~  
19 ~~certificate of authority under this article~~] applicant captive  
20 insurance company shall pay to the commissioner a nonrefundable  
21 application fee for examining, investigating, and processing its  
22 application for the certificate of authority. [~~In addition,~~



1 ~~each captive insurance company receiving a]~~ Upon approval of the  
2 application for the certificate of authority, the applicant  
3 captive insurance company shall pay to the commissioner a  
4 license fee for the certificate of authority [~~from the~~  
5 ~~commissioner shall pay an annual fee therefor for the year of~~  
6 ~~registration and for each annual renewal thereafter~~].  
7 Thereafter, the captive insurance company shall pay to the  
8 commissioner an annual renewal fee. The amount of the  
9 nonrefundable application fee [~~and the annual certificate of~~  
10 ~~authority fee~~], license fee, and renewal fee shall be set forth  
11 in rules adopted by the commissioner. In addition, the  
12 commissioner may adopt rules with respect to fees for the  
13 issuance of other documents as may be deemed necessary or  
14 requested by captive insurance companies.

15 (f) The commissioner may use independent advisors and  
16 consultants to assist in the review and analysis of a specific  
17 application or business plan amendment. The independent  
18 advisory and consulting fee, to be paid by the [~~captive~~  
19 applicant~~[-]~~] captive insurance company, shall be a reasonable  
20 fee authorized by the commissioner pursuant to section  
21 431:19-114."





1 SECTION 7. Section 431:19-102.2, Hawaii Revised Statutes,  
2 is amended by amending subsection (a) to read as follows:

3 "(a) [~~Notwithstanding the provisions of section 431:19-~~  
4 ~~102(a), a]~~ A captive insurance company may be licensed to  
5 provide personal lines coverage for unrelated risks if the  
6 commissioner deems that extraordinary circumstances exist [~~which~~  
7 ~~make the provision of this]~~ whereby coverage [~~by a captive~~  
8 ~~insurance company]~~ would be appropriate and in the best interest  
9 of the public. In determining whether [~~such~~] extraordinary  
10 circumstances exist, the commissioner shall consider the  
11 following factors:

- 12 (1) The extent to which the particular coverage is  
13 available in the voluntary market;
- 14 (2) The existence of a relationship between the parent of  
15 the captive insurance company and the proposed  
16 policyholders other than that of insurer to insured;
- 17 (3) Whether the captive insurance company has sufficient  
18 capitalization to insure the proposed risks; and
- 19 (4) Any other factors [~~which~~] the commissioner deems  
20 appropriate."

21 SECTION 8. Section 431:19-102.3, Hawaii Revised Statutes,  
22 is amended to read as follows:



1           "§431:19-102.3 Redomestication; approval as a domestic  
2 **captive insurer.** (a) Any foreign or alien captive insurance  
3 company may become a domestic captive insurance company by  
4 meeting the following requirements:

5           (1) [~~Compliance~~] Comply with all of the requirements  
6 relating to the organization and licensing of a  
7 domestic captive insurance company of the same type,  
8 and any requirements that the commissioner may adopt  
9 by rule;

10          (2) [~~The articles of incorporation or other~~] Amend and  
11 restate its organizational [~~document shall be amended~~]  
12 documents in compliance with the laws of this State  
13 [~~and restated in its entirety before submission to the~~  
14 ~~commissioner. Before the amended and restated~~  
15 ~~articles of incorporation or other organizational~~  
16 ~~document is transmitted to the department of commerce~~  
17 ~~and consumer affairs, the foreign or alien captive~~  
18 ~~insurance company shall petition~~], and submit the  
19 amended and restated organizational documents for the  
20 commissioner's review; and

21          (3) Petition the commissioner to issue a certificate  
22 [~~setting~~] of general good, which sets forth the



1 commissioner's finding that the redomestication and  
2 maintenance of the company will promote the general  
3 good of the State. In arriving at the finding, the  
4 commissioner shall consider the factors set forth in  
5 section 431:19-106(b) [✓].

