

JAN 24 2024

A BILL FOR AN ACT

RELATING TO INSURANCE.

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 a new section to be
3 appropriately designated and to read as follows:

4 "§431:19- Dormant captive insurance companies. (a) As
5 used in this section, unless the context requires otherwise,
6 "dormant captive insurance company" means a captive insurance
7 company that as of the filing of its application for a
8 certificate of dormancy under this section:

9 (1) Has never transacted the business of insurance; or

10 (2) Has ceased transacting the business of insurance and
11 has no remaining insurance liabilities associated with
12 any business of insurance transacted by it.

13 (b) A captive insurance company may apply to the
14 commissioner for a certificate of dormancy and the commissioner
15 may grant a certificate of dormancy. The certificate of
16 dormancy shall be subject to renewal every five years and shall
17 expire if not renewed. The application for renewal shall be
18 submitted no less than ninety days prior to the certificate

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1 expiration date. The issuance of a certificate of dormancy
2 shall automatically cause the certificate of authority of the
3 captive insurance company to be placed in inactive status.

4 (c) A dormant captive insurance company that has been
5 issued a certificate of dormancy shall:

6 (1) Possess and thereafter maintain unimpaired, paid-in
7 capital and surplus of not less than \$25,000;

8 (2) Prior to March 1 of each year, submit to the
9 commissioner a report of its financial condition,
10 verified by oath of two of its executive officers, in
11 a form as may be prescribed by the commissioner; and

12 (3) Pay a certificate of dormancy renewal fee of \$300.

13 (d) A dormant captive insurance company that has been
14 issued a certificate of dormancy shall not:

15 (1) Conduct the business of insurance;

16 (2) Be subject to or liable for the payment of any tax
17 under section 431:19-116;

18 (3) Be required to file audited annual financial
19 statements and other reports required under section
20 431:19-107; and

21 (4) Be subject to examination under section 431:19-108,
22 except for non-compliance with this section.

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1 (e) Prior to conducting any insurance business, a dormant
2 captive insurance company shall apply for approval from the
3 commissioner to surrender its certificate of dormancy and to
4 reactivate its certificate of authority.

5 (f) A certificate of dormancy shall be revoked if a
6 dormant captive insurance company violates any provisions of
7 subsections (a) through (d).

8 (g) The commissioner may adopt rules as necessary to carry
9 out this section."

10 SECTION 2. Section 431:2-217, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~§~~431:2-217 **Trade name.** (a) Prior to the use or
13 change of a trade name to sell, solicit, or negotiate insurance
14 in this State, the licensee shall register the trade name with
15 the department of commerce and consumer affairs pursuant to part
16 II of chapter 482.

17 (b) Upon registration of the trade name with the
18 department of commerce and consumer affairs, the licensee may
19 apply, on a form approved by the commissioner, to add or remove
20 a trade name on a license. The applicant shall provide proof of
21 registration of a trade name to the commissioner.

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1 (c) If the commissioner finds the application for use or
2 change of a trade name is substantially identical to another
3 trade name registered with the department of commerce and
4 consumer affairs, or substantially identical to a legal name or
5 trade name of a revoked license, the commissioner shall deny use
6 of the trade name on a license issued pursuant to this chapter.

7 (d) A licensee shall inform the commissioner, by any means
8 acceptable to the commissioner, of any change of status of a
9 trade name registered with the department of commerce and
10 consumer affairs within thirty days of the change.

11 (e) For purposes of this article, "trade name" shall
12 include the name under which an individual or business entity is
13 conducting business or doing business as."

