

JAN 24 2013

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**A BILL FOR AN ACT**

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 431:2-308, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3           "(d) Application for a hearing made to the commissioner  
4 pursuant to this code shall be in writing, shall be made within  
5 ten days of the date of receipt of the notice to the aggrieved  
6 party, and shall specify in what respects the person so applying  
7 was aggrieved and the grounds to be relied upon as a basis for  
8 the relief to be demanded at the hearing. Where the  
9 commissioner has used the authority contained in section 431:9-  
10 235 or section 431:9A-112 to suspend, revoke, or refuse to  
11 extend a license subject to the right of the licensee to have a  
12 hearing and has suspended the license pending the hearing, the  
13 commissioner shall hold the hearing within thirty days after the  
14 commissioner's receipt of the application unless postponed by  
15 mutual consent."

16           SECTION 2. Section 431:3-403, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

1           (a) "Company action level event" means any of the  
2 following events:

3           (1) The filing of a risk-based capital report by an  
4 insurer which indicates that:

5           (A) The insurer's total adjusted capital is greater  
6 than or equal to its regulatory action level  
7 risk-based capital but less than its company  
8 action level risk-based capital;

9           (B) If a life or accident and health or sickness  
10 insurer, the insurer has total adjusted capital  
11 greater than or equal to its company action level  
12 risk-based capital but less than the product of  
13 its authorized control level risk-based capital  
14 and [~~two and a half,~~] three, and has a negative  
15 trend;

16           (C) If a property and casualty insurer, the insurer  
17 has a total adjusted capital greater than or  
18 equal to its company action level risk-based  
19 capital but less than the product of its  
20 authorized control level risk-based capital and  
21 three, and triggers the trend test determined in  
22 accordance with the trend test calculation

- 1 included in the property and casualty risk-based  
2 capital instructions; or
- 3 (D) If a benefit society or health maintenance  
4 organization, the benefit society or health  
5 maintenance organization has a total adjusted  
6 capital greater than or equal to its company  
7 action level risk-based capital but less than the  
8 product of its authorized control level risk-  
9 based capital and three, and triggers the trend  
10 test determined in accordance with the trend test  
11 calculation included in the health risk-based  
12 capital instructions;
- 13 (2) The notification by the commissioner to the insurer of  
14 an adjusted risk-based capital report that indicates  
15 the occurrence of the event in paragraph (1), if the  
16 insurer does not challenge the adjusted risk-based  
17 capital report under section 431:3-407; or
- 18 (3) If, pursuant to section 431:3-407, the insurer  
19 challenges an adjusted risk-based capital report that  
20 indicates the occurrence of the event in paragraph  
21 (1), the notification by the commissioner to the

1 insurer that the commissioner has, after a hearing,  
2 rejected the insurer's challenge."

3 SECTION 3. Section 431:9A-153, Hawaii Revised Statutes, is  
4 amended by amending subsection (f) to read as follows:

5 "(f) No course shall be approved for more than [~~twenty~~  
6 twenty-four credit hours."

7 SECTION 4. Section 431:15-103.5, Hawaii Revised Statutes,  
8 is amended to read as follows:

9 "[~~f~~] §431:15-103.5 [~~f~~] **Standards and authority.** (a) The  
10 following standards, either singly or in a combination of two or  
11 more, may be considered by the commissioner to determine whether  
12 the continued operation of any insurer transacting insurance  
13 business in this State may be deemed to be hazardous to [~~the~~  
14 its policyholders, its creditors, or the general public:

15 (1) Adverse findings reported in financial condition and  
16 market conduct examination reports [~~7~~], audit reports,  
17 and actuarial opinions, reports, or summaries;

18 (2) The National Association of Insurance Commissioners'  
19 insurance regulatory information system and its  
20 [~~related~~] other financial analysis solvency tools and  
21 reports;

- 1       ~~[(3) The ratios of commission expense, general insurance~~  
2       ~~expense, policy benefits, and reserve increases as to~~  
3       ~~annual premium and net investment income that could~~  
4       ~~lead to an impairment of capital and surplus;~~
- 5       ~~(4) The insurer's asset portfolio, when viewed in light of~~  
6       ~~current economic conditions, is not of sufficient~~  
7       ~~value, liquidity, or diversity to assure the company's~~  
8       ~~ability to meet its outstanding obligations as they~~  
9       ~~mature;]~~
- 10       (3) Whether the insurer has made adequate provision,  
11       according to presently accepted actuarial standards of  
12       practice, for the anticipated cash flows required by  
13       the contractual obligations and related expenses of  
14       the insurer, when considered in light of the assets  
15       held by the insurer with respect to such reserves and  
16       related actuarial items including, but not limited to,  
17       the investment earnings on the assets, and the  
18       considerations anticipated to be received and retained  
19       under the policies and contracts;
- 20       ~~[-(5)]~~ (4) The ability of an assuming reinsurer to perform  
21       and whether the insurer's reinsurance program provides  
22       sufficient protection for the ~~[company's]~~ insurer's