6 [~~(3)~~ The] (b) Upon issuance of the certificate of general  
7 good by the commissioner pursuant to subsection (a)(3), the  
8 foreign or alien captive insurance company shall file the  
9 following [~~shall be transmitted to~~] with the department of  
10 commerce and consumer affairs [~~for filing~~]:

11 [~~(A)~~] (1) Articles of redomestication[✓], which shall set  
12 forth the following:

13 (A) Name of the company;

14 (B) Date and location of incorporation or  
15 organization;

16 (C) Street address of the principal office in this  
17 State;

18 (D) Names and titles of the:

19 (i) Officers and directors of the company; or

20 (ii) Members of the governing body;



- 1           (E) A statement that the company is moving its  
2           domicile from its present state or country to  
3           this State;
- 4           (F) A statement that redomestication will occur upon  
5           filing the articles of redomestication and that  
6           the company shall be subject to the laws of this  
7           State; and
- 8           (G) A statement that copies of the articles of  
9           incorporation or other organizational document  
10          and any amendments certified by the proper  
11          officer of the state or country under the laws of  
12          which the company is incorporated or organized  
13          are attached; provided that if any of these  
14          documents are in a foreign language, a  
15          translation under oath of the translator shall  
16          accompany these documents;
- 17          ~~[(B)]~~ (2) Certificate of general good issued [by the  
18          ~~commissioner,]~~ pursuant to subsection (a)(3);
- 19          ~~[(C)]~~ (3) Certificate of good standing or comparable  
20          documentation [~~duly authenticated~~] certified by the  
21          proper officer of the [~~state or country~~] jurisdiction  
22          under [~~the laws of~~] which the foreign or alien captive



1 insurance company is [~~incorporated;~~] incorporated or  
2 organized; provided that:

3 [~~(i)~~] (A) The certificate or documentation shall be  
4 dated not earlier than thirty days prior to the  
5 [~~filing of the articles of redomestication;~~] date  
6 of the certificate of general good; and

7 [~~(ii)~~] (B) If the certificate of good standing or  
8 documentation is in a foreign language, a  
9 translation under oath of the translator shall  
10 accompany the certificate or documentation;

11 [~~(D)~~] ~~Amendments to the articles of incorporation or~~  
12 ~~other organizational document in compliance with~~  
13 ~~the laws of this State;~~

14 ~~(E) Restatement of the articles of incorporation or~~  
15 ~~other organizational document in its entirety;~~  
16 and

17 ~~(F) Organization fee; and~~

18 ~~(4) The articles of redomestication shall set forth the~~  
19 ~~following:~~

20 ~~(A) Name of the company;~~

21 ~~(B) Date and location of incorporation or~~  
22 ~~organization;~~



- 1           ~~(C) Street address of the principal office in this~~  
2           ~~State;~~
- 3           ~~(D) Names and titles of the:~~
- 4           ~~(i) Officers and directors of the company; or~~  
5           ~~(ii) Members of the governing body;~~
- 6           ~~(E) A statement that the company is moving its~~  
7           ~~domicile from its present state or country to~~  
8           ~~this State;~~
- 9           ~~(F) A statement that redomestication will occur upon~~  
10           ~~filing the articles of redomestication and that~~  
11           ~~the company shall be subject to the laws of this~~  
12           ~~State; and~~
- 13           ~~(G) A statement that copies of the articles of~~  
14           ~~incorporation or other organizational document~~  
15           ~~and any amendments certified by the proper~~  
16           ~~officer of the state or country under the laws of~~  
17           ~~which the company is incorporated or organized~~  
18           ~~are attached; provided that if any of these~~  
19           ~~documents are in a foreign language, a~~  
20           ~~translation under oath of the translator shall~~  
21           ~~accompany these documents].~~



1        (4) The company's organizational documents, which shall be  
2                    amended and restated in compliance with the laws of  
3                    this State; and

4        (5) Nonrefundable application fee.

5        [~~(b) The~~] (c) Upon payment of the license fee and annual  
6 renewal fees, the domestic captive insurance company shall be  
7 entitled to the necessary or appropriate certificates and  
8 licenses to do business in this State and shall be subject to  
9 the authority and jurisdiction of this State. No captive  
10 insurance company redomesticating into this State need merge,  
11 consolidate, transfer assets, or otherwise engage in any other  
12 reorganization, other than as specified in this section.

13        [~~(e)~~] (d) Upon redomestication in accordance with this  
14 section, the foreign or alien captive insurance company shall  
15 become a domestic captive insurance company organized under the  
16 laws of this State and shall have all the rights, privileges,  
17 immunities, and powers and be subject to all applicable laws,  
18 duties, and liabilities of a domestic captive insurance company  
19 of the same type. The domestic captive insurance company shall  
20 possess all rights that it had prior to the redomestication to  
21 the extent permitted by the laws of this State and shall be  
22 responsible and liable for all the liabilities and obligations



1 that it was subject to prior to the redomestication. All  
2 outstanding policies of the captive insurance company shall  
3 remain in full force and effect."