14 SECTION 3. Section 431:9A-154, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§431:9A-154 Self-study courses.** (a) In addition to the
17 requirements of courses generally, an approved continuing
18 education course provider shall also require for self-study
19 courses, including computer-based courses, a written or
20 computer-based examination at the conclusion of the self-study
21 course. The examination shall:

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- 1 (1) Be composed of multiple choice questions, essay
2 questions, or both;
- 3 (2) Have at least three different versions of itself, used
4 on a random or rotating basis;
- 5 (3) If composed of multiple choice questions for a course
6 approved for up to four credit hours, include at least
7 twenty-five multiple choice questions;
- 8 (4) If composed of multiple choice questions for a course
9 approved for more than four credit hours, include at
10 least fifty multiple choice questions;
- 11 (5) Be graded by the continuing education course provider
12 or the continuing education course provider's agent;
- 13 (6) If the examination is computer-based, not include
14 prompts designed to aid the person taking the
15 examination; and
- 16 (7) If the course is a computer-based course with a
17 computer-based examination, be designed to prevent the
18 licensee from taking the examination without reviewing
19 the course materials.
- 20 (b) To pass a multiple-choice self-study course, the
21 licensee shall answer at least seventy per cent of the
22 examination questions correctly.

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1 (c) A self-study course examination shall not be
2 administered by a person who:

3 (1) Is related to, or is a business associate of, the
4 licensee taking the examination; or

5 (2) Has a financial interest in the success or failure of
6 a licensee taking the examination.

7 (d) The effective date of a completed examination pursuant
8 to this section shall be the date the continuing education
9 course provider receives the completed examination. Upon
10 receipt of the completed examination, the continuing education
11 course provider or the continuing education course provider's
12 agent shall grade the examination and mail the results to the
13 licensee within fifteen days.

14 (e) The written or computer-based examination and contents
15 shall be made available by the continuing education course
16 provider, upon request, to the commissioner, and shall not be
17 required to be submitted for filing."

18 SECTION 4. Section 431:9B-102, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) The commissioner may require a reinsurance
21 intermediary-manager subject to subsection (b) to[-

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1 ~~(1) File a bond from an insurance company licensed to do~~
2 ~~business within the State or with an insurance company~~
3 ~~approved by the commissioner, in an amount equal to~~
4 ~~\$500,000 or ten per cent of the annual reinsurance~~
5 ~~premiums managed by the reinsurance~~
6 ~~intermediary manager, whichever is greater, except~~
7 ~~that the bond amount under this paragraph shall not~~
8 ~~exceed \$10,000,000, for the protection of the~~
9 ~~reinsurer;~~

10 ~~(2) Maintain an errors and omissions policy with an~~
11 ~~insurance company licensed to do business within the~~
12 ~~State or with an insurance company approved by the~~
13 ~~commissioner, in an amount equal to \$250,000 or~~
14 ~~twenty five per cent of the annual reinsurance~~
15 ~~premiums managed by the reinsurance~~
16 ~~intermediary manager, whichever is greater, except~~
17 ~~that the policy limits under this paragraph shall not~~
18 ~~exceed \$10,000,000; and~~

19 ~~(3) Provide] provide any [ether] report required by the~~
20 ~~commissioner.~~

21 ~~[At the commissioner's request, the reinsurance~~
22 ~~intermediary manager shall provide the commissioner with proof~~

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1 ~~of the bond and policy and appropriate documentation to show~~
2 ~~that the bond and policy continue to be in effect, or that a new~~
3 ~~bond and new policy have been secured.] "~~

4 SECTION 5. Section 431:9B-108, Hawaii Revised Statutes, is
5 amended to read as follows:

6 " [†] §431:9B-108 [‡] **Duties of reinsurers utilizing the**
7 **services of a reinsurance intermediary-manager.** (a) A
8 reinsurer shall not engage the services of any person, firm,
9 association, or corporation to act as a reinsurance
10 intermediary-manager on its behalf unless the person, firm,
11 association, or corporation is licensed as required by section
12 431:9B-102(b).

13 (b) The reinsurer shall annually obtain a copy of
14 statements of the financial condition of each reinsurance
15 intermediary-manager which the reinsurer has engaged prepared by
16 an independent certified accountant in a form acceptable to the
17 commissioner.

18 (c) If a reinsurance intermediary-manager establishes loss
19 reserves, the reinsurer shall annually obtain the opinion of an
20 actuary attesting to the adequacy of loss reserves established
21 for losses incurred and outstanding on business produced by the

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1 reinsurance intermediary-manager. This opinion shall be in
2 addition to any other required loss reserve certification.

