

Report Title:

Special Purpose Financial Captive Insurance Company; Sponsored Captive Insurance Companies

Description:

Authorizes the creation and regulation of special purpose financial captive insurance companies (SPFCIC). Establishes confidentiality provisions applicable to captives, including SPFCICs. Provides clarity on sponsored captive insurance companies. (CD1)

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

S.B. NO. 3023
S.D. 2
H.D. 2
C.D. 1

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 two new parts to article 19 to be appropriately designated and to read as follows:

**"PART II. SPECIAL PURPOSE FINANCIAL CAPTIVE
INSURANCE COMPANIES**

§431:19-A Purpose. This part provides for the creation of special purpose financial captive insurance companies for the exclusive purpose of facilitating the securitization of one or

more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. This part intends to allow the organizers of special purpose financial captive insurance companies to achieve greater efficiencies in structuring and executing insurance securitization, to diversify and broaden access to sources of capital, to facilitate access to insurance securitization and capital markets financing technology, and to further the economic development opportunities of the State.

§431:19-B Applicable law. (a) A special purpose

financial captive insurance company shall be subject to the provisions of this part and to part I. If there is any conflict between this part and part I, this part shall control.

(b) A special purpose financial captive insurance company shall be subject to all applicable rules adopted pursuant to section 431:19-114 that are in effect as of the effective date of this part and that are adopted after the effective date of this part.

(c) The commissioner, by order, may exempt a special purpose financial captive insurance company from any provision of this article or from any rule adopted pursuant to section 431:19-114 if the commissioner determines the provision to be inappropriate, given the nature of risks to be insured by the special purpose financial captive insurance company or its

approved plan of operation, and that the public interest is being served or protected, and that reasonable expectations of the policyholders and consumers will be maintained.

(d) Nothing in this part shall be construed to affect chapter 485A in any manner.

§431:19-C Definitions. For purposes of this part:

"Counterparty" means the insurer that cedes risk to a special purpose financial captive insurance company which, unless otherwise approved by the commissioner, shall be the parent or an affiliated company of the special purpose financial captive insurance company.

"Insolvency" or "insolvent," for the purpose of applying the provisions of article 15 to a special purpose financial captive insurance company, means:

(1) That the special purpose financial captive insurance company is unable to pay its obligations when due, unless those obligations are the subject of a bona fide dispute; or

(2) That the special purpose financial captive insurance company has failed to meet all the criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

"Insurance securitization" and "securitization" mean a

transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements, where all or part of the result of the transactions is used to fund the special purpose financial captive insurance company's obligations to the counterparty under the special purpose financial captive insurance company contract in accordance with the terms of the transaction, and by which:

(1) Proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of securities by the special purpose financial captive insurance company or any person; or

(2) A person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company that the commissioner authorizes the special purpose financial captive insurance company to treat as admitted assets for the purposes of the special purpose financial captive insurance company's annual report and where all or any part of the proceeds, letters of credit, or assets, as applicable, are used to fund the special purpose financial captive insurance company's

obligations under the special purpose financial captive insurance company contract with a counterparty.

The terms "insurance securitization" and "securitization" do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company's capital and surplus requirements under section 431:19-104.

"Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the special purpose financial captive insurance company, including but not limited to officers or agents elected or appointed to act on behalf of the special purpose financial captive insurance company.

"Organizational document" means the special purpose financial captive insurance company's articles of incorporation, articles of organization, bylaws, operating agreement, or any other document that establishes the special purpose financial captive insurance company as a legal entity or prescribes its existence.

"Special purpose financial captive insurance company" means a captive insurance company that has received a certificate of authority from the commissioner to operate as a special purpose financial captive insurance company pursuant to this part.

"Special purpose financial captive insurance company contract" means a contract between the special purpose financial captive insurance company and the counterparty pursuant to which the special purpose financial captive insurance company agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.

"Special purpose financial captive insurance company security" means a security defined in section 485A-102, and shall also include any other form of debt obligation, equity, surplus certificate, surplus note, funding agreement, derivative, or other financial instrument that the commissioner designates, by rule or order, as a security, and that is issued by a special purpose financial captive insurance company, or a third party, where the proceeds from the security are obtained directly or indirectly by a special purpose financial captive insurance company.

"Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time by the National Association of Insurance Commissioners, and as modified or supplemented by rule or order of the commissioner.