4 SECTION 9. Section 431:19-102.4, Hawaii Revised Statutes,  
5 is amended by amending subsections (b) through (d) to read as  
6 follows:

7 "(b) Before transferring its domicile to any other  
8 jurisdiction and before the notice of change in domicile is  
9 transmitted to the department of commerce and consumer affairs,  
10 the domestic captive insurance company shall [~~deliver to the~~  
11 ~~commissioner a notice of intent to transfer, along with payment~~  
12 ~~of~~] submit a written request to the commissioner to  
13 redomesticate to another jurisdiction and a transfer fee of  
14 \$300[, and petition the commissioner to issue a certificate of  
15 transfer].

16 (c) [~~The notice of change in domicile, the certificate of~~  
17 ~~transfer issued by the commissioner, the proof of~~  
18 ~~redomestication,~~] Upon approval of the written request to  
19 redomesticate pursuant to subsection (b), the commissioner shall  
20 issue a certificate of transfer. The domestic captive insurance  
21 company shall submit the certificate of transfer, a notice of  
22 change of domicile, and the filing fee [shall be transmitted] to





1 the department of commerce and consumer affairs. The notice of  
2 change in domicile shall set forth the following:

3 (1) Name of the company;

4 (2) Dates that notice of the company's intent to transfer  
5 domicile from this State was published pursuant to the  
6 publication requirements of section 1-28.5;

7 (3) Date of the transfer of its domicile; and

8 (4) State or country to which its domicile will be  
9 transferred.

10 (d) ~~[Upon any transfer authorized pursuant to this  
11 section, the captive insurance company shall cease to be  
12 domiciled in this State, and its corporate or other legal  
13 existence in this State shall cease upon the issuance of a  
14 certificate of discontinuance by the department of commerce and  
15 consumer affairs; provided that at the time of issuance of the  
16 certificate of discontinuance, the captive insurance company  
17 shall pay a certificate fee in accordance with chapter 414.]~~

18 Upon meeting the requirements of subsection (c) and upon the  
19 issuance of a certificate of discontinuance by the department of  
20 commerce and consumer affairs, the captive insurance company  
21 shall cease to be domiciled in this State, and its corporate or  
22 other legal existence in this State shall cease. The captive



1 insurance company shall pay a certificate fee at the time the  
2 certificate of discontinuance is issued in accordance with  
3 chapter 414."

4 SECTION 10. Section 431:19-104, Hawaii Revised Statutes,  
5 is amended by amending subsection (a) to read as follows:

6 "(a) Each captive insurance company licensed pursuant to  
7 this article shall possess and thereafter maintain unimpaired  
8 capital and surplus in the amount established by the  
9 commissioner; provided that:

10 (1) The commissioner shall take into account the nature  
11 and volume of business transacted by each captive  
12 insurance company, and any other factors deemed  
13 appropriate by the commissioner;

14 (2) Class 3 [~~captive insurance~~] companies shall be subject  
15 to other applicable provisions of this chapter that  
16 may require capital and surplus in excess of those  
17 established by the commissioner; and

18 (3) Minimum capital and surplus established by the  
19 commissioner shall be no less than the following  
20 amounts:

21 (A) Class 1[+] company: \$100,000;

22 (B) Class 2[+] company: \$250,000;



- 1 (C) Class 3[+] company: \$500,000;
- 2 (D) Class 4[+] company: \$500,000; and
- 3 (E) Class 5[+] company: An amount as determined by
- 4 the commissioner on a case by case basis."

5 SECTION 11. Section 431:19-106, Hawaii Revised Statutes,

6 is amended by amending subsection (e) to read as follows:

7 "(e) Captive insurance companies formed under this article

8 shall have the privileges and be subject to the general

9 corporation law, nonprofit corporation law, or limited liability

10 company law of this State as may be applicable, as well as this

11 article. In the event of conflict between any of the foregoing

12 applicable laws of this State and this article, this article

13 shall control."