3 (d) The reinsurer shall require the reinsurance
4 intermediary-manager to:

5 (1) File a bond for the protection of the reinsurer from
6 an insurance company licensed to do business within
7 the State or with an insurance company approved by the
8 commissioner, in an amount equal to \$500,000 or ten
9 per cent of the annual reinsurance premiums managed by
10 the reinsurance intermediary-manager, whichever is
11 greater, except that the bond amount under this
12 paragraph shall not exceed \$10,000,000; and

13 (2) Maintain an errors and omissions policy with an
14 insurance company licensed to do business within the
15 State or with an insurance company approved by the
16 commissioner, in an amount equal to \$250,000 or
17 twenty-five per cent of the annual reinsurance
18 premiums managed by the reinsurance
19 intermediary-manager, whichever is greater, except
20 that the policy limits under this paragraph shall not
21 exceed \$10,000,000.

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1 At the commissioner's request, the reinsurance
2 intermediary-manager shall provide the commissioner with proof
3 of the bond and policy required, and appropriate documentation
4 to show that the bond and policy continue to be in effect, or
5 that a new bond and new policy have been secured.

6 [~~d~~] (e) Binding authority for all retrocessional
7 contracts or participation in reinsurance syndicates shall rest
8 with an officer of the reinsurer who shall not be affiliated
9 with the reinsurance intermediary-manager.

10 [~~e~~] (f) Within thirty days of termination of a contract
11 with a reinsurance intermediary-manager, the reinsurer shall
12 provide written notification of the termination to the
13 commissioner.

14 [~~f~~] (g) A reinsurer shall not appoint to its board of
15 directors any officer, director, employee, controlling
16 shareholder, or subagent of its reinsurance intermediary-
17 manager; provided that this subsection shall not apply to
18 relationships governed by article 11."

19 SECTION 6. Section 431:9J-103, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§431:9J-103 **Surety bond required.** (a) Before the
22 issuance of the administrator license, the administrator shall

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1 file with the commissioner, and maintain in force while so
2 licensed, a surety bond of at least \$100,000[7] during the
3 administrator's first licensing biennial, and at least \$300,000
4 for every licensing renewal thereafter, in the form and penal
5 sum acceptable to the commissioner, and shall provide that the
6 bond may not be canceled or otherwise terminated until two years
7 have elapsed from the last day the applicant was an
8 administrator, unless the commissioner has given prior written
9 consent. The surety bond shall be undertaken and may be
10 enforced in the name of "Commissioner of Insurance, State of
11 Hawaii".

12 (b) [~~For~~] At the first licensing renewal, and each
13 subsequent [annual report filing,] year, the surety bond amount
14 shall be at least [~~\$100,000~~] \$300,000 and filed in accordance
15 with section 431:9J-112."

16 SECTION 7. SECTION 431:9J-112, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§431:9J-112 Annual report required. (a) An
19 administrator shall file an annual report for the preceding
20 calendar year with the commissioner on or before March 1 of each
21 year, in a form and manner prescribed by the commissioner.

22 (b) The annual report shall include:

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1 (1) The names and addresses of all insurers with which the
2 administrator had an agreement during the preceding
3 calendar year; and

4 (2) A renewal certificate for the surety bond required in
5 section 431:9J-103 and an updated surety bond form, if
6 needed[~~;~~ and

7 ~~(3) An audited financial statement prepared by an
8 independent certified public accountant].~~

9 (c) An administrator shall file with the commissioner an
10 audited financial statement for the preceding calendar year by
11 an independent certified public accountant on or before June 1
12 of each year.

13 (d) An audited financial statement and annual report
14 prepared on a consolidated basis shall include a columnar
15 consolidating or combining worksheet filed with the report and
16 shall include the following:

17 (1) Worksheet showing the amounts shown on the
18 consolidated audited financial report;

19 (2) Amounts for each entity that shall be stated
20 separately; and

21 (3) Explanations of consolidating and eliminating entries.

