

ACT 133

S.B NO. 3190

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Branch captive insurance company” means an outside captive insurance company licensed under this article by the commissioner to transact the business of insurance in this State through a business unit that has its principal place of business in this State.

“Outside captive insurance company” means an insurance company licensed under the laws of a jurisdiction other than this State and not otherwise admitted to do business as an insurance company in this State, that insures the risks of its parent or any affiliated companies.”

SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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 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; or as reinsurance as may be allowed under this article;¹ and
- (4) No captive insurance company may accept or cede insurance 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[;], except that a branch captive insurance company need only maintain the principal place of a business unit 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 the captive insurance company upon whom any process, notice, or demand may be served.”

SECTION 3. Section 431:19-103, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-103 Names of companies. No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State[.], except that the commissioner may allow a branch captive insurance company to be licensed in this State under a different trade name if the normal name of the branch captive insurance company is not available for use in this State.”

SECTION 4. Section 431:19-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-104 Minimum capital; letter of credit, security. (a) Subject to subsection (c), no 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.

(b) The capital may be in the form of cash, in the form of an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other security approved by the commissioner.

(c) Minimum capital or surplus requirements for captive insurance companies shall be as follows:

- (1) Class 1: \$100,000;
- (2) Class 2: \$250,000;
- (3) Class 3: \$500,000 for risk retention captive insurance companies, and \$750,000 for association captive insurance companies; and
- (4) Class 4: \$1,000,000.

The foregoing requirements do not limit the commissioner’s discretionary authority to require a captive insurance company to possess and maintain a greater amount of capital or surplus in order to preserve the solvency of the company, nor do such requirements limit or diminish any other applicable provision of law that may require a captive insurance company to maintain a particular level of capital, surplus, assets, or investments.

(d) In the case of a branch captive insurance company, and in lieu of minimum capital or surplus under this section or section 431:19-105, the commissioner shall determine the amount and form of security to be maintained by the branch captive insurance company in this State after taking into consideration:

- (1) The amount of risk written through and retained by the branch captive insurance company in this State;
- (2) The financial condition of the outside captive insurance company whose branch office is located in this State;
- (3) Trusts or other security posted for ceding insurers; and
- (4) Any other factors the commissioner deems appropriate.

The security required by the commissioner may be in the form of cash or investments, an irrevocable letter of credit issued by a bank chartered in this State or a member bank of the Federal Reserve System, a trust, or any other forms of security deemed appropriate by the commissioner.”

SECTION 5. Section 431:19-107, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-107 Financial statements and other reports. (a) Each pure captive insurance company shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles and audited

by an independent certified public accountant on or before the last day of the sixth month following the end of the company's fiscal year.

(b) Each captive insurance company that is not a pure captive insurance company shall annually file with the commissioner the following:

(1) Annual statement and audit:

- (A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive's principal officers;
- (B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive;
- (C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. Each risk retention group shall also comply with section 431:3-302; and

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

(c) The statements required to be filed in subsections (a) and (b) shall include but not be limited to actuarially appropriate reserves for:

- (1) Known claims and expenses associated therewith;
- (2) Claims incurred but not reported and expenses associated therewith;
- (3) Unearned premiums; and
- (4) Bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited statements, except that the actuarial opinion for captive insurance companies other than pure captive insurance companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(d) The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, summary loss reports and quarterly financial statements.

(e) The commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents required by subsections (a) and (b). The fine shall be not more than \$500 per day past the due date.

(f) Each branch captive insurance company shall file with the commissioner copies of all reports and financial statements required to be filed by the outside captive insurance company of the branch captive insurance company under the laws of the jurisdiction in which the outside captive insurance company is domiciled. The

copies of the reports and financial statements shall be certified under oath by two officers of the outside captive insurance company and shall be filed with the commissioner no later than thirty days after the reports and financial statements are filed with the insurance regulator of the domicile of the outside captive insurance company. In addition to, and at the same time as the foregoing filings with the commissioner, the outside captive insurance company shall file a statement signed by two of its executive officers, one of which must be the president or chief financial officer, setting forth the gross premiums written, reinsurance ceded and accepted, and reserves and other liabilities associated with the insurance business written through the branch captive insurance company in this State.

If the commissioner is not satisfied that the reports, financial statements, and statement required to be filed under this subsection fairly and adequately describe the financial condition of the outside captive insurance company and the business underwritten through the branch captive insurance company in this State, the commissioner may require the branch captive insurance company to file an annual statement pursuant to subsection (a) within a reasonable time after notification of such requirement.”

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-108 Examinations and investigations. (a) The commissioner or any examiner authorized by the commissioner may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company’s affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article.

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

(c) All examination reports conducted by the commissioner, or a designated agent of the commissioner, of any pure captive insurance company shall remain confidential unless the commissioner determines that the pure captive insurance company is in an adverse financial condition and the commissioner reasonably believes that the interest of the public necessitates the opening of the information contained in the examination report for public inspection.

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

SECTION 7. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(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 captive insurance companies formed under this article.

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 shall apply to captive insurance companies other than pure captive insurance companies[,] and branch 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.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 30, 2000.)

Note

1. Semicolon should be underscored.