

**ACT 68**

H.B. NO. 2220

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. The purpose of this Act is to create a mechanism by which captive insurance companies formed as stock, mutual corporations or captive reciprocal insurers and domiciled in the State under article 19 of the insurance code may be converted to or merged with or into another form of captive insurer.

SECTION 2. 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- Conversion or merger of captive insurers.** (a) Subject to this section, a captive insurance company domiciled in the State may be converted into, or merged with, a different form of captive insurer under this article.

(b) A plan of conversion or merger shall be submitted to and be approved by the commissioner in advance of the proposed conversion or merger. The commissioner shall not approve the plan unless:

- (1) The commissioner finds that it is fair, equitable, and consistent with law;
  - (2) The plan has been approved:
    - (A) In the case of a stock corporation, by at least two-thirds of the shares entitled to vote at a duly called regular or special meeting of the shareholders at which a quorum is present, or by unanimous written consent of the shareholders; or
    - (B) In the case of a mutual insurer, by at least two-thirds of the voting interest of the members of the mutual insurer at a duly called regular or special meeting of the membership at which a quorum is present, or by unanimous written consent of the members of the mutual insurer; or
    - (C) In the case of a reciprocal insurer, by at least two-thirds of the voting interest of the subscribers of the reciprocal insurer at a duly called meeting of the subscribers of the reciprocal insurer, or by unanimous written consent of the subscribers;
  - (3) The plan provides for:
    - (A) The conversion of existing stockholder, member, or subscriber interests into equal or proportionate interests in the new converted or merged insurer, or such other method and basis for the conversion of the stockholder, member, or subscriber interests that is fair and equitable;
    - (B) The purchase or other disposition of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting member of a mutual insurer or the subscriber surplus account interest, if any, of a subscriber of a reciprocal insurer, in accordance with either an agreement with any nonconsenting stockholder, member, or subscriber or with the existing articles or bylaws of the insurer relating to the buyback buyout, or the termination of the stockholder, member, or subscriber interests, if any, or if no such provisions exist, then in accordance with the laws of this State relating to the rights of dissenting shareholders; and
    - (C) The novation, assignment, transfer, run-off, or other disposition of in force policies insuring any nonconsenting shareholder, member, or subscriber;
  - (4) The conversion or merger will leave the resulting converted insurer or surviving insurer of the merger with capital or surplus funds reasonably adequate to preserve the security of its policyholders and an ability to continue to transact business in the classes of insurance in which it is then authorized to transact; and
  - (5) The commissioner finds that the conversion or merger will promote the general good of the State.
- (c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and

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consumer affairs, appropriate articles of amendment or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer to a stock or mutual insurer, the existing reciprocal insurer shall file articles of incorporation in order to commence the corporate existence of the company in the form of a stock or mutual insurer. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter 415 or 415B.

(d) Where a stock or mutual insurer converts to a reciprocal insurer or merges with a reciprocal insurer in which the reciprocal insurer will be the surviving company, the stock or mutual insurer shall include in its articles of amendment the fact of the conversion to, or merger with, a reciprocal and that the resulting or surviving entity shall be a reciprocal insurer under the continued jurisdiction of the commissioner, the effective date of the conversion of merger, and the name of the agent for service of process of the converted or surviving reciprocal insurer.

(e) In the case of the merger of two reciprocal insurers, no articles of amendment, merger, or incorporation shall be required to be filed with the director of commerce and consumer affairs, and the merger shall be effective upon the effective date approved by the commissioner pursuant to the plan of merger filed with and approved by the commissioner.

(f) Notwithstanding that the corporate existence of a stock or mutual insurer which converts to, or merges with, a reciprocal insurer may cease, in all cases of a conversion or merger pursuant to this section, and unless otherwise provided in the approved plan of conversion or merger, the converted insurer or the surviving company of the merger shall assume and succeed to all of the obligations and liabilities of the pre-conversion insurer or the respective merging insurers and shall be held liable to pay and discharge all such debts and liabilities and perform such obligations in the same manner as if they had been incurred or contracted by the converted or surviving merged insurer.

(g) An alien or foreign insurer may be a party to a merger under this section provided that the surviving company shall otherwise qualify and be approved by the commissioner as a captive insurance company under this article. For purposes of chapters 415 and 415B, an alien stock or mutual insurer subject to this section shall be considered a foreign corporation.

(h) This section shall not supersede section 431:19-102, and shall not apply to redemptions or conversions of captive insurers under section 431:19-102.4.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This act shall take effect upon its approval.

(Approved April 27, 2000.)

### Note

1. Edited pursuant to HRS §23G-16.5.