
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 two new sections to part I of article 19 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 rules are adopted to implement this section, 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 pursuant to chapter 386 may be
17 subject to article 15 if the captive insurance company is deemed
18 insolvent."



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

3 1. By adding nine new definitions to be appropriately
4 inserted and to read:

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

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

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

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

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

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

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



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

3 (2) That has an existing contractual relationship with a
4 parent or one of its affiliated entities; or

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

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

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

16 2. By amending the definitions of "affiliated entity",
17 "association", "association captive insurance company", "captive
18 insurance company", "outside captive insurance company",
19 "participant", "protected cell", "pure captive insurance
20 company", "risk retention captive insurance company", and
21 "sponsored captive insurance company" to read:



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

8 "Association" means [~~any legal association of~~] two or more
9 members who are engaged in business or activities similar or
10 related to the liability to which these members are exposed by
11 virtue of any related, similar, or common business trade,
12 product, services, premises, or operations; provided that the
13 members of the association shall be individuals, corporations,
14 limited liability companies, partnerships, associations, or
15 other entities, except labor organizations, the member
16 organizations of which or which does itself, whether or not in
17 conjunction with some or all of the member organizations:

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



1 (2) Have complete voting control over an association
2 captive insurance company incorporated as a mutual
3 insurer; ~~[or]~~

4 (3) Constitute all of the subscribers of an association
5 captive insurance company formed as a reciprocal
6 insurer~~[-]~~; or

7 (4) Have complete voting control over an association
8 captive insurance company formed as a limited
9 liability company.

10 "Association captive insurance company" means ~~[any]~~ a
11 captive insurance company that insures risks of the member
12 organizations of the association, and ~~[their]~~ that may insure
13 the risks of affiliated ~~[companies-]~~ entities of the member
14 organizations and the risks of the association itself.

15 "Captive insurance company" means a class 1~~[-]~~ company,
16 class 2~~[-]~~ company, class 3~~[-]~~ company, class 4~~[-]~~ company, or
17 class 5 ~~[captive insurance]~~ company formed or authorized under
18 this article.

19 "Outside captive insurance company" means an insurance
20 company licensed under the laws of a jurisdiction other than
21 this State and not otherwise admitted to do business as an



1 insurance company in this State, that insures the risks of its
2 parent or any affiliated [~~companies~~] entities.

3 "Participant" means an entity that meets the requirements
4 of section 431:19-305, and any [~~affiliates~~] affiliated entities
5 thereof that are insured by a sponsored captive insurance
6 company where the losses of the participant may be limited
7 through a participant contract to the participant's pro rata
8 share of the assets of one or more protected cells identified in
9 the participant contract.

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

17 "Pure captive insurance company" means [~~any~~] a captive
18 insurance company that only insures or reinsures risks of its
19 parent and affiliated entities[~~-~~] or of a controlled
20 unaffiliated business.



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

4 "Sponsored captive insurance company" means [~~any~~] a captive
5 insurance company [~~in~~]:

6 (1) In which the minimum required capital and surplus is
7 provided by one or more sponsors [~~and~~];

8 (2) That is formed or licensed under this article[~~—A~~
9 ~~sponsored captive insurance company~~];

10 (3) That insures the risks only of its participants
11 through separate participant contracts; and [~~may fund~~]

12 (4) That may fund its liability to each participant
13 through one or more protected cells. A sponsored
14 captive insurance company segregates the assets of
15 each protected cell from the assets of other protected
16 cells and from the assets of the sponsored captive
17 insurance company's general account."

18 SECTION 3. Section 431:19-101.2, Hawaii Revised Statutes,
19 is amended to read as follows:

20 "**§431:19-101.2 Confidential treatment.** (a) Except as
21 otherwise provided in [~~subsection (b),~~] this section, all
22 nonpublic information in a captive insurance company's



1 application for licensure, its business plan, or of its parent
2 or the parent's member organizations, and all other nonpublic
3 information disclosed to the commissioner pursuant to this
4 article, shall be given confidential treatment and shall not be
5 made public by the commissioner.