§431:19-D Certificate of authority. (a) Any special

purpose financial captive insurance company, when permitted by its organizational documents, may apply to the commissioner for a certificate of authority to transact insurance or reinsurance business as authorized in this part. A special purpose financial captive insurance company may only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this part, a special purpose financial captive insurance company may purchase reinsurance to cede the risks assumed under the special purpose financial captive insurance contracts, subject to the prior approval of the commissioner.

(b) In conjunction with the issuance of a certificate of authority to a special purpose financial captive insurance company, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the special purpose financial captive insurance company that are deemed appropriate by the commissioner and that are not inconsistent with this part. Except as provided in sections 431:19-L and 431:19-M, a certificate of authority issued to a special purpose financial captive insurance company pursuant to this part shall not be revoked, suspended, amended, or modified other than as follows:

- (1) The special purpose financial captive insurance company consents to the revocation,

suspension, amendment, or modification; or

(2) The commissioner makes a showing of clear and convincing evidence demonstrating that the revocation, suspension, amendment, or modification is necessary to avoid irreparable harm to the special purpose financial captive insurance company, investors who hold special purpose financial captive insurance company securities, the public, or a counterparty, if applicable.

(c) To qualify for a certificate of authority, a special purpose financial captive insurance company shall be subject, in addition to the requirements of section 431:19-102, to the following:

(1) The special purpose financial captive insurance company shall submit its plan of operation to the commissioner for approval. The plan of operation shall include:

(A) Draft documentation or, at the discretion of the commissioner, a written summary, of all agreements and material transactions, including but not limited to the name of the counterparty, the nature of risk being assumed, and the nature and purpose of the interrelationships between the various transactions that are entered into to effectuate the special purpose financial

captive insurance company contract and the insurance securitization;

(B) The source and form of the special purpose financial captive insurance company's initial and ongoing capital and surplus;

(C) The proposed strategic investment policy of the special purpose financial captive insurance company;

(D) A description of the underwriting, reporting, and claims reserving and payment methods by which losses covered by the special purpose financial captive insurance company are reported, accounted for, and settled; and

(E) Projected financial statements of the special purpose financial captive insurance company using an expected and at least one adverse case scenario applied to the special purpose financial captive insurance company contract;

(2) The special purpose financial captive insurance company shall submit an affidavit of or a declaration by its president, a vice president, the treasurer, or the chief financial officer, that includes the following statements, to the best of that person's knowledge and belief after reasonable inquiry:

(A) That the proposed organization and operation of the special purpose financial captive insurance company complies with all applicable provisions of this part;

(B) That the special purpose financial captive insurance company's strategic investment policy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and management of the assets with respect to the risks associated with the special purpose financial captive insurance company contract and the insurance securitization transaction; and

(C) That the special purpose financial captive insurance company contract and any arrangement for securing the special purpose financial captive insurance company's obligations under the special purpose financial captive insurance company contract, including but not limited to any agreement or other documentation to implement the arrangement, comply with the provisions of this part;

(3) The special purpose financial captive insurance company shall submit other documents or statements of the special purpose financial captive

insurance company's officer as may be required by the commissioner to evaluate the special purpose financial captive insurance company's application for licensure; and

(4) The application shall include an opinion of qualified legal counsel, in a form acceptable to the commissioner, that the offer and sale of any special purpose financial captive insurance company securities comply with all applicable registration requirements, or applicable exemptions from or exceptions to the requirements of the federal securities laws and that the offer and sale of securities by the special purpose financial captive insurance company itself comply with all registration requirements or applicable exemptions from or exceptions to the requirements of the security laws of this State. The legal opinions shall not be required as part of the application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that the opinions shall be provided to the commissioner prior to the offer or sale of any special purpose financial captive insurance company securities.

(d) The commissioner may issue a certificate of authority to transact insurance and reinsurance business as a special

purpose financial captive insurance company in this State that shall be valid through the term of the insurance securitization and automatically renewed each April 1 following the date of initial issuance, except as provided for in section 431:19-L, and upon the commissioner's finding that:

(1) The proposed plan of operation provides for a reasonable and expected successful operation;

(2) The terms of the special purpose financial captive insurance company contract and related transactions comply with this part; and

(3) The insurance regulator of the home domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or has not disapproved the transaction; provided that the commissioner shall not be precluded from issuing or renewing a certificate of authority the insurance regulator of the home domicile of a counterparty has not responded with respect to all or any part of the transaction.