14 SECTION 12. Section 431:19-106.5, Hawaii Revised Statutes,

15 is amended by amending subsections (b) and (c) to read as

16 follows:

17 "(b) A plan of conversion or merger shall be submitted to

18 and be approved by the commissioner in advance of the proposed

19 conversion or merger. The commissioner shall not approve the

20 plan unless:

21 (1) The commissioner finds that it is fair, equitable, and

22 consistent with law;



- 1           (2) The plan has been approved[+  
2           ~~(A) In the case of a stock corporation, by at least  
3           two thirds of the shares entitled to vote at a  
4           duly called regular or special meeting of the  
5           shareholders at which a quorum is present, or by  
6           unanimous written consent of the shareholders;~~  
7           ~~(B) In the case of a mutual insurer, by at least two  
8           thirds of the voting interest of the members of  
9           the mutual insurer at a duly called regular or  
10          special meeting of the membership at which a  
11          quorum is present, or by unanimous written  
12          consent of the members of the mutual insurer;~~  
13          ~~(C) In the case of a reciprocal insurer, by at least  
14          two thirds of the voting interest of the  
15          subscribers of the reciprocal insurer at a duly  
16          called meeting of the subscribers of the  
17          reciprocal insurer, or by unanimous written  
18          consent of the subscribers;~~  
19          ~~(D) In the case of a nonprofit corporation, by at  
20          least two thirds of the voting interest of the  
21          members at a duly called meeting of the members~~



1 ~~of the corporation, or by unanimous written~~  
2 ~~consent of the members; or~~  
3 ~~(E) In the case of a limited liability company, by at~~  
4 ~~least two thirds of the voting interest of the~~  
5 ~~members at a duly called meeting of the members~~  
6 ~~of the limited liability company, or by unanimous~~  
7 ~~written consent of the members;}~~ by at least two-  
8 thirds of the voting interest or unanimous  
9 written consent of the voting interest of the  
10 captive insurance company;

11 (3) The plan provides for:

12 (A) The conversion of existing stockholder, member,  
13 or subscriber interests into equal or  
14 proportionate interests in the new converted or  
15 merged insurer, or such other method and basis  
16 for the conversion of the stockholder, member, or  
17 subscriber interests that is fair and equitable;

18 (B) The purchase or other disposition of the shares  
19 of any nonconsenting shareholder of a stock  
20 insurer, policyholder interest of any  
21 nonconsenting member of a mutual insurer,  
22 membership interest of a limited liability



1 company, or subscriber surplus account interest,  
 2 if any, of a subscriber of a reciprocal insurer,  
 3 in accordance with either an agreement with any  
 4 nonconsenting stockholder, member, or subscriber  
 5 or with the existing [~~articles or bylaws~~]  
 6 organizational documents of the insurer relating  
 7 to the buyback buyout, or the termination of the  
 8 stockholder, member, or subscriber interests, if  
 9 any, or if no such provisions exist, then in  
 10 accordance with the laws of this State relating  
 11 to the rights of dissenting shareholders; and

12 (C) The novation, assignment, transfer, run-off, or  
 13 other disposition of [~~in-force~~] in-force policies  
 14 insuring any nonconsenting shareholder, member,  
 15 or subscriber;

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



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

3 (c) After approval of the plan of conversion or merger by  
4 the commissioner, the converting or merging insurer shall file  
5 with the director of commerce and consumer affairs, appropriate  
6 ~~[articles of amendment, articles of conversion, or articles of~~  
7 ~~merger, as the case may be; provided that in the case of the~~  
8 ~~conversion of a reciprocal insurer or limited liability company~~  
9 ~~insurer to a stock or mutual insurer, the existing reciprocal or~~  
10 ~~limited liability company insurer shall file articles of~~  
11 ~~incorporation to commence the corporate existence of the company~~  
12 ~~in the form of a stock or mutual insurer.] organizational~~  
13 documents to commence the existence of the company in its  
14 converted or merged form. Documents filed with the director of  
15 commerce and consumer affairs pursuant to this subsection shall  
16 comply with all applicable requirements for such documents as  
17 may be contained in this article and chapter 414, 414D, or 428,  
18 as to the extent that these laws are applicable to the  
19 conversion or merger."

20 SECTION 13. Section 431:19-107, Hawaii Revised Statutes,  
21 is amended by amending subsections (a) and (b) to read as  
22 follows:



1           "(a) Each captive insurance company other than a [~~class-3~~]  
2 risk retention captive insurance company shall submit to the  
3 commissioner financial statements reporting the financial  
4 condition and the results of operations of the insurer written  
5 according to generally accepted accounting principles, or other  
6 comprehensive basis of accounting as may be deemed appropriate  
7 by the commissioner, and audited by an independent certified  
8 public accountant, or other qualified professional as deemed  
9 appropriate by the commissioner, on or before the last day of  
10 the sixth month following the end of the company's fiscal year.