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

19 (c) This section shall not apply to risk retention captive
20 insurance companies. The confidentiality provisions of section
21 431:2-209 shall apply to risk retention captive insurance
22 companies.



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

2 "Equity securities" means:

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

6 (2) The interest of a limited partner in a limited
7 partnership;

8 (3) The interest of a partner in a partnership, including
9 a joint venture; or

10 (4) A warrant or right, other than a right to convert, to
11 purchase, sell, or subscribe to a share, security, or
12 interest of a kind specified in paragraph (1), (2), or
13 (3).

14 "Nonpublic information" means information that, prior to
15 disclosure to the commissioner pursuant to this article is, or
16 was:

17 (1) Not a public record as defined in rule 1001(5) of
18 section 626-1; or

19 (2) Not a government record that must be disclosed under
20 section 92F-12;

21 provided that in the case of a person whose equity securities
22 are collectively owned and held by thirty-six or more persons,



1 "nonpublic information" does not include financial information
2 disclosed to owners and holders of equity securities."

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

5 "**§431:19-101.5 Captive insurance administrator.** [~~a~~]

6 There shall be established within the [~~office of the~~
7 ~~commissioner,~~] insurance division a captive insurance
8 administrator, who shall be solely responsible for assisting the
9 commissioner in [~~the~~] monitoring, [~~regulation, and development~~
10 ~~of~~] regulating, and developing captive insurance companies under
11 this article. The commissioner, with the approval of the
12 director of commerce and consumer affairs, shall appoint the
13 administrator who shall be designated as a deputy commissioner
14 and shall be exempt from chapter 76, notwithstanding section
15 431:2-105(b) [~~to the contrary.~~] The administrator shall serve
16 at the pleasure of the director of commerce and consumer affairs
17 and shall report directly to the commissioner.

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

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



1 1. By amending subsection (a) to read:

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

6 2. By amending subsection (d) to read:

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



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

4 "(a) [~~Any captive insurance company, when~~] When permitted
5 by [~~its articles of association, articles of incorporation,~~
6 ~~articles of organization, or other~~] an applicant captive
7 insurance company's organizational [document,] documents, the
8 applicant captive insurance company may apply to the
9 commissioner for a certificate of authority to do any and all
10 insurance set forth in subsection (h); provided that:

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

15 (2) No association captive insurance company may insure
16 any risks other than those of [~~the member~~
17 ~~organizations of its association and their affiliated~~
18 ~~entities,~~] its association, those of the member
19 organizations of its association, and those of a
20 member organization's affiliated entities;

21 (3) [~~No~~] Unless otherwise allowed under section 431:19-
22 102.2, no captive insurance company may provide



1 personal motor vehicle or homeowner's insurance
2 coverage or any component thereof, other than as
3 [~~employee~~];

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

7 (B) Reinsurance as may be allowed under this article;
8 and

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

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

13 (1) It first obtains from the commissioner a certificate
14 of authority authorizing it to do insurance business
15 in this State;

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

19 (3) It maintains its principal place of business and
20 registered office in this State, except that a branch
21 captive insurance company need only maintain the
22 principal place of a business unit in this State; and



1 (4) It designates a registered resident agent in
2 accordance with chapter 414, 414D, or 428, as
3 applicable, to accept service of process and to
4 otherwise act on its behalf in this State. Whenever
5 the registered resident agent cannot, with reasonable
6 diligence, be found at the registered office of the
7 captive insurance company, the commissioner shall be
8 an agent of the captive insurance company upon whom
9 any process, notice, or demand may be served in
10 accordance with section 431:2-206.