1 remaining surplus after taking into account the  
2 insurer's cash flow and the classes of business  
3 written as well as the financial condition of the  
4 assuming reinsurer;

5 ~~[-(6)]~~ (5) ~~[The]~~ Whether the insurer's operating loss in the  
6 last twelve-month period or any shorter period of  
7 time, including but not limited to net capital gain or  
8 loss, change in non-admitted assets, and cash  
9 dividends paid to shareholders, is greater than fifty  
10 per cent of ~~[such]~~ the insurer's remaining surplus as  
11 regards policyholders in excess of the minimum  
12 required;

13 (6) Whether the insurer's operating loss in the last  
14 twelve-month period or any shorter period of time,  
15 excluding net capital gains, is greater than twenty  
16 per cent of the insurer's remaining surplus as regards  
17 policyholders in excess of the minimum required;

18 (7) Whether ~~[any affiliate, subsidiary, or]~~ a reinsurer,  
19 obligor, or any entity within the insurer's insurance  
20 holding company system, is insolvent, threatened with  
21 insolvency, or delinquent in payment of its monetary  
22 or other obligations ~~[+]~~ and which in the opinion of

- 1           the commissioner may affect the solvency of the  
2           insurer;
- 3           (8) Contingent liabilities, pledges, or guaranties that,  
4           either individually or collectively, involve a total  
5           amount that, in the opinion of the commissioner, may  
6           affect the solvency of the insurer;
- 7           (9) Whether any "controlling person" of an insurer is  
8           delinquent in the transmitting to, or payment of, net  
9           premiums to such insurer;
- 10          (10) The age and collectibility of receivables;
- 11          (11) Whether management of an insurer, including officers,  
12          directors, or any other person who directly or  
13          indirectly controls the operation of [~~such~~] the  
14          insurer, fails to possess and demonstrate the  
15          competence, fitness, and reputation deemed necessary  
16          to serve the insurer in such position;
- 17          (12) Whether management of an insurer has failed to respond  
18          to inquiries relative to the condition of the insurer  
19          or has furnished false and misleading information  
20          concerning an inquiry;

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- 1        (13) Whether the insurer has failed to meet financial and  
2        holding company filing requirements in the absence of  
3        a reason satisfactory to the commissioner;
- 4        [~~13~~] (14) Whether management of an insurer either has filed  
5        any false or misleading sworn financial statement, or  
6        has released any false or misleading financial  
7        statement to lending institutions or to the general  
8        public, or has made a false or misleading entry, or  
9        has omitted an entry of material amount in the books  
10       of the insurer;
- 11       [~~14~~] (15) Whether the insurer has grown so rapidly and to  
12       such an extent that it lacks adequate financial and  
13       administrative capacity to meet its obligations in a  
14       timely manner; [~~and~~]
- 15       [~~15~~] (16) Whether the company has experienced, or will  
16       experience in the foreseeable future, cash flow or  
17       liquidity problems [~~or both~~];
- 18       (17) Whether management has established reserves that do  
19       not comply with minimum standards established by state  
20       insurance laws, regulations, statutory accounting  
21       standards, sound actuarial principles, and standards  
22       of practice;



1        (18) Whether management persistently engages in material  
2        under reserving that results in adverse development;

3        (19) Whether transactions among affiliates, subsidiaries,  
4        or controlling persons for which the insurer receives  
5        assets or capital gains, or both, do not provide  
6        sufficient value, liquidity, or diversity to assure  
7        the insurer's ability to meet its outstanding  
8        obligations as they mature; and

9        (20) Any other finding determined by the commissioner to be  
10       hazardous to the insurer's policyholders, creditors,  
11       or the general public.

12       (b) For the purposes of making a determination of an  
13 insurer's financial condition under this part, the commissioner  
14 may:

15       (1) Disregard any credit or amount receivable resulting  
16       from transactions with a reinsurer that is insolvent,  
17       impaired, or otherwise subject to a delinquency  
18       proceeding;

19       (2) Make appropriate adjustments including disallowance to  
20       asset values attributable to investments in or  
21       transactions with parents, subsidiaries, or  
22       affiliates[+] consistent with the National Association

1 of Insurance Commissioners' accounting practices and  
2 procedures manual, state laws, and rules;

3 (3) Refuse to recognize the stated value of accounts  
4 receivable if the ability to collect receivables is  
5 highly speculative in view of the age of the account  
6 or the financial condition of the debtor; or

7 (4) Increase the insurer's liability in an amount equal to  
8 any contingent liability, pledge, or guarantee not  
9 otherwise included if there is a substantial risk that  
10 the insurer will be called upon to meet the obligation  
11 undertaken within the next twelve-month period.