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1 (e) The annual report shall be in the form, and contain
2 such matters, as the commissioner prescribes and shall be
3 verified by at least two officers of the administrator."

4 SECTION 8. Section 431:19-101, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending the definition of "controlled unaffiliated
7 business" to read:

8 ""Controlled unaffiliated business" means, in the case of a
9 pure captive insurance company, any person[+], or in the case of
10 a sponsored captive insurance company, any participant:

11 (1) That is not in the corporate system of a parent or
12 sponsor and its affiliated entities;

13 (2) That has an existing contractual relationship with a
14 parent or sponsor or one of its affiliated entities;
15 and

16 (3) Whose risks are managed by the pure captive insurance
17 company[-] or the sponsored captive insurance
18 company."

19 2. By amending the definition of "participant" to read:

20 ""Participant" means an entity that meets the requirements
21 of section 431:19-305, and any affiliated or controlled
22 unaffiliated business entities thereof that are insured by a

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

5 SECTION 9. Section 431:19-116, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§431:19-116 Taxation.** (a) Each captive insurance
8 company licensed to do business in this State shall pay to the
9 director of finance through the commissioner a tax on gross
10 premiums on or before March 1 of each year, as follows:

11 (1) .25 per cent on \$0 to \$25,000,000 of gross premiums
12 for insurance written on all risks or property
13 resident, situated, or located within this State, and
14 on risks and property situated elsewhere upon which no
15 premium tax is otherwise paid during the year ending
16 on the preceding December 31, less return premiums and
17 less any reinsurance accepted;

18 (2) .15 per cent on more than \$25,000,000, to \$50,000,000
19 of gross premiums for insurance written on all risks
20 or property resident, situated, or located within this
21 State, and on risks and property situated elsewhere
22 upon which no premium tax is otherwise paid during the

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1 year ending on the preceding December 31, less return
2 premiums and less any reinsurance accepted;

3 (3) .05 per cent on more than \$50,000,000, to \$250,000,000
4 of gross premiums for insurance written on all risks
5 or property resident, situated, or located within this
6 State, and on risks and property situated elsewhere
7 upon which no premium tax is otherwise paid during the
8 year ending on the preceding December 31, less return
9 premiums and less any reinsurance accepted; and

10 (4) 0.00 per cent on more than \$250,000,000 of gross
11 premiums for insurance written on all risks or
12 property resident, situated, or located within this
13 State, and on risks and property situated elsewhere
14 upon which no premium tax is otherwise paid during the
15 year ending on the preceding December 31, less return
16 premiums and less any reinsurance accepted;

17 provided that the annual maximum aggregate tax on gross premiums
18 to be paid by a captive insurance company shall not exceed
19 \$200,000.

20 (b) The tax imposed by this section shall be in settlement
21 of and in lieu of all demands for taxes of every character
22 imposed by the laws of this State, the ordinances or other laws,

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1 or rules of any county of this State, except taxes on real
2 property and taxes on the purchase, use, or ownership of
3 tangible personal property.

4 (c) A captive insurance company is exempted from payment
5 of premium taxes for the first year after its formation."

6 SECTION 10. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 11. This Act shall take effect upon its approval;
9 provided that section 5 shall take effect on July 1, 2025.

10

11

INTRODUCED BY: 

12

BY REQUEST

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Report Title:

Insurance Code; Captive Insurers; Producers; Trade Name; Third Party Administrators; Surety Bond; Reinsurance Intermediary-Managers; Reinsurers

Description:

Amends various provisions of title 24, HRS, to update and improve existing provisions. Defines "dormant captive insurance company" and sets out a procedure to apply for the certificate of dormancy. Adds the term "doing business as" to "trade name" statutory references. Clarifies continuing education provider filing requirements. Clarifies reinsurance intermediary-manager filing requirements. Amends the surety bond threshold requirement for third party administrators and clarifies the audited financial statements requirements. Amends the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies. Provides for exemption from premium taxes for a captive insurer in its first year after formation.