11 (c) Before [~~receiving~~] an applicant captive insurance
12 company receives a certificate of authority, [a captive
13 insurance company] the applicant captive insurance company shall
14 file with the commissioner:

15 (1) A certified copy of its organizational documents[~~7~~
16 ~~including but not limited to its articles of~~
17 ~~incorporation, articles of association, bylaws,~~
18 ~~subscribers' agreement, articles of organization, and~~
19 ~~operating agreement, as applicable];~~

20 (2) A statement under oath of:

21 (A) Any two of its principal officers;



1 (B) Its attorney-in-fact in the case of a captive
2 insurance company formed as a reciprocal insurer;
3 or

4 (C) The duly authorized representative of its
5 governing body,

6 showing its financial condition; and

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

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

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

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

16 (3) The overall soundness of its plan of operation[+],
17 including the net retained risk on any one subject of
18 insurance;

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



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

4 (e) Each [~~captive insurance company applying for a~~
5 ~~certificate of authority under this article~~] applicant captive
6 insurance company shall pay to the commissioner a nonrefundable
7 application fee for examining, investigating, and processing its
8 application for the certificate of authority. [~~In addition,~~
9 ~~each captive insurance company receiving a~~] Upon approval of the
10 application for the certificate of authority, the applicant
11 captive insurance company shall pay to the commissioner a
12 license fee for the certificate of authority [~~from the~~
13 ~~commissioner shall pay an annual fee therefor for the year of~~
14 ~~registration and for each annual renewal thereafter~~].
15 Thereafter, the captive insurance company shall pay to the
16 commissioner an annual renewal fee. The amount of the
17 nonrefundable application fee [~~and the annual certificate of~~
18 ~~authority fee~~], license fee, and renewal fee shall be set forth
19 in rules adopted by the commissioner. In addition, the
20 commissioner may adopt rules with respect to fees for the
21 issuance of other documents as may be deemed necessary or
22 requested by captive insurance companies.



1 (f) The commissioner may use independent advisors and
 2 consultants to assist in the review and analysis of a specific
 3 application or business plan amendment. The independent
 4 advisory and consulting fee, to be paid by the [~~captive~~
 5 applicant~~[-]~~ captive insurance company, shall be a reasonable
 6 fee authorized by the commissioner pursuant to section
 7 431:19-114."

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

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

- 19 (1) The extent to which the particular coverage is
- 20 available in the voluntary market;



- 1 (2) The existence of a relationship between the parent of
2 the captive insurance company and the proposed
3 policyholders other than that of insurer to insured;
- 4 (3) Whether the captive insurance company has sufficient
5 capitalization to insure the proposed risks; and
- 6 (4) Any other factors [~~which~~] that the commissioner deems
7 appropriate."

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

10 **"§431:19-102.3 Redomestication; approval as a domestic**
11 **captive insurer.** (a) Any foreign or alien captive insurance
12 company may become a domestic captive insurance company by
13 meeting the following requirements:

- 14 (1) [~~Compliance~~] Complying with all of the requirements
15 relating to the organization and licensing of a
16 domestic captive insurance company of the same type,
17 and any requirements that the commissioner may adopt
18 by rule;
- 19 (2) [~~The articles of incorporation or other~~] Amending and
20 restating its organizational [~~document shall be~~
21 ~~amended~~] documents in compliance with the laws of this
22 State [~~and restated in its entirety before submission~~



1 ~~to the commissioner. Before the amended and restated~~
2 ~~articles of incorporation or other organizational~~
3 ~~document is transmitted to the department of commerce~~
4 ~~and consumer affairs, the foreign or alien captive~~
5 ~~insurance company shall petition], and submitting the~~
6 ~~amended and restated organizational documents for the~~
7 ~~commissioner's review; and~~

8 (3) Petitioning the commissioner to issue a certificate
9 [setting] of general good, which sets forth the
10 commissioner's finding that the redomestication and
11 maintenance of the company will promote the general
12 good of the State. In arriving at the finding, the
13 commissioner shall consider the factors set forth in
14 section 431:19-106(b) [†].