(e) Section 431:19-101.2 shall apply to all information submitted pursuant to subsection (c) and to any order issued to the special purpose financial captive insurance company pursuant to subsection (b).

§431:19-E Changes in plan of operation; voluntary

dissolution or cessation of business. (a) Any change in the special purpose financial captive insurance company's plan of operation shall require the prior approval of the commissioner.

(b) Any transaction or series of transactions shall be subject to the prior approval of the commissioner if the transaction or series of transactions:

(1) Is undertaken to dissolve a special purpose financial captive insurance company; or

(2) Results in the termination of all or any part of a special purpose financial captive insurance company's business; provided that no prior approval of the commissioner shall be required for any transaction or series of transactions performed in accordance with a document, contract, or agreement described in the special purpose financial captive insurance company's plan of operation and if the commissioner is notified in advance of the transaction or series of transactions.

(c) A special purpose financial captive insurance company shall notify the commissioner in advance of any change in the legal ownership of any security issued by the special purpose financial captive insurance company.

§431:19-F Formation. (a) A special purpose financial captive insurance company may be incorporated as a stock

corporation, limited liability company, mutual association, partnership, or other form of organization approved by the commissioner.

(b) A special purpose financial captive insurance company's organizational documents shall limit the special purpose financial captive insurance company's authority to transact the business of insurance or reinsurance to those activities that the special purpose financial captive insurance company conducts to accomplish its purposes as expressed in this part.

§431:19-G Minimum capital and surplus. A special purpose financial captive insurance company shall not be issued a license unless it possesses and thereafter maintains unimpaired capital and surplus of not less than \$250,000 in the form of cash or other assets approved by the commissioner.

§431:19-H Issuance of securities. (a) A special purpose financial captive insurance company may issue securities, as defined in section 485A-102, subject to and in accordance with its approved plan of operation and its organizational documents.

(b) A special purpose financial captive insurance company, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) A special purpose financial captive insurance company

may:

(1) Subject to the approval of the commissioner, account for the proceeds of surplus notes as surplus; and

(2) Submit for prior approval of the commissioner, periodic written requests for payments of interest on and repayment of principal surplus notes, and any other debt obligations issued by the special purpose financial captive insurance company; provided that the commissioner may, in lieu of the approval of periodic written requests, approve a formula or plan that provides for the payment of interest, principal, or both.

(d) Securities issued by a special purpose financial captive insurance company pursuant to an insurance securitization shall not be considered to be insurance or reinsurance contracts. An investor in these securities or a holder of these securities, by sole means of this investment or holding, shall not be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting

business only by virtue of their activities in conjunction with the insurance securitization.

§431:19-I Authorized contracts and agreements. (a) A

special purpose financial captive insurance company shall insure only the risks of a counterparty and shall not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurance company contract; provided that the special purpose financial captive insurance company may cede risks assumed through a special purpose financial captive insurance company to third party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the commissioner.

(b) A special purpose financial captive insurance company may enter into contracts and agreements with affiliated entities and third parties to conduct other activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurance company contract, the insurance securitization, and this part; provided that the contracts and activities are included in the special purpose financial captive insurance company's plan of operation or are otherwise approved in advance by the commissioner. Those contracts, agreements, and activities may include but are not limited to:

- (1) Entering into special purpose financial

captive insurance company contracts;

(2) Issuing of special purpose financial captive insurance company securities;

(3) Complying with the terms of the special purpose financial captive insurance company contracts or securities;

(4) Entering into trust, tax, administration, reimbursement, or fiscal agent transactions; or

(5) Complying with trust indenture, reinsurance or retrocession and other contracts, agreements, and activities necessary or incidental to effectuate an insurance securitization in compliance with the special purpose financial captive insurance company's plan of operation approved by the commissioner or as authorized by this part.

(c) A special purpose financial captive insurance company may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments issued

pursuant to a special purpose financial captive insurance company insurance securitization transaction or the obligations of a special purpose financial captive insurance company under a special purpose financial captive insurance company contract.

(d) A special purpose financial captive insurance company shall immediately notify the commissioner of any threatened or pending action by a counterparty or any other person to foreclose or otherwise take possession of or control over or encumber the collateral provided by the special purpose financial captive insurance company and part of the insurance securitization.