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 amend various provisions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions, including:

- (1) Adding a new section to part I of article 19 of chapter 431 regarding dormant captive insurance companies (Section 1);
- (2) Amending section 431:2-217 to clarify that a "trade name" used by individuals and business entities is also the name used to conduct business for uniformity and to ensure an expedited and smooth transition to the new electronic licensing platform (Section 2);
- (3) Amending section 431:9A-154 to clarify that self-study exams are not required to be submitted for approval and review of contents to the insurance division (Section 3);
- (4) Deleting the surety bond and Errors and Omissions (E&O) policy filing requirements in section 431:9B-102(c)(1) and (2) and inserting the surety bond and E&O policy filing requirements in section 431:9B-108 (Sections 4 and 5);
- (5) Amending the surety bond threshold requirement for third party administrators in section 431:9J-103, HRS, to \$300,000 from the third year of licensure filing; and clarifying the audited financial statements requirements in section 431:9J-112 (Sections 6 and 7);

- (6) Amending the definitions of "controlled unaffiliated business" and "participant" in section 431:19-101 (Section 8);
- (7) Amending section 431:19-116 to provide a premium tax exemption for captive insurers during their first year after formation (Section 9).

MEANS:

Add a new section to part I of article 19 of chapter 431, HRS, and amend sections 431:2-217, 431:9A-154, 431:9B-102(c), 431:9B-108, 431:9J-103, 431:9J-112, 431:19-101, and 431:19-116, HRS.

JUSTIFICATION:

- (1) There is no standardized process for a captive insurance company to transition to a dormant status. A dormant captive insurance company maintains a certificate of authority and is not intending to dissolve, but does not transact any business of insurance. Under current practices, a dormant captive insurance company must obtain approval from the Insurance Division to be dormant and if approved, must comply with modified filing requirements. A clear standardized process codified in statute will increase efficiency, promote uniformity, reduce confusion, and provide clarity for both the captive insurance company and the Insurance Division (section 1).
- (2) Uniformity in terminology is essential to allow for electronic applications and renewals via the National Association of Insurance Commissioners (NAIC) State Based Systems and National Insurance Producer Registry (NIPR). The NIPR Uniform Online application does not use the term "trade name", therefore clarifying that "trade name" also means the name individuals and business entities are doing business as

will allow for applicants and licensees to add or maintain trade names on licenses (section 2).

- (3) Continuing Education (CE) providers are required to only submit the licensing self-study course to the Insurance Division. However, CE providers are also submitting exam questions. By accepting and filing the exam courses, providers may have a false impression that the division is also approving exam content/questions. The statutory amendment will make clear that exam content and questions are not required to be approved or filed with the division and are to be made available upon request of the commissioner (section 3).
- (4) Surety bond requirements and E&O policy filing requirements for Reinsurance Intermediary-Managers (RIM) are better placed in section 431:9B-108 than in section 431:9B-102, as RIMs have the authority to bind or manage all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and act as an agent for the reinsurer. Similar requirements for reinsurers and Managing General Agents are codified in section 431:9C-103(7) and (8) (sections 4 and 5).
- (5) Amending sections 431:9J-103 and 431:9J-112 to increase the surety bond amount at the third year of licensure, and requiring proof of requisite surety bond amount filed with the annual report, as well as clarification regarding annual report filings starting March 1, 2024, will ensure adequate consumer protection and promote transparency of Third Party

Administrators operating in the State of Hawaii (sections 6 and 7).

- (6) Clarification is necessary to the definition of a "controlled unaffiliated business" in section 431:19-101 to make clear that this term applies to sponsored captive insurance companies that are subject to part III of article 19 of chapter 431 (section 8).
- (7) Amending section 431:19-116 to provide a premium tax exemption for captive insurers during their first year after formation will provide relief from premium taxes to newly formed captive insurers (Section 9).

Impact on the public: This bill will enhance consumer protection by making necessary updates and improvements to title 24, HRS.

Impact on the department and other agencies: This bill will streamline division processing of licenses and certificates of authority, promote efficiency, decrease costs, and reduce resource waste.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.