15 [~~3~~ ~~The~~] (b) Upon issuance of the certificate of general
16 good by the commissioner pursuant to subsection (a)(3), the
17 foreign or alien captive insurance company shall file the
18 following [shall be transmitted to] with the department of
19 commerce and consumer affairs [for filing]:

20 [~~A~~] (1) Articles of redomestication[†], which shall
21 include:

22 (A) Name of the company;



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



1 ~~[(B)]~~ (2) Certificate of general good issued ~~[by the~~
2 ~~commissioner,~~] pursuant to subsection (a)(3);

3 ~~[(C)]~~ (3) Certificate of good standing or comparable
4 documentation ~~[duly authenticated]~~ certified by the
5 proper officer of the ~~[state or country]~~ jurisdiction
6 under ~~[the laws of]~~ which the foreign or alien captive
7 insurance company is ~~[incorporated,~~] incorporated or
8 organized; provided that:

9 ~~[(i)]~~ (A) The certificate or documentation shall be
10 dated not earlier than thirty days prior to the
11 ~~[filing of the articles of redomestication,~~] date
12 of the certificate of general good; and

13 ~~[(ii)]~~ (B) If the certificate of good standing or
14 documentation is in a foreign language, a
15 translation under oath of the translator shall
16 accompany the certificate or documentation;

17 ~~[(D)]~~ ~~Amendments to the articles of incorporation or~~
18 ~~other organizational document in compliance with~~
19 ~~the laws of this State;~~

20 ~~(E)~~ ~~Restatement of the articles of incorporation or~~
21 ~~other organizational document in its entirety;~~
22 and



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



1 ~~which the company is incorporated or organized~~
2 ~~are attached; provided that if any of these~~
3 ~~documents are in a foreign language, a~~
4 ~~translation under oath of the translator shall~~
5 ~~accompany these documents.]~~

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

9 (5) Nonrefundable application fee.

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

18 ~~[-(e)]~~ (d) Upon redomestication in accordance with this
19 section, the foreign or alien captive insurance company shall
20 become a domestic captive insurance company organized under the
21 laws of this State and shall have all the rights, privileges,
22 immunities, and powers and be subject to all applicable laws,



1 duties, and liabilities of a domestic captive insurance company
 2 of the same type. The domestic captive insurance company shall
 3 possess all rights that it had prior to the redomestication to
 4 the extent permitted by the laws of this State and shall be
 5 responsible and liable for all the liabilities and obligations
 6 that it was subject to prior to the redomestication. All
 7 outstanding policies of the captive insurance company shall
 8 remain in full force and effect."

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

12 "(b) Before transferring its domicile to any other
 13 jurisdiction and before the notice of change in domicile is
 14 transmitted to the department of commerce and consumer affairs,
 15 the domestic captive insurance company shall ~~[deliver to the~~
 16 ~~commissioner a notice of intent to transfer, along with payment~~
 17 ~~of]~~ submit a written request to the commissioner to
 18 redomesticate to another jurisdiction and a transfer fee of
 19 \$300 ~~[, and petition the commissioner to issue a certificate of~~
 20 ~~transfer]~~.

21 (c) ~~[The notice of change in domicile, the certificate of~~
 22 ~~transfer issued by the commissioner, the proof of~~



1 ~~redomestication,~~ Upon approval of the written request to
 2 redomesticate pursuant to subsection (b), the commissioner shall
 3 issue a certificate of transfer. The domestic captive insurance
 4 company shall submit the certificate of transfer, a notice of
 5 change of domicile, and the filing fee [~~shall be transmitted~~] to
 6 the department of commerce and consumer affairs. The notice of
 7 change in domicile shall set forth the following:

- 8 (1) Name of the company;
- 9 (2) Dates that notice of the company's intent to transfer
 10 domicile from this State was published pursuant to the
 11 publication requirements of section 1-28.5;
- 12 (3) Date of the transfer of its domicile; and
- 13 (4) [~~State or country~~] Jurisdiction to which its domicile
 14 will be transferred.

