

ACT 194

H.B. NO. 1243

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Counties authorized to form captives. Any county may establish a captive insurance company pursuant to article 19, chapter 431.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

“§431:19- Leased capital facilities. (a) One or more sponsors may form a leased capital facility under this article. A leased capital facility shall only insure the risks of its participants. The risks of the participants may be insured through participant contracts that segregate each participant’s or related participants’ liabilities through one or more protected cells.

(b) In addition to the information required by section 431:19-102, each application for a leased capital facility filed with the commissioner shall provide the following:

- (1) A business plan that sets forth in sufficient detail:
 - (A) The proposed organizational and operational structure of the leased capital facility;
 - (B) If the risks of the participants are segregated through one or more protected cells, the mechanisms by which the assets and liabilities of each protected cell will be segregated from those of other protected cells in the leased capital facility; and
 - (C) A fair and equitable plan for allocating direct and indirect expenses to each participant;

and

- (2) All contracts or sample contracts between the leased capital facility and its participants.

(c) The owners or shareholders of a leased capital facility shall be limited to its sponsors and participants. However, the participants need not be owners or shareholders of a leased capital facility.

(d) No leased capital facility may insure any risks other than those of its participants.

(e) Within each protected cell, the leased capital facility shall only insure the risks of the participant or participants within the protected cell. If more than one participant is insured within a protected cell, all participants insured within that protected cell shall be related by being either partners, joint venturers, or within the same corporate family.

(f) No participant contract shall take effect without the commissioner’s prior written approval. The following shall constitute a change in the leased capital facility’s business plan and shall require the commissioner’s prior written approval:

- (1) The addition of each new protected cell;
- (2) The addition of a new participant;
- (3) The withdrawal of any protected cell; or
- (4) The withdrawal of a participant from a protected cell.

(g) Unless otherwise approved in writing by the commissioner and all of the participants within the protected cell, the assets of a protected cell, including any

collateral or other security with respect to the risks insured in that cell, shall only be used for the payment of expenses, claims, and liabilities attributable to the risks insured within that protected cell and not for any expenses, claims, or liabilities attributable to any other protected cell. The participants within the protected cell shall not be liable for any expenses or claims attributable to any other protected cell.

(h) Unless otherwise deemed necessary by the commissioner, the general assets of the leased capital facility may not be used to pay the insurance claims or insurance liabilities of a protected cell. General assets of the leased capital facility for purposes of this section shall include the capital and surplus contributed by the sponsors to the leased capital facility, but not any capital, surplus, or other assets contributed by such sponsors as a participant in a protected cell of the company.

(i) In addition to consolidated financial statements for the leased capital facility, each protected cell shall be accounted for separately on the books and records of the leased capital facility so as to reflect the financial condition and results of operations of the protected cell, including net income or loss, dividends, or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner.

(j) Each protected cell within a leased capital facility shall be established and maintained with sufficient assets, collateral, reinsurance, or other security, that in total, at least equal the reserves and other insurance liabilities attributed to that protected cell.

(k) No sale, exchange, assignment, or other transfer of assets or liabilities may be made by a leased capital facility between or among any of its protected cells without the consent of the affected protected cells.

(l) No sale, exchange, assignment, or other transfer of assets, liabilities, dividends, or distributions may be made from a protected cell to a sponsor or participant without the commissioner's approval, and in no event shall the approval be given if the transaction would result in the insolvency or financial impairment with respect to a protected cell.

(m) Each sponsored captive insurance company shall annually file with the commissioner financial reports as required by this article and as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell.

(n) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell becoming insolvent, financially impaired, or otherwise unable to meet its claims or expense obligations.

(o) All contracts or other documentation of insurance or reinsurance issued by the leased capital facility with respect to a protected cell, shall clearly disclose that the assets, collateral, reinsurance, or other security, as the case may be, of that protected cell, and only the assets, collateral, reinsurance or other security, are available to pay the insurance obligations of that protected cell. Notwithstanding the foregoing, and subject to article 19 and any other applicable law or regulation, the failure to include such language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent this section.

(p) All financial records of the leased capital facility, including records pertaining to any protected cells, shall be made available to the commissioner or the commissioner's designated agent."

SECTION 3. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:
"'Participant' means any entity, partners, or joint venture partners, or members within the same corporate family of the entity that are insured by a leased

capital facility, where the losses of the participant may be limited through a participant contract to the assets of a protected cell. A sponsor may be a participant.

“Participant contract” means a contract by which a leased capital facility insures the risks of a participant and, if the risks are segregated through one or more protected cells, limits the losses of the participant to the assets of a protected cell.

“Protected cell” means a separate account established and maintained by a leased capital facility for one participant.

“Sponsor” means any entity that is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a leased capital facility.”

2. By amending the definition of “leased capital facility” to read:

~~““Leased capital facility” means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its [members, but whose owner or owners may, subject to approval of the commissioner, be persons or entities other than the members.] participants.”~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.