11           (b) Each [~~class-3~~] risk retention captive insurance  
12 company shall annually file with the commissioner the following:

13           (1) Annual statement and audit:

14           (A) On or before March 1, or such day subsequent  
15 thereto as the commissioner upon request and for  
16 cause may specify, an annual statement using the  
17 National Association of Insurance Commissioners'  
18 annual statement blank plus any additional  
19 information required by the commissioner, which  
20 shall be a true statement of its financial  
21 condition, transactions, and affairs as of the  
22 immediately preceding December 31. The reported





- 1 information shall be verified by oaths of at  
2 least two of the captive's principal officers;
- 3 (B) On or before June 1, or such day subsequent  
4 thereto as the commissioner upon request and for  
5 cause may specify, an audit by a designated  
6 independent certified public accountant or  
7 accounting firm of the financial statements  
8 reporting the financial condition and results of  
9 the operation of the captive; and
- 10 (C) The annual statement and audit shall be prepared  
11 in accordance with the National Association of  
12 Insurance Commissioners' annual statement  
13 instructions, accounting practices and procedures  
14 manual, and rules adopted by the commissioner  
15 following the practices and procedures prescribed  
16 by the National Association of Insurance  
17 Commissioners; and
- 18 (2) On or before each March 1, or such day subsequent  
19 thereto as the commissioner upon request and for cause  
20 may specify, a risk-based capital report in accordance  
21 with section 431:3-402; provided that [~~a-class-3~~] an  
22 association captive insurance company shall not be



1 required to file risk-based capital reports with the  
2 National Association of Insurance Commissioners."

3 SECTION 14. Section 431:19-108, Hawaii Revised Statutes,  
4 is amended as follows:

5 1. By amending its title to read as follows:

6 "**§431:19-108 Examinations [and], investigations[-], and**  
7 **financial surveillance.**"

8 2. By amending subsection (a) to read as follows:

9 "(a) The commissioner or any authorized examiner may  
10 conduct an examination, investigation, or financial surveillance  
11 of any captive insurance company as often as the commissioner  
12 deems appropriate[-]; provided that unless the commissioner  
13 requires otherwise:

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

17 (2) An examination of a [~~class-3~~] risk retention captive  
18 insurance company shall be conducted no later than  
19 three years after its formation and at least once  
20 every five years thereafter.

21 The commissioner or any authorized examiner shall  
22 thoroughly inspect and examine the captive insurance company's



1 affairs to ascertain its financial condition, its ability to  
2 fulfill its obligations, and whether it has complied with this  
3 article."

4 SECTION 15. Section 431:19-109, Hawaii Revised Statutes,  
5 is amended to read as follows:

6 "**§431:19-109 Grounds and procedures for suspension and**  
7 **revocation of certificate of authority[-];  fines.** (a) The  
8 commissioner may suspend or revoke the certificate of authority  
9 of a captive insurance company to do business in this State [~~may~~  
10 ~~be suspended or revoked by the commissioner~~] for any of the  
11 following reasons:

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



- 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  
5 pursuant to 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 (b) ~~[¶]~~ Notwithstanding any other law to the contrary, if  
19 the commissioner, upon examination, hearing, or other evidence,  
20 finds that any captive insurance company has committed any of  
21 the acts specified in subsection (a), the commissioner may  
22 suspend ~~[or]~~ the certificate of authority, revoke the



1 certificate of authority, impose a fine, or any combination of  
2 these actions, if the commissioner deems it in the best interest  
3 of the public and the policyholders of such captive insurance  
4 company [~~notwithstanding any other law~~]."