12 (c) If the commissioner determines that the continued  
13 operation of the insurer licensed to transact business in this  
14 State may be hazardous to ~~the~~ its policyholders, its  
15 creditors, or the general public, the commissioner may, upon the  
16 commissioner's determination, issue an order requiring the  
17 insurer to:

18 (1) Reduce the total amount of present and potential  
19 liability for policy benefits by reinsurance;

20 (2) Reduce, suspend, or limit the volume of business being  
21 accepted or renewed;

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- 1 (3) Reduce general insurance and commission expenses by  
2 specified methods;
- 3 (4) Increase the insurer's capital and surplus;
- 4 (5) Suspend or limit the declaration and payment of  
5 dividends by an insurer to its stockholders or to its  
6 policyholders;
- 7 (6) File reports in a form acceptable to the commissioner  
8 concerning the market value of the insurer's assets;
- 9 (7) Limit or withdraw from certain investments or  
10 discontinue certain investment practices to the extent  
11 the commissioner deems necessary;
- 12 (8) Document the adequacy of premium rates in relation to  
13 the risks insured;
- 14 (9) File, in addition to regular annual statements,  
15 interim financial reports on the form adopted by the  
16 National Association of Insurance Commissioners or on  
17 such forms as approved by the commissioner[-];
- 18 (10) Correct corporate governance practice deficiencies,  
19 and adopt and utilize governance practices acceptable  
20 to the commissioner;
- 21 (11) Provide a business plan to the commissioner in order  
22 to continue to transact business in the State; or

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1        (12) Notwithstanding any other provision of law limiting  
2        the frequency or amount of premium rate adjustments,  
3        adjust rates for any non-life insurance product  
4        written by the insurer that the commissioner considers  
5        necessary to improve the financial condition of the  
6        insurer.

7        If the insurer is a foreign insurer, the commissioner's order  
8        may be limited to the extent provided by statute.

9            (d) Any insurer subject to an order under subsection (c)  
10       may request a hearing to review that order pursuant to chapter  
11       91."

12            SECTION 5. Section 431:19-102.3, Hawaii Revised Statutes,  
13       is amended by amending subsections (a) and (b) to read as  
14       follows:

15            "(a) Any foreign or alien captive insurance company may  
16       become a domestic captive insurance company by meeting the  
17       following requirements:

18            (1) Complying with all of the requirements relating to the  
19            organization and licensing of a domestic captive  
20            insurance company of the same type, and any  
21            requirements that the commissioner may adopt by rule;

1 (2) Amending and restating its organizational documents in  
2 compliance with the laws of this State, and submitting  
3 the amended and restated organizational documents for  
4 the commissioner's review; and

5 (3) Petitioning the commissioner to issue a certificate of  
6 general good, which sets forth the commissioner's  
7 finding that the redomestication and maintenance of  
8 the company will promote the general good of the  
9 State. In arriving at the finding, the commissioner  
10 shall consider the factors set forth in section  
11 431:19-106(b). The petition shall include a  
12 nonrefundable application fee.

13 (b) Upon issuance of the certificate of general good by  
14 the commissioner pursuant to subsection (a)(3), the foreign or  
15 alien captive insurance company shall file the following with  
16 the department of commerce and consumer affairs:

17 (1) Articles of redomestication, which shall include:

18 (A) Name of the company;

19 (B) Date and location of incorporation or  
20 organization;

21 (C) Street address of the principal office in this  
22 State;

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

1 jurisdiction under which the foreign or alien captive  
2 insurance company is incorporated or organized;  
3 provided that:

4 (A) The certificate or documentation shall be dated  
5 not earlier than thirty days prior to the date of  
6 the certificate of general good; and

7 (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 and

12 (4) The company's organizational documents, which shall be  
13 amended and restated in compliance with the laws of  
14 this State [~~7~~ and

15 ~~(5) Nonrefundable application fee]."~~

16 SECTION 6. Section 431:19-115, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) Sections 431:3-302 to [~~431:3-304 and~~] 431:3-304.5,  
19 431:3-307 [~~7~~], 431:3-401 to 431:3-407, and 431:3-414; articles 1,  
20 2, 4A, 5, 6, 9A, 9B, 9C, 11, 11A, and 15; and chapter 431K shall  
21 apply to risk retention captive insurance companies."

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1 SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2013.

