

ACT 69

H.B. NO. 2394

A Bill for an Act Relating to Insurance.

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

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

“§431:19- Dormant captive insurance companies. (a) A captive insurance company may apply to the commissioner for a certificate of dormancy and the commissioner may grant a certificate of dormancy. The certificate of dormancy shall be subject to renewal every five years and shall expire if not renewed. The application for renewal shall be submitted not less than ninety days before the certificate expiration date. The issuance of a certificate of dormancy shall automatically cause the certificate of authority of the captive insurance company to be placed in inactive status.

(b) A dormant captive insurance company that has been issued a certificate of dormancy shall:

- (1) Possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000;
- (2) Before March 1 of each year, submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the commissioner; and
- (3) Pay a certificate of dormancy renewal fee of \$300.

(c) A dormant captive insurance company that has been issued a certificate of dormancy shall not:

- (1) Conduct the business of insurance;
- (2) Be subject to or liable for the payment of any tax under section 431:19-116;
- (3) Be required to file audited annual financial statements and other reports required under section 431:19-107; and
- (4) Be subject to examination under section 431:19-108, except for non-compliance with this section.

(d) Before conducting any insurance business, a dormant captive insurance company shall apply for approval from the commissioner to surrender its certificate of dormancy and to reactivate its certificate of authority.

(e) A certificate of dormancy shall be revoked if a dormant captive insurance company violates any provisions of subsections (a) through (c).

(f) The commissioner may adopt rules as necessary to carry out this section.

(g) As used in this section, unless the context requires otherwise, “dormant captive insurance company” means a captive insurance company that as of the filing of its application for a certificate of dormancy under this section:

- (1) Has never transacted the business of insurance; or
- (2) Has ceased transacting the business of insurance and has no remaining insurance liabilities associated with any business of insurance transacted by it.”

SECTION 2. Section 431:2-217, Hawaii Revised Statutes, is amended to read as follows:

“~~§431:2-217~~ **Trade name.** (a) ~~[Prior to]~~ Before the use or change of a trade name to sell, solicit, or negotiate insurance in this State, the licensee shall register the trade name with the department of commerce and consumer affairs pursuant to part II of chapter 482.

(b) Upon registration of the trade name with the department of commerce and consumer affairs, the licensee may apply, on a form approved by the commissioner, to add or remove a trade name on a license. The applicant shall provide proof of registration of a trade name to the commissioner.

(c) If the commissioner finds the application for use or change of a trade name is substantially identical to another trade name registered with the department of commerce and consumer affairs, or substantially identical to a legal name or trade name of a revoked license, the commissioner shall deny use of the trade name on a license issued pursuant to this chapter.

(d) A licensee shall inform the commissioner, by any means acceptable to the commissioner, of any change of status of a trade name registered with the department of commerce and consumer affairs within thirty days of the change.

(e) For purposes of this article, “trade name” shall include the name under which an individual or business entity is conducting business or doing business as.”

SECTION 3. Section 431:9A-154, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9A-154 Self-study courses.** (a) In addition to the requirements of courses generally, an approved continuing education course provider shall also require for self-study courses, including computer-based courses, a written or computer-based examination at the conclusion of the self-study course. The examination shall:

- (1) Be composed of multiple choice questions, essay questions, or both;
- (2) Have at least three different versions of itself, used on a random or rotating basis;
- (3) If composed of multiple choice questions for a course approved for up to four credit hours, include at least twenty-five multiple choice questions;
- (4) If composed of multiple choice questions for a course approved for more than four credit hours, include at least fifty multiple choice questions;

- (5) Be graded by the continuing education course provider or the continuing education course provider's agent;
 - (6) If the examination is computer-based, not include prompts designed to aid the person taking the examination; and
 - (7) If the course is a computer-based course with a computer-based examination, be designed to prevent the licensee from taking the examination without reviewing the course materials.
- (b) To pass a multiple-choice self-study course, the licensee shall answer at least seventy per cent of the examination questions correctly.
- (c) A self-study course examination shall not be administered by a person who:
- (1) Is related to, or is a business associate of, the licensee taking the examination; or
 - (2) Has a financial interest in the success or failure of a licensee taking the examination.
- (d) The effective date of a completed examination pursuant to this section shall be the date the continuing education course provider receives the completed examination. Upon receipt of the completed examination, the continuing education course provider or the continuing education course provider's agent shall grade the examination and mail the results to the licensee within fifteen days.
- (e) The written or computer-based examination and contents shall be made available by the continuing education course provider, upon request, to the commissioner, and shall not be required to be submitted for filing."