5 SECTION 16. Section 431:19-110, Hawaii Revised Statutes,  
6 is amended by amending subsections (a) and (b) to read as  
7 follows:

8 "(a) Except for [~~class 3~~] risk retention captive insurance  
9 companies, captive insurance companies licensed under this  
10 article shall be allowed to maintain investments in accordance  
11 with a strategic investment policy adopted and monitored by the  
12 captive insurance company's governing body, and approved by the  
13 commissioner; provided that in addition to the minimum capital  
14 and surplus requirements prescribed in section 431:19-104(b),  
15 [~~and the requirements prescribed in subsection (b),~~] each  
16 captive insurance company with an approved strategic investment  
17 policy shall maintain investments in one or more of the  
18 following forms, which aggregate not less than one hundred per  
19 cent of reserves as required by this [~~code~~] chapter or the  
20 commissioner:

21 (1) Cash;



- 1           (2) Irrevocable letter of credit issued by a bank
- 2                    chartered by this State or a member bank of the
- 3                    Federal Reserve System;
- 4           (3) Investments in accordance with a strategic investment
- 5                    policy adopted and monitored by the captive insurance
- 6                    company's governing body, and approved by the
- 7                    commissioner;
- 8           (4) Premiums in the course of collection; or
- 9           (5) Other forms approved by the commissioner.

10           (b) Each captive insurance company that does not maintain  
 11 a strategic investment policy as described in subsection (a) and  
 12 [~~class 3~~] risk retention captive insurance companies shall be  
 13 subject to the restrictions on allowable investments provided  
 14 under sections 431:6-101 to 431:6-501; provided that the  
 15 commissioner may approve other assets, investments, and  
 16 investment provisions as the commissioner deems appropriate."

17           SECTION 17. Section 431:19-111.5, Hawaii Revised Statutes,  
 18 is amended by amending subsection (a) to read as follows:

19           "(a) A class 5 company under this article is one that is  
 20 not a class 1[~~7~~] company, class 2[~~7~~] company, class 3[~~7~~]  
 21 company, or class 4 company, and acts only as a reinsurer or  
 22 excess insurer, or both. Notwithstanding any other provision of



1 this article, a class 5 company authorized under this article  
2 may reinsure or provide excess insurance, or both, for the risks  
3 and lines of insurance approved by the commissioner."

4 SECTION 18. Section 431:19-113, Hawaii Revised Statutes,  
5 is amended to read as follows:

6 "**§431:19-113 Exemption from compulsory associations.** No  
7 captive insurance company shall be permitted to join or  
8 contribute financially to any plan, pool, association, or  
9 guaranty or insolvency fund in this State, except as provided  
10 under chapter 386, nor shall any captive insurance company, its  
11 insured, or its parent or any affiliated [~~company,~~] entity, or  
12 any member organization of its association, receive any benefit  
13 from any such plan, pool, association, or guaranty or insolvency  
14 fund for claims arising out of the operations of such captive  
15 insurance company."

16 SECTION 19. Section 431:19-115, Hawaii Revised Statutes,  
17 is amended to read as follows:

18 "**§431:19-115 Laws applicable.** (a) No insurance laws of  
19 this State other than those contained in this article, or  
20 contained in specific references contained in this section or  
21 article, shall apply to captive insurance companies [~~formed~~  
22 ~~under this article.~~ In addition to this article, article 1,



1 ~~article 2, sections 431:3-302 to 431:3-304, section 431:3-307,~~  
2 ~~article 4A, parts I and II of article 5, article 6, article 11,~~  
3 ~~and article 15 of this chapter shall apply to captive insurance~~  
4 ~~companies other than pure captive insurance companies and branch~~  
5 ~~captive insurance companies, unless these other laws are~~  
6 ~~inconsistent with this article or the commissioner by rule,~~  
7 ~~regulation, or order determines, on a case by case basis that~~  
8 ~~these other laws should not apply thereto.~~

9 ~~In addition to this article, and except as otherwise~~  
10 ~~provided in this article, article 1, article 2, article 6,~~  
11 ~~article 11, and article 15 of this chapter shall apply to class~~  
12 ~~5 companies, unless these other laws are inconsistent with this~~  
13 ~~article or the commissioner by rule, regulation, or order~~  
14 ~~determines, on a case by case basis that these other laws should~~  
15 ~~not apply thereto.~~

16 ~~In addition to this article and the articles or portions~~  
17 ~~thereof referenced in this section, chapter 431K shall apply to~~  
18 ~~risk retention captive insurance companies authorized under this~~  
19 ~~article.~~

20 ~~(b) The application of the foregoing provisions shall not~~  
21 ~~diminish the commissioner's authority for exemption as may be~~





1 ~~contained therein or as may be deemed appropriate under the~~  
2 ~~circumstances.~~

3 ~~In addition, the commissioner may adopt rules pursuant to~~  
4 ~~chapter 91 as the commissioner deems necessary in connection~~  
5 ~~with the financial oversight and regulation of captive insurance~~  
6 ~~companies].~~

7 (b) In addition to the exceptions set forth in subsection

8 (a):

9 (1) Sections 431:3-302 to 431:3-304 and 431:3-307;

10 (2) Articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15;

11 and

12 (3) Chapter 431K,

13 shall apply to risk retention captive insurance companies.