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

1 Upon meeting the requirements of subsection (c) and upon the
2 issuance of a certificate of discontinuance by the department of
3 commerce and consumer affairs, the captive insurance company
4 shall cease to be domiciled in this State, and its corporate or
5 other legal existence in this State shall cease. The captive
6 insurance company shall pay a certificate fee at the time that
7 the certificate of discontinuance is issued in accordance with
8 chapter 414."

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

11 "(a) Each captive insurance company licensed pursuant to
12 this article shall possess and thereafter maintain unimpaired
13 capital and surplus in the amount established by the
14 commissioner; provided that:

15 (1) The commissioner shall take into account the nature
16 and volume of business transacted by each captive
17 insurance company, and any other factors deemed
18 appropriate by the commissioner;

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



- 1 (3) Minimum capital and surplus established by the
2 commissioner shall be no less than the following
3 amounts:
- 4 (A) Class 1[+] company: \$100,000;
5 (B) Class 2[+] company: \$250,000;
6 (C) Class 3[+] company: \$500,000;
7 (D) Class 4[+] company: \$500,000; and
8 (E) Class 5[+] company: An amount as determined by
9 the commissioner on a case by case basis."

10 SECTION 11. Section 431:19-106, Hawaii Revised Statutes,
11 is amended by amending subsection (e) to read as follows:

12 "(e) Captive insurance companies formed under this article
13 shall have the privileges and be subject to the general
14 corporation law, nonprofit corporation law, or limited liability
15 company law of this State as may be applicable, as well as this
16 article. In the event of conflict between any of the foregoing
17 applicable laws of this State and this article, this article
18 shall control."

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



1 "(b) A plan of conversion or merger shall be submitted to
2 and be approved by the commissioner in advance of the proposed
3 conversion or merger. The commissioner shall not approve the
4 plan unless:

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

7 (2) The plan has been approved[+]

8 ~~(A) In the case of a stock corporation, by at least~~
9 ~~two thirds of the shares entitled to vote at a~~
10 ~~duly called regular or special meeting of the~~
11 ~~shareholders at which a quorum is present, or by~~
12 ~~unanimous written consent of the shareholders,~~

13 ~~(B) In the case of a mutual insurer, by at least two~~
14 ~~thirds of the voting interest of the members of~~
15 ~~the mutual insurer at a duly called regular or~~
16 ~~special meeting of the membership at which a~~
17 ~~quorum is present, or by unanimous written~~
18 ~~consent of the members of the mutual insurer,~~

19 ~~(C) In the case of a reciprocal insurer, by at least~~
20 ~~two thirds of the voting interest of the~~
21 ~~subscribers of the reciprocal insurer at a duly~~
22 ~~called meeting of the subscribers of the~~



1 ~~reciprocal insurer, or by unanimous written~~
2 ~~consent of the subscribers;~~

3 ~~(D) In the case of a nonprofit corporation, 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 corporation, or by unanimous written~~
7 ~~consent of the members; or~~

8 ~~(E) In the case of a limited liability company, by at~~
9 ~~least two thirds of the voting interest of the~~
10 ~~members at a duly called meeting of the members~~
11 ~~of the limited liability company, or by unanimous~~
12 ~~written consent of the members,] by at least two-~~
13 ~~thirds of the voting interest or unanimous~~
14 ~~written consent of the voting interest of the~~
15 ~~captive insurance company;~~

16 (3) The plan provides for:

17 (A) The conversion of existing stockholder, member,
18 or subscriber interests into equal or
19 proportionate interests in the new converted or
20 merged insurer, or such other method and basis
21 for the conversion of the stockholder, member, or
22 subscriber interests that is fair and equitable;