SECTION 4. Section 431:9B-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The commissioner may require a reinsurance intermediary-manager subject to subsection (b) to[:

- (1) ~~File a bond from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$500,000 or ten per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed \$10,000,000, for the protection of the reinsurer;~~
- (2) ~~Maintain an errors and omissions policy with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed \$10,000,000; and~~
- (3) ~~Provide] provide any [other] report required by the commissioner.~~

~~[At the commissioner's request, the reinsurance intermediary-manager shall provide the commissioner with proof of the bond and policy and appropriate documentation to show that the bond and policy continue to be in effect, or that a new bond and new policy have been secured.]"~~

SECTION 5. Section 431:9B-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:9B-106 Required contract provisions; reinsurance intermediary-managers. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity shall only be entered into pursuant to a

written contract, specifying the responsibilities of each party that shall be approved by the reinsurer's board of directors. The contract, at a minimum, shall provide that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
- (3) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity and deposited in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:
 - (A) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and disposition of outstanding reserves on covered risks;
 - (C) Reporting and settlement requirements of balances;
 - (D) Rate used to compute the reinsurance premium;
 - (E) Names and addresses of reinsurers;
 - (F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;
 - (G) Related correspondence and memoranda;
 - (H) Proof of placement;
 - (I) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section [431:9B-108(d),] 431:9B-108(e), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (J) Financial records, including but not limited to, premium and loss accounts; and
 - (K) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:
 - (i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;

- (5) The reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer;
- (6) The contract shall not be assigned in whole or in part by the reinsurance intermediary-manager;
- (7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
- (8) The contract sets forth the rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer;
- (9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:
 - (A) All claims shall be reported to the reinsurer in a timely manner;
 - (B) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the reinsurance intermediary-manager's claims settlement authority;
 - (iv) Is open for more than six months; or
 - (v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
 - (C) All claim files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis; and
 - (D) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;
- (10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to section 431:9B-108(c);
- (11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall, at a minimum, semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager;
- (13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract; and

- (14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.”

SECTION 6. Section 431:9B-108, Hawaii Revised Statutes, is amended to read as follows:

“~~§431:9B-108~~ **Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.** (a) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person, firm, association, or corporation is licensed as required by section 431:9B-102(b).

(b) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(c) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion shall be in addition to any other required loss reserve certification.

(d) The reinsurer shall require the reinsurance intermediary-manager to:

- (1) File a bond for the protection of the reinsurer from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$500,000 or ten per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed \$10,000,000; and
- (2) Maintain an errors and omissions policy with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed \$10,000,000.

At the commissioner’s request, the reinsurance intermediary-manager shall provide the commissioner with proof of the bond and policy required, and appropriate documentation to show that the bond and policy continue to be in effect, or that a new bond and new policy have been secured.

~~(d)~~ (e) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

~~(e)~~ (f) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

~~(f)~~ (g) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subagent of its reinsurance intermediary-manager; provided that this subsection shall not apply to relationships governed by article 11.”

SECTION 7. Section 431:9J-103, Hawaii Revised Statutes, is amended to read as follows:

“§431:9J-103 Surety bond required. (a) Before the issuance of the administrator license, the administrator shall file with the commissioner, and maintain in force while so licensed, a surety bond of at least \$100,000~~[;]~~ during the administrator’s first licensing biennial, and at least \$300,000 for every licensing renewal thereafter, in the form and penal sum acceptable to the commissioner, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was an administrator, unless the commissioner has given prior written consent. The surety bond shall be undertaken and may be enforced in the name of “Commissioner of Insurance, State of Hawaii”.

(b) ~~[For]~~ At the first licensing renewal, and each subsequent [annual-report filing;] year, the surety bond amount shall be at least ~~[\$100,000]~~ \$300,000 and filed in accordance with section 431:9J-112.”

SECTION 8. Section 431:9J-112, Hawaii Revised Statutes, is amended to read as follows:

“§431:9J-112 Annual report required. (a) An administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner.

(b) The annual report shall include:

- (1) The names and addresses of all insurers with which the administrator had an agreement during the preceding calendar year; and
- (2) A renewal certificate for the surety bond required in section 431:9J-103 and an updated surety bond form, if needed~~[-]; and~~
- (3) ~~An audited financial statement prepared by an independent certified public accountant[.]~~

(c) An administrator shall file with the commissioner an audited financial statement for the preceding calendar year by an independent certified public accountant on or before June 1 of each year.

(d) An audited financial statement and annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet filed with the report and shall include the following:

- (1) Worksheet or worksheets showing the amounts shown on the consolidated audited financial report;
- (2) Amounts for each entity that shall be stated separately; and
- (3) Explanations of consolidating and eliminating entries.

(e) The annual report shall be in the form, and contain the matters, as the commissioner prescribes and shall be verified by at least two officers of the administrator.”

SECTION 9. Section 431:19-101, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “controlled unaffiliated business” to read:

““Controlled unaffiliated business” means, in the case of a pure captive insurance company, any person~~[;]~~, or in the case of a sponsored captive insurance company, any participant:

- (1) That is not in the corporate system of a parent or sponsor and its affiliated entities;
- (2) That has an existing contractual relationship with a parent or sponsor or one of its affiliated entities; and
- (3) Whose risks are managed by the pure captive insurance company~~[-]~~ or the sponsored captive insurance company.”

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2. By amending the definition of “participant” to read:

““Participant” means an entity that meets the requirements of section 431:19-305, and any affiliated or controlled unaffiliated business entities thereof that are insured by a sponsored captive insurance company where the losses of the participant may be limited through a participant contract to the participant’s pro rata share of the assets of one or more protected cells identified in the participant contract.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval; provided that section 6 shall take effect on July 1, 2025.

(Approved June 21, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.