14 (c) In addition to the exceptions set forth in subsection

15 (a), articles 1, 2, 6, and 15 shall apply to class 5 companies.

16 (d) If any of the laws specified in this section are

17 inconsistent with this article, this article shall apply unless

18 the commissioner by rule or order determines otherwise on a

19 case-by-case basis.

20 (e) The application of the foregoing provisions shall not

21 diminish the commissioner's authority for exemption as may be



1 contained therein or as may be deemed appropriate under the  
2 circumstances."

3 SECTION 20. Section 431:19-203, Hawaii Revised Statutes,  
4 is amended as follows:

5 (1) By amending the definition of "counterparty" to read  
6 as follows:

7 "Counterparty" means the insurer that cedes risk to a  
8 special purpose financial captive insurance company which,  
9 unless otherwise approved by the commissioner, shall be the  
10 parent or an affiliated [company] entity of the special purpose  
11 financial captive insurance company."

12 (2) By repealing the definition of "organizational  
13 document".

14 [~~"Organizational document" means the special purpose~~  
15 ~~financial captive insurance company's articles of incorporation,~~  
16 ~~articles of organization, bylaws, operating agreement, or any~~  
17 ~~other document that establishes the special purpose financial~~  
18 ~~captive insurance company as a legal entity or prescribes its~~  
19 ~~existence." ]~~

20 SECTION 21. Section 431:19-308, Hawaii Revised Statutes,  
21 is amended to read as follows:



1           "~~[+]§431:19-308[+]~~ **Applicable laws.** A sponsored captive  
 2 insurance company shall be subject to this part and to part  
 3 ~~[H.]~~ I. If there is any conflict between this part and part  
 4 ~~[H.]~~ I, this part shall control."

5           SECTION 22. Section 431:19-309, Hawaii Revised Statutes,  
 6 is amended to read as follows:

7           "~~[+]§431:19-309[+]~~ **Existing licenses.** Except as otherwise  
 8 determined by the commissioner, a captive insurance company that  
 9 has been issued a certificate of authority by the commissioner  
 10 pursuant to section 431:19-102 as of July 1, 2008, and is  
 11 licensed as a class 4 ~~[captive]~~ company shall not be required to  
 12 re-apply for a certificate of authority under this part, but  
 13 shall otherwise be subject to this part as a sponsored captive  
 14 insurance company; provided that the commissioner may by order  
 15 require the captive insurance company to take any action that  
 16 the commissioner determines is reasonably necessary to bring the  
 17 captive insurance company into compliance with this part."

18           SECTION 23. Section 431:19-101.3, Hawaii Revised Statutes,  
 19 is repealed.

20           ~~["§431:19-101.3 Classes of captive insurance. Each~~  
 21 ~~captive insurance company formed under this article shall be~~



1 ~~designated and licensed as one of the following classes of~~  
2 ~~captive insurance companies:~~

3 ~~(1) A class 1 company shall be limited to a pure captive~~  
4 ~~insurance company that only writes business as a~~  
5 ~~reinsurer;~~

6 ~~(2) A class 2 company shall be limited to a pure captive~~  
7 ~~insurance company that is not a class 1 company;~~

8 ~~(3) A class 3 company shall be any company formed under~~  
9 ~~this article as an association captive insurance~~  
10 ~~company or a risk retention captive insurance company;~~

11 ~~(4) A class 4 company shall be a sponsored captive~~  
12 ~~insurance company formed under part III of this~~  
13 ~~article; and~~

14 ~~(5) A class 5 company shall be a reinsurance or excess~~  
15 ~~insurance company formed under this article." ]~~

16 SECTION 24. In codifying the new sections added by section  
17 1 of this Act, the revisor of statutes shall substitute  
18 appropriate section numbers for the letters used in designating  
19 the new sections in this Act.

20 SECTION 25. Statutory material to be repealed is bracketed  
21 and stricken. New material is underscored.

22 SECTION 26. This Act shall take effect on July 1, 2012.



**Report Title:**

Captive Insurance Companies

**Description:**

Amends captive insurance company law (article 19, chapter 431, Hawaii Revised Statutes). Effective July 1, 2012. (HB2503 HD1)

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