4

5

6

INTRODUCED BY: 

7

BY REQUEST



S.B. NO. 1072

**Report Title:**  
Insurance

**Description:**  
Updates the Insurance Code.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To update the Insurance Code, chapter 431, Hawaii Revised Statutes (HRS), by:

- (1) Establishing in section 431:2-308(d) the ten-day deadline to request an administrative hearing, for consistency with sections 431:9A-112 and 431:19-109;
- (2) Revising in section 431:3-403(a)(1)(B) the applicable risk-based capital "trend test" for life insurers, as required for National Association of Insurance Commissioners (NAIC) accreditation;
- (3) Changing in section 431:9A-153(f) the reference from 20 continuing education credit hours to 24 for consistency with section 431:9A-124(a);
- (4) Updating section 431:15-103.5 for revisions to the NAIC Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition;
- (5) Clarifying in section 431:19-102.3 that the nonrefundable application fee for captive redomestication must be paid at the time of application; and
- (6) Clarifying in section 431:19-115(b) the statutory requirements applicable to risk retention captives, as required for NAIC accreditation.

MEANS: Amend sections 431:2-308(d), 431:3-403(a), 431:9A-153(f), 431:15-103.5, 431:19-102.3(a) and (b), and 431:19-115(b), HRS.

JUSTIFICATION: Section 431:2-308(d) currently requires the request for administrative hearing to be in writing but does not provide a deadline for filing the request. Sections 431:9A-112(b) and 431:19-109(b) specify that the written demand for hearing must be made within ten days of the date of receipt of the notice for hearing. This amendment would provide for consistency of statutes within the Insurance Code.

Section 431:3-403(a)(1)(B) provides the applicable risk-based capital (RBC) company action level applicable for life insurers. RBC represents an amount of required capital that an insurer should hold to protect policyholders against adverse developments based on an assessment of the inherent risks in the insurer's operations.

In November 2011, the NAIC revised the Risk-Based Capital for Insurers Model Act for life insurers, changing the level to a higher standard at which the life RBC "trend test" was triggered to be consistent with the level used for health and property and casualty insurers. The level at which the life trend test could be triggered was changed from 2.5 times the authorized control level RBC amount to 3.0 times the authorized control level amount. The life trend test attempts to give an indication of weakly capitalized companies that are not currently at an RBC action level but are showing financial results that indicates they may soon be at an action level. Having the same trend test level across states provides a consistent standard of RBC for insurers to follow. This amendment is needed for the Insurance Division to retain NAIC accreditation.

Section 431:9A-153(f) currently limits the approval of a continuing education course to a maximum of 20 credit hours. To qualify for license renewal, an insurance producer must take 24 credit hours of continuing education coursework, per section 431:9A-124(b). This amendment would provide for consistency with section 431:9A-124 and within the Insurance Code.

Section 431:15-103.5 governs the standards and authority for determining whether any insurer may be operating in a financially hazardous condition. In July 2010, the NAIC adopted revisions to the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition. Updating this section to conform with this model regulation is necessary to retain NAIC accreditation.

Section 431:19-102.3 governs the requirements for a foreign or alien captive insurer to redomesticate as a Hawaii domestic captive insurer. This amendment clarifies that the nonrefundable application fee for redomestication must be paid at the time of application and codifies existing practice.

Section 431:19-115(b) incorporates by reference the Insurance Code provisions applicable to risk retention captives. Adding the following provisions are necessary to retain NAIC accreditation, to clarify existing law, and to reflect the Insurance Division's current practices: (1) section 431:3-304.5 governing treatment of the statement of actuarial opinion as a public document; and (2) sections 431:3-401 to 431:3-407, and 431:3-414, governing RBC reports.

Section 431:3-304.5 currently requires insurers to file the statement of actuarial opinion with the annual statement, deems an

insurer's statement of actuarial opinion as a public document, and provides confidentiality for the actuarial opinion summary and related documents. Similarly, risk retention captives are also currently required to file a statement of actuarial opinion with the annual statement, per section 431:19-107(c). This reference will provide similar treatment for the statement of actuarial opinion.

Risk retention captives are currently required to file RBC reports, per section 431:19-107(b)(2). This reference will clarify existing law.

In summary, the above amendments represent efforts to streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce the cost of insurance regulation.

Impact on the public: This bill will make provisions of the Insurance Code more understandable, technically correct, and consistent, and decrease the cost and burden of regulatory compliance.

Impact on the department and other agencies: These amendments streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce confusion and inefficiency in implementing Hawaii insurance laws.

GENERAL FUND: None.

OTHER FUNDS: Compliance resolution fund.

PPBS PROGRAM  
DESIGNATION: CCA 106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2013.