

ACT 150

H.B. NO. 2672

A Bill for an Act Relating to Captive Insurance Companies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Article 19, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§431:19- Service providers.** The commissioner shall have the authority to approve service providers to captive insurance companies licensed under this article, including but not limited to captive insurance managers, independent certified public accountants, actuaries, and loss reserve specialists.”

SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of “captive insurance company” to read as follows:

““Captive insurance company” means any pure captive insurance company, risk retention captive insurance company, or association captive insurance company formed or licensed under this article.”

SECTION 3. Section 431:19-102, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-102 Licensing; authority.** (a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commissioner for a license to do any and all insurance set forth in subsection (h); provided that:

- (1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies;
- (2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;
- [(3) No risk retention captive insurance company may insure any risks other than those of the insureds that comprise the risk retention group;
- (4)] (3) No captive insurance company may provide personal motor vehicle or homeowner’s insurance coverage or any component thereof[;], other than as employee benefits for the employees of a parent, association, or its members, and their respective affiliated companies; and
- [(5)] (4) No captive insurance company may accept or cede reinsurance except as provided in section 431:19-111.

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

- (1) It first obtains from the commissioner a license authorizing it to do insurance business in this State;
- (2) Its board of directors holds at least one meeting each year in this State;
- (3) It maintains its principal place of business in this State; and
- (4) It appoints a resident agent to accept service of process and to otherwise act on its behalf in this State. Whenever the agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the commissioner shall be an agent of [such] the captive insurance company upon whom any process, notice, or demand may be served.

(c) Before receiving a license, a captive insurance company shall file with the commissioner a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner.

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

- (1) The amount and liquidity of its assets relative to the risks to be assumed;
- (2) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
- (3) The overall soundness of its plan of operation;
- (4) The adequacy of the loss prevention programs of its parent or member organizations as applicable; and

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

(e) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$1,000 for examining, investigating, and processing its application for license. In addition, it shall pay a license fee for the year of registration and a renewal fee for each year thereafter of \$300.

(f) The commissioner shall establish a list of advisors to assist with the review of captive applications. The commissioner shall appoint one advisor from the list to review a specific application. The advisor's fee, to be paid by the captive applicant, shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.

(g) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this article, the commissioner may grant a license authorizing it to do insurance business in this State until April 1 thereafter, which license may be renewed.

(h) A captive insurance company may engage in the business of any of the following types of insurance:

- (1) All casualty insurance;
- (2) Marine and transportation insurance;
- (3) Marine protection and indemnity insurance, which includes insurance against, or against legal liability of the insured for loss, damage, or expense arising out of or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of a vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, death, or for loss of or damage to the property of another person;
- (4) Wet marine and transportation insurance, which is that part of marine and transportation insurance that includes only:
 - (A) Insurance upon vessels, crafts, hulls, and of interests therein or with relation thereto;
 - (B) Insurance of marine builder's risks, marine war risks and contracts, or marine protection and indemnity insurance;
 - (C) Insurance of freights and disbursements pertaining to a subject of insurance; and
 - (D) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, with respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment, or reshipment incident thereto;
- (5) Property insurance;
- (6) Surety insurance;
- (7) Title insurance;[and]
- (8) Credit life insurance and credit disability insurance offered as part of, or relating directly to the business or operations of its parent or affiliated companies[.]; and
- (9) Other lines of insurance that the commissioner may allow.

(i) No risk retention captive insurance company may insure any risks other than those allowed under chapter 431K.”

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

“(a) No pure captive insurance company [or], association captive insurance company, or risk retention captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner. The amount for pure captive insurance companies may differ from the amount for association captive insurance companies[.] and risk retention captive insurance companies.”

SECTION 5. Section 431:19-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No captive insurance company shall be issued a license unless it shall possess and thereafter maintain a free surplus of an amount established and deemed appropriate by the commissioner. The amount for pure captive insurance companies may differ from the amount for association captive insurance companies[.] and risk retention captive insurance companies. The amount for association captive insurance companies and risk retention captive insurance companies incorporated as stock insurers may differ from the amount for association captive [insurers incorporated] insurance companies or risk retention captive insurance companies formed as mutual or reciprocal insurers.”

SECTION 6. Section 431:19-115, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-115 Laws applicable.** (a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to pure captive insurance companies[.], association captive insurance companies, and risk retention captive insurance companies.

In addition to this article, article 1, article 2, part III of article 3, article 4A, parts I and II of article 5, article 6, article 11, and article 15 of this chapter[, and chapter 431K] shall apply to association captive insurance companies[, including] and risk retention captive insurance companies, unless these other laws are inconsistent with this article[.] or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies licensed under this article.

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

[(b)] In addition, the commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary in connection with the financial oversight and regulation of association captive insurance companies, including risk retention captive insurance companies.”

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

SECTION 8. This Act shall take effect upon its approval.

(Approved July 7, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.