- 1 (B) The purchase or other disposition of the shares
2 of any nonconsenting shareholder of a stock
3 insurer, policyholder interest of any
4 nonconsenting member of a mutual insurer,
5 membership interest of a limited liability
6 company, or subscriber surplus account interest,
7 if any, of a subscriber of a reciprocal insurer,
8 in accordance with either an agreement with any
9 nonconsenting stockholder, member, or subscriber
10 or with the existing [~~articles or bylaws~~]
11 organizational documents of the insurer relating
12 to the buyback buyout, or the termination of the
13 stockholder, member, or subscriber interests, if
14 any, or if no such provisions exist, then in
15 accordance with the laws of this State relating
16 to the rights of dissenting shareholders; and
- 17 (C) The novation, assignment, transfer, run-off, or
18 other disposition of [~~in-force~~] in-force policies
19 insuring any nonconsenting shareholder, member,
20 or subscriber;
- 21 (4) The conversion or merger will leave the resulting
22 converted insurer or surviving insurer of the merger



1 with capital or surplus funds reasonably adequate to
2 preserve the security of its policyholders and an
3 ability to continue to transact business in the
4 classes of insurance in which it is then authorized to
5 transact; and

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

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



1 as to the extent that these laws are applicable to the
2 conversion or merger."

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

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

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

18 (1) Annual statement and audit:

19 (A) On or before March 1, or such day subsequent
20 thereto as the commissioner upon request and for
21 cause may specify, an annual statement using the
22 National Association of Insurance Commissioners'



1 annual statement blank plus any additional
2 information required by the commissioner, which
3 shall be a true statement of its financial
4 condition, transactions, and affairs as of the
5 immediately preceding December 31. The reported
6 information shall be verified by oaths of at
7 least two of the captive's principal officers;

8 (B) On or before June 1, or [~~such~~] any day subsequent
9 thereto as the commissioner upon request and for
10 cause may specify, an audit by a designated
11 independent certified public accountant or
12 accounting firm of the financial statements
13 reporting the financial condition and results of
14 the operation of the captive; and

15 (C) The annual statement and audit shall be prepared
16 in accordance with the National Association of
17 Insurance Commissioners' annual statement
18 instructions, accounting practices and procedures
19 manual, and rules adopted by the commissioner
20 following the practices and procedures prescribed
21 by the National Association of Insurance
22 Commissioners; and



1 (2) On or before each March 1, or [~~such~~] any day
2 subsequent thereto as the commissioner upon request
3 and for cause may specify, a risk-based capital report
4 in accordance with section 431:3-402[~~; provided that a~~
5 ~~class 3 association captive insurance company shall~~
6 ~~not be required to file risk-based capital reports~~
7 ~~with the National Association of Insurance~~
8 ~~Commissioners]."~~

9 SECTION 14. Section 431:19-108, Hawaii Revised Statutes,
10 is amended by amending the title and subsection (a) to read as
11 follows:

12 "**§431:19-108 Examinations [and], investigations[+], and**
13 **financial surveillance.** (a) The commissioner or any authorized
14 examiner may conduct an examination, investigation, or financial
15 surveillance of any captive insurance company as often as the
16 commissioner deems appropriate[~~+~~]; provided that, unless the
17 commissioner requires otherwise:

18 (1) An examination shall be conducted at least once every
19 five years for all captive insurance companies, except
20 as provided in paragraph (2); and
21 (2) An examination of a [~~class 3~~] risk retention captive
22 insurance company shall be conducted no later than



1 three years after its formation and at least once
2 every five years thereafter.

