

JAN 20 2023

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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

3 1. By amending the definitions of "participant contract"
4 and "protected cell" to read:

5 "Participant contract" means a contract by which a
6 sponsored captive insurance company, on behalf of a participant,
7 insures the risks of a participant and may also limit the losses
8 of each participant to its pro rata share of the assets of one
9 or more protected cells identified in ~~[such]~~ the participant
10 contract.

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



1 ~~[assumed on behalf of the participants]~~ as set forth in the
2 participant contracts."

3 2. By amending the definition of "sponsored captive
4 insurance company" to read:

5 "Sponsored captive insurance company" means a captive
6 insurance company:

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

9 (2) That is formed or licensed under this article;

10 (3) ~~[That insures the risks only of its participants~~
11 ~~through separate participant contracts;]~~ In which
12 risks assumed on behalf of the participant pursuant to
13 separate participant contracts are maintained in
14 separate protected cells for each participant; and

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



1 SECTION 2. Section 431:19-108, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:19-108 Examinations, investigations, and financial
4 surveillance~~[-]~~; certificate of exemption. (a) The
5 commissioner or any authorized examiner may conduct an
6 examination, investigation, or financial surveillance of any
7 captive insurance company as often as the commissioner deems
8 appropriate; provided that, unless exempt or the commissioner
9 requires otherwise:

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

13 (2) An examination of a risk retention captive insurance
14 company shall be conducted no later than three years
15 after its formation and at least once every five years
16 thereafter.

17 The commissioner or any authorized examiner shall
18 thoroughly inspect and examine the captive insurance company's
19 affairs to ascertain its financial condition, its ability to
20 fulfill its obligations, and whether it has complied with this
21 article.



1 (b) The powers, authorities, and duties relating to
2 examinations vested in and imposed upon the commissioner under
3 section 431:2-301 through section 431:2-307.5 of the code are
4 extended to and imposed upon the commissioner in respect to
5 examinations of captive insurance companies.

6 (c) All examination reports, preliminary examination
7 reports or results, working papers, recorded information,
8 documents, and copies thereof produced by, obtained by, or
9 disclosed to the commissioner or any person in the course of an
10 examination made under this section are confidential and are not
11 subject to subpoena and may not be made public by the
12 commissioner or an employee or agent of the commissioner without
13 the written consent of the company, except to the extent
14 provided in this subsection. Nothing in this subsection shall
15 prevent the commissioner from using information in furtherance
16 of the commissioner's regulatory authority under this title.
17 The commissioner may grant access to the information to public
18 officers having jurisdiction over the regulation of insurance in
19 any other state or country, or to law enforcement officers of
20 this State or any other state or agency of the federal
21 government at any time, so long as the officers receiving the



1 information agree in writing to hold it in a manner consistent
2 with this section.

3 (d) Each branch captive insurance company shall file
4 annually with the commissioner a certificate of compliance
5 issued by the insurance regulatory authority of the jurisdiction
6 in which the outside captive insurance company of the branch
7 captive insurance company is domiciled along with certified
8 copies of any examination reports conducted of the outside
9 captive insurance company by its domiciliary insurance regulator
10 during the preceding calendar year. These filings shall be made
11 with the commissioner by March 1 of each year. So long as the
12 branch captive insurance company complies with the requirements
13 of this subsection, and unless otherwise deemed necessary by the
14 commissioner, any examination of the branch captive insurance
15 company under this subsection shall be only with respect to the
16 business underwritten by the branch captive insurance company in
17 this State. If necessary, however, the commissioner may examine
18 the outside captive insurance company of any branch captive
19 insurance company licensed under this article.

20 (e) Except for risk retention captive insurance companies,
21 captive insurance companies may apply to the commissioner for a



1 certificate of exemption from examination, provided the captive
2 insurance company applicant has:

3 (1) Satisfactorily completed at least one examination
4 under this section;

5 (2) Continuously filed and continues to file all financial
6 statements and other reports and otherwise complies
7 with all other required provisions of this article;
8 and

9 (3) Demonstrated other good cause supporting its
10 application for exemption from further examination.