(e) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall not:

(1) Issue or otherwise administer primary insurance contracts;

(2) Enter into a special purpose financial captive insurance company contract with a counterparty that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;

(3) Enter into a special purpose financial captive insurance contract that contains any provision for payment by the special purpose financial captive

insurance company in discharge of its obligations under the contract to any person other than the counterparty or receiver;

(4) Have any direct obligation to the policyholders or reinsured of the counterparty; or

(5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from anyone convicted of a felony, anyone convicted of a criminal offense involving the conversion or misappropriation of funds, including fiduciary funds or insurance amounts, or theft, deceit, fraud, misrepresentation, embezzlement, or corruption. Also, anyone whom the commissioner has cause to believe has violated, is violating, or is about to violate any provision of this code, any order of the commissioner, or undertakes or plans to undertake any action that may cause the special purpose financial captive insurance company to be in a condition as to render the continuance of the special purpose financial captive insurance company's business hazardous to the public or to the holders of the special purpose financial captive insurance company contracts or special purpose financial captive insurance company securities.

§431:19-J Disposition of assets; investments. (a) The

assets of a special purpose financial captive insurance company shall be preserved and administered by or on behalf of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company, the insurance securitization, and other related contracts and agreements.

(b) Unless waived by the commissioner, any security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other special purpose financial captive insurance company securities shall include a disclosure that all or part of the proceeds of the insurance securitization will be used to fund the special purpose financial captive insurance company's obligations to the counterparty.

(c) A special purpose financial captive insurance company shall not be subject to any restriction on investments; provided that the special purpose financial captive insurance company:

(1) Maintains compliance with the strategic investment policy adopted by the special purpose financial captive insurance company; and

(2) Shall not make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the commissioner;

provided further that the commissioner may prohibit or limit any

investment that threatens the solvency or liquidity of the special purpose financial captive insurance company unless the investment is otherwise approved in its plan of operation or in an order issued to the special purpose financial captive insurance company pursuant to section 431:19-B(c).

§431:19-K Annual reporting; books and records. (a) For purposes of section 431:19-107(a), the commissioner may require any appropriate or necessary modification or supplemental or additional information to be filed with the required financial statements.

(b) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall maintain its books, records, documents, accounts, vouchers, and agreements in this State. A special purpose financial captive insurance company shall make its books, records, documents, accounts, vouchers, and agreements available for inspection by the commissioner at any time. A special purpose financial captive insurance company shall keep its books and records in a manner that its financial condition, affairs, and operations can be readily ascertained and so that the commissioner may readily verify its financial statements and determine its compliance with this part.

(c) Unless otherwise approved in advance by the commissioner, all original books, records, documents, accounts,

vouchers, and agreements shall be preserved and kept available in this State for the purpose of examination and inspection and until a time as the commissioner approves the destruction or other disposition of the books, records, documents, accounts, vouchers, and agreements. If the commissioner approves the keeping of the items listed in this subsection outside this State, then the special purpose financial captive insurance company shall maintain in this State a complete and true copy of each original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

§431:19-L Suspension and revocation of certificate of

authority. (a) The commissioner shall notify a special purpose financial captive insurance company not less than thirty days before suspending or revoking its certificate of authority pursuant to section 431:19-109, which notice shall state the basis for the suspension or revocation. The special purpose financial captive insurance company shall be afforded the opportunity for a hearing pursuant to chapter 91.

(b) Notwithstanding subsection (a) and section 91-9.5, the commissioner may cause the immediate suspension or restriction of the special purpose financial captive insurance company's certificate of authority, subject to timely subsequent notice and opportunity for a hearing, upon the commissioner's

determination that the failure to take an action may result in the material deterioration of the financial condition or soundness of the special purpose financial captive insurance company, and that for the protection of the public from the possible consequences of practices, the special purpose financial captive insurance company's certificate of authority should be immediately suspended or restricted.

The commissioner may order the summary suspension of the certificate of authority for a period not to exceed the later of thirty days or, if a hearing is requested by the special purpose financial captive insurance company pursuant to chapter 91, the conclusion of the hearing. Any attempt by the special purpose financial captive insurance company to continue its operations while its certificate of authority has been summarily suspended shall be sufficient to warrant a permanent revocation of the certificate of authority and shall subject the special purpose financial captive insurance company to all penalties prescribed by this article, or any rule or order issued by the commissioner.