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

10 "**§431:19-109 Grounds and procedures for suspension and**
11 **revocation of certificate of authority[-]; fines.** (a) The
12 commissioner may suspend or revoke the certificate of authority
13 of a captive insurance company to do business in this State [may
14 be suspended or revoked by the commissioner] or impose a fine of
15 not less than \$100 nor more than \$10,000 per violation, or any
16 combination of these actions, for any of the following reasons:

- 17 (1) Insolvency or impairment of capital or surplus;
- 18 (2) Failure to meet the requirements of section
19 431:19-104;
- 20 (3) Refusal or failure to submit an annual report, as
21 required by section 431:19-107 or any other report or



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



1 (b) If the commissioner [~~upon examination, hearing, or~~
2 ~~other evidence, finds that any captive insurance company has~~
3 ~~committed any of the acts specified in subsection (a), the~~
4 ~~commissioner may suspend or revoke the certificate of authority~~
5 ~~if the commissioner deems it in the best interest of the public~~
6 ~~and the policyholders of such captive insurance company,~~
7 ~~notwithstanding any other law.] takes action pursuant to
8 subsection (a), the commissioner shall notify the captive
9 insurance company in writing of the reason for that action. The
10 captive insurance company may make written demand upon the
11 commissioner within ten days of the date of receipt of the
12 notice for a hearing before the commissioner to determine the
13 reasonableness of the commissioner's action. The hearing shall
14 be held within thirty days of receipt of the written demand and
15 shall be held pursuant to chapter 91."~~

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

19 "(a) Except for [~~class-3~~] risk retention captive insurance
20 companies, captive insurance companies licensed under this
21 article shall be allowed to maintain investments in accordance
22 with a strategic investment policy adopted and monitored by the



1 captive insurance company's governing body, and approved by the
2 commissioner; provided that in addition to the minimum capital
3 and surplus requirements prescribed in section 431:19-104(b),
4 ~~[and the requirements prescribed in subsection (b),]~~ each
5 captive insurance company with an approved strategic investment
6 policy shall maintain investments in one or more of the
7 following forms, which aggregate not less than one hundred per
8 cent of reserves as required by this ~~[code]~~ chapter or the
9 commissioner:

- 10 (1) Cash;
- 11 (2) Irrevocable letter of credit issued by a bank
12 chartered by this State or a member bank of the
13 Federal Reserve System;
- 14 (3) Investments in accordance with a strategic investment
15 policy adopted and monitored by the captive insurance
16 company's governing body, and approved by the
17 commissioner;
- 18 (4) Premiums in the course of collection; or
- 19 (5) Other forms approved by the commissioner.

20 (b) Each captive insurance company that does not maintain
21 a strategic investment policy as described in subsection (a) and
22 ~~[class-3]~~ risk retention captive insurance companies shall be



1 subject to the restrictions on allowable investments provided
2 under sections 431:6-101 to 431:6-501; provided that the
3 commissioner may approve other assets, investments, and
4 investment provisions as the commissioner deems appropriate."

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

7 "(a) A class 5 company under this article is one that is
8 not a class 1[7] company, class 2[7] company, class 3[7]
9 company, or class 4 company, and acts only as a reinsurer or
10 excess insurer, or both. Notwithstanding any other provision of
11 this article, a class 5 company authorized under this article
12 may reinsure or provide excess insurance, or both, for the risks
13 and lines of insurance approved by the commissioner."

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

16 "**§431:19-113 Exemption from compulsory associations.** No
17 captive insurance company shall be permitted to join or
18 contribute financially to any plan, pool, association, or
19 guaranty or insolvency fund in this State, except as provided
20 under chapter 386, nor shall any captive insurance company, its
21 insured, or its parent or any affiliated [~~company,~~] entity, or
22 any member organization of its association, receive any benefit



1 from any [~~such~~] plan, pool, association, or guaranty or
2 insolvency fund for claims arising out of the operations of
3 [~~such~~] the captive insurance company."