11 (f) If the commissioner is satisfied with the captive
12 insurance company's application, the commissioner may issue a
13 certificate of exemption from examination along with renewals
14 thereof.

15 (g) Unless earlier revoked by the commissioner for good
16 cause, a certificate of exemption from examination shall be
17 valid for a period not to exceed five years from its effective
18 date, and a captive insurance company may apply to the
19 commissioner for renewal of its certificate of exemption from
20 examination no earlier than six months prior to its expiration
21 date."



1 SECTION 3. Section 431:19-303, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:19-303 Protected cells. A sponsored captive
4 insurance company formed and licensed under this article may,
5 subject to the commissioner's approval, establish and maintain
6 one or more protected cells to insure risks of one or more
7 participants, or other parties unaffiliated with a participant,
8 or both, subject to the following:

- 9 (1) The shareholders or members of a sponsored captive
10 insurance company shall be limited to its participants
11 and sponsors; provided that a sponsored captive
12 insurance company may issue nonvoting securities to
13 other persons on terms approved by the commissioner;
- 14 (2) A protected cell shall be organized and operated in
15 only those forms of business organization authorized
16 by the commissioner, including an association,
17 corporation, limited liability company, partnership,
18 or trust;
- 19 (3) Each protected cell shall be accounted for separately
20 on the books and records of the sponsored captive
21 insurance company to reflect the financial condition



1 and results of operations of the protected cell, net
2 income or loss, dividends or other distributions to
3 participants, and other factors as may be provided in
4 the participant contract or required by the
5 commissioner;

6 (4) The assets of a protected cell shall not be chargeable
7 with liabilities arising out of any other insurance
8 business the sponsored captive insurance company may
9 conduct;

10 (5) No sale, exchange, or other transfer of assets may be
11 made by a sponsored captive insurance company between
12 or among any of its protected cells without the
13 consent of the protected cells;

14 (6) No sale, exchange, transfer of assets, dividend, or
15 distribution may be made from a protected cell to a
16 sponsor or participant without the commissioner's
17 approval, and in no event shall the approval be given
18 if the sale, exchange, transfer, dividend, or
19 distribution would result in insolvency or impairment
20 with respect to a protected cell;



- 1 (7) Each sponsored captive insurance company shall
2 annually file with the commissioner, financial reports
3 as the commissioner shall require, that shall include,
4 without limitation, accounting statements detailing
5 the financial experience of each protected cell;
- 6 (8) Each sponsored captive insurance company shall notify
7 the commissioner in writing within ten business days
8 of any protected cell that is insolvent or otherwise
9 unable to meet its claim or expense obligations; and
- 10 (9) No participant contract shall take effect without the
11 commissioner's prior written approval, and the
12 addition of each new protected cell and withdrawal of
13 any participant or termination of any existing
14 protected cell shall constitute a change in business
15 plan requiring the commissioner's prior written
16 approval."

17 SECTION 4. Section 431:19-305, Hawaii Revised Statutes, is
18 amended by amending subsection (d) to read as follows:

19 "(d) A participant shall insure only [~~its own~~] risks
20 approved by the commissioner through a sponsored captive
21 insurance company."



S.B. NO. 434

1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect upon its approval.

4

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'JBL', is written over a horizontal line.

S.B. NO. 434

Report Title:

Insurance; Captive Insurance; Examination Exemption; Insurance Commissioner; Participants; Protected Cells

Description:

Requires sponsored captive insurance companies to maintain separate protected cells for separate participant contracts. Except for risk retention captive insurance companies, authorizes captive insurance companies to apply for an exemption from examination from the insurance commissioner, provided certain conditions are met. Requires protected cells established by sponsored captive insurance companies to be approved by the Insurance Commissioner. Authorizes sponsored captive insurance companies to establish and maintain protected cells to insure risks of parties unaffiliated with a participant under certain circumstances. Requires a participant, through a sponsored captive insurance company, to insure only risks approved by the Insurance Commissioner.

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