(c) For purposes of this section, any reference to section 431:19-104 in section 431:19-109(a)(2) shall be construed to also reference section 431:19-G.

§431:19-M Supervision, rehabilitation, liquidation. (a)

Except as otherwise provided in this part, article 15 shall apply in full to a special purpose financial captive insurance

company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to this part.

(c) Amounts recoverable by the receiver of a special purpose financial captive insurance company under a special purpose financial captive insurance company contract shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a counterparty, notwithstanding any provision in the contracts or other documentations governing the special purpose financial captive insurance company securitization.

(d) Notwithstanding article 15 or any other law of this State:

(1) An application or petition for a temporary restraining order or injunction issued pursuant to article 15 with respect to a counterparty does not prohibit the transaction of business by a special purpose financial captive insurance company, including any payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security, or any

action or proceeding against a special purpose financial captive insurance company or its assets;

(2) The commencement of a summary proceeding with respect to a special purpose financial captive insurance company and any order issued by the court in the summary proceeding, unless otherwise specifically addressed in the summary proceeding or order issued by the court, shall not prohibit payments by a special purpose financial captive insurance company and shall not prohibit the special purpose financial captive insurance company from taking any action required to make payments; provided that payments are made:

(A) Pursuant to a special purpose financial captive insurance company security or special purpose financial captive insurance company contract; and

(B) Consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to section 431:19-D(b), as either is amended from time to time;

(3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special

purpose financial captive insurance company of money or other property made pursuant to a special purpose financial captive insurance company contract; and

(4) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:

(A) Made to a counterparty pursuant to a special purpose financial captive insurance company contract or made to or for the benefit of any holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and

(B) Made consistent with the special purpose financial captive insurance company's plan of operation and any order issued to the special purpose financial captive insurance company pursuant to section 431:19-D(b), as either is amended from time to time.

(e) With the exception of the fulfillment of the obligations under a special purpose financial captive insurance contract and notwithstanding any other provision of this part or other laws of this State, the assets of a special purpose financial captive insurance company, including assets held in

trust, on a funds-withheld basis, or in any other arrangement to secure the special purpose financial captive insurance company's obligations under a special purpose financial captive insurance company contract, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to this part for any purpose including, without limitation, distribution to creditors of the counterparty.

§431:19-N Existing licenses. Except as otherwise determined by the commissioner, a captive insurance company, that has been issued a certificate of authority by the commissioner pursuant to section 431:19-102 as of July 1, 2008, and is engaged in or will be engaged in an insurance securitization, need not obtain a certificate of authority pursuant to section 431:19-D, but shall otherwise be subject to this part as a special purpose financial captive insurance company; provided that the commissioner may require the captive insurance company to take any action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this part; provided further that the commissioner may issue an order described in section 431:19-D(b) with respect to the captive insurance company.

Part III. SPONSORED CAPTIVE INSURANCE COMPANIES

§431:19-O Formation. (a) One or more sponsors may form a sponsored captive insurance company under this part. In addition to the general provisions of this article, the provisions of this part shall apply to sponsored captive insurance companies.

(b) A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a member-managed or manager-managed limited liability company.

§431:19-P Supplemental application materials. In addition to the information required in section 431:19-102(c) and (d), each sponsored captive insurance company applicant that segregates the risks of its participants through one or more protected cells shall file with the commissioner the following:

(1) All contracts or draft contracts between the sponsored captive insurance company and its participants;

(2) A description of the means by which the assets, liabilities, income, and expenses of each protected cell shall be segregated from those of other protected cells in the sponsored captive insurance company, and reported to the commissioner; and

(3) A fair and equitable plan for allocating direct and indirect expenses to each protected cell.

§431:19-Q Protected cells. A sponsored captive insurance company formed and licensed under this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following:

(1) The shareholders or members of a sponsored captive insurance company shall be limited to its participants and sponsors; provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, 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;

(3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange, or other transfer of assets may be made by a sponsored captive insurance company between or among any of its protected cells without the

consent of the protected cells;

(5) No sale, exchange, transfer of assets, dividend, or distribution 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 sale, exchange, transfer dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(6) Each sponsored captive insurance company shall annually file with the commissioner, financial reports as the commissioner shall require, that shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(7) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and

(8) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in business plan requiring the commissioner's prior written approval.