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

6 "**§431:19-115 Laws applicable.** (a) No insurance laws of
7 this State other than those contained in this article, or
8 contained in specific references contained in this section or
9 article, shall apply to captive insurance companies [~~formed~~
10 ~~under this article. In addition to this article, article 1,~~
11 ~~article 2, sections 431:3 302 to 431:3 304, section 431:3 307,~~
12 ~~article 4A, parts I and II of article 5, article 6, article 11,~~
13 ~~and article 15 of this chapter shall apply to captive insurance~~
14 ~~companies other than pure captive insurance companies and branch~~
15 ~~captive insurance companies, unless these other laws are~~
16 ~~inconsistent with this article or the commissioner by rule,~~
17 ~~regulation, or order determines, on a case by case basis that~~
18 ~~these other laws should not apply thereto.~~

19 ~~In addition to this article, and except as otherwise~~
20 ~~provided in this article, article 1, article 2, article 6,~~
21 ~~article 11, and article 15 of this chapter shall apply to class~~
22 ~~5 companies, unless these other laws are inconsistent with this~~



1 ~~article or the commissioner by rule, regulation, or order~~
2 ~~determines, on a case by case basis that these other laws should~~
3 ~~not apply thereto.~~

4 ~~In addition to this article and the articles or portions~~
5 ~~thereof referenced in this section, chapter 431K shall apply to~~
6 ~~risk retention captive insurance companies authorized under this~~
7 ~~article.~~

8 ~~(b) The application of the foregoing provisions shall not~~
9 ~~diminish the commissioner's authority for exemption as may be~~
10 ~~contained therein or as may be deemed appropriate under the~~
11 ~~circumstances.~~

12 ~~In addition, the commissioner may adopt rules pursuant to~~
13 ~~chapter 91 as the commissioner deems necessary in connection~~
14 ~~with the financial oversight and regulation of captive insurance~~
15 ~~companies].~~

16 (b) Sections 431:3-302 to 431:3-304 and 431:3-307;
17 articles 1, 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and
18 chapter 431K shall apply to risk retention captive insurance
19 companies.

20 (c) Articles 1, 2, 6, and 15 shall apply to class 5
21 companies.



1 (d) If any of the laws specified in this section are
2 inconsistent with this article, this article shall apply unless
3 the commissioner by rule or order determines otherwise on a
4 case-by-case basis.

5 (e) The application of the foregoing provisions shall not
6 diminish the commissioner's authority for exemption as may be
7 contained therein or as may be deemed appropriate under the
8 circumstances."

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

11 1. By amending the definition of "counterparty" to read:

12 "Counterparty" means the insurer that cedes risk to a
13 special purpose financial captive insurance company which,
14 unless otherwise approved by the commissioner, shall be the
15 parent or an affiliated [~~company~~] entity of the special purpose
16 financial captive insurance company."

17 2. By repealing the definition of "organizational
18 document".

19 [~~"Organizational document" means the special purpose~~
20 ~~financial captive insurance company's articles of incorporation,~~
21 ~~articles of organization, bylaws, operating agreement, or any~~
22 ~~other document that establishes the special purpose financial~~



1 ~~captive insurance company as a legal entity or prescribes its~~
2 ~~existence."~~]

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

5 " ~~[+]§431:19-308[+]~~ **Applicable laws.** A sponsored captive
6 insurance company shall be subject to this part and to part
7 ~~[++-]~~ I. If there is any conflict between this part and part
8 ~~[++-]~~ I, this part shall control."

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

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



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

3 [~~"§431:19-101.3 Classes of captive insurance. Each~~
4 ~~captive insurance company formed under this article shall be~~
5 ~~designated and licensed as one of the following classes of~~
6 ~~captive insurance companies:~~

7 (1) ~~A class 1 company shall be limited to a pure captive~~
8 ~~insurance company that only writes business as a~~
9 ~~reinsurer;~~

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

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

15 (4) ~~A class 4 company shall be a sponsored captive~~
16 ~~insurance company formed under part III of this~~
17 ~~article; and~~

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

20 SECTION 24. In codifying the new sections added by section
21 1 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 25. Statutory material to be repealed is bracketed
4 and stricken. New material is underscored.

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



Report Title:

Captive Insurance Companies

Description:

Amends Hawaii's captive insurance company law to ensure that risk retention captive insurance companies comply with the accreditation standards of the National Association of Insurance Commissioners. Effective July 1, 2012. (SB2765 HD2)

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