§431:19-R Qualification of sponsors. A sponsor of a sponsored captive insurance company shall be an insurer licensed under laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this article, or any other person, company, or organization approved by the commissioner in the exercise of the commissioner's discretion, after finding that the approval of that person, company, or organization as a sponsor is not inconsistent with the purposes of this article. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company.

§431:19-S Participants in sponsored captive insurance companies. (a) Associations, corporations, limited liability companies, partnerships, trusts, and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter.

(b) A sponsor of a sponsored captive insurance company may be a participant.

(c) A participant need not be a shareholder or member of the sponsored captive insurance company or any affiliate thereof.

(d) A participant shall insure only its own risks through a sponsored captive insurance company.

§431:19-T Investments by sponsored captive insurance companies. Notwithstanding section 431:19-Q, the assets of two

or more protected cells may be combined for purposes of investments, and the combination shall not be construed as defeating the segregation of the assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements under section 431:19-110.

§431:19-U Delinquency of sponsored captive insurance

companies. In the case of a sponsored captive insurance company, article 15 shall apply; provided that:

(1) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to the protected cells; and

(2) Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.

§431:19-V Applicable laws. A sponsored captive insurance

company shall be subject to this part and to part . If there is any conflict between this part and part , this part shall control.

§431:19-W Existing licenses. Except as otherwise

determined by the commissioner, a captive insurance company that has been issued a certificate of authority by the commissioner pursuant to section 431:19-102 as of July 1, 2008, and is licensed as a Class 4 captive shall not be required to re-apply for a certificate of authority under this part, but shall

otherwise be subject to this part as a sponsored captive insurance company; provided that the commissioner may by order require the captive insurance company to take any action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this part."

SECTION 2. Chapter 431, article 19, Hawaii Revised Statutes, is amended by designating sections 431:19-101 to 431:19-116 as part I, to read:

"PART I. GENERAL PROVISIONS"

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

1. By adding five new definitions to be appropriately inserted and to read:

"Participant" means an entity that meets the requirements of section 431:19-S, and any affiliates 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.

"Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and may also limit the losses of each participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

"Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under this part in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.

"Sponsor" means any entity that meets the requirements of section 431:19-R and is approved by the commissioner to provide all or part of the minimum required capital and surplus of a sponsored captive insurance company and to organize and operate a sponsored captive insurance company.

"Sponsored captive insurance company" means any captive insurance company in which the minimum required capital and surplus is provided by one or more sponsors and is formed or licensed under this article. A sponsored captive insurance company insures the risks only of its participants through separate participant contracts and may fund its liability to each participant through one or more protected cells. A sponsored captive insurance company segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account."

2. By repealing the definitions of "leased capital

facility," "participant," "participant contract," "protected cell," and "sponsor."

["Leased capital facility" means a limited membership insurance company formed as a class 4 company under this article that insures the risks of its participants.]

"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.]

SECTION 4. Section 431:19-101.3, Hawaii Revised Statutes, is amended to read as follows:

§431:19-101.3 Classes of captive insurance. Each captive

insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

(1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;

(2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;

(3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company;

(4) A class 4 company shall be a [leased capital facility] sponsored captive insurance company formed under part III of this article; and

(5) A class 5 company shall be a reinsurance or excess insurance company formed under this article."

SECTION 5. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each captive insurance company licensed pursuant to this article shall possess and thereafter maintain unimpaired capital and surplus in the amount established by the commissioner; provided that:

(1) The commissioner shall take into account the nature and volume of business transacted by each captive

insurance company, and any other factors deemed appropriate by the commissioner;

(2) Class 3 captive insurance companies shall be subject to other applicable provisions of this chapter that may require capital and surplus in excess of those established by the commissioner; and

(3) Minimum capital and surplus established by the commissioner shall be no less than the following amounts:

(A) Class 1: \$100,000;

(B) Class 2: \$250,000;

(C) Class 3: \$500,000;

(D) Class 4: [~~\$1,000,000~~] \$500,000; and

(E) Class 5: An amount as determined by

the commissioner on a case by case basis."

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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.~~] All examination

reports, preliminary examination reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using information in furtherance of the commissioner's regulatory authority under this title. The commissioner may grant access to the information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law enforcement officers of this State or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section."

SECTION 7. Section 431:19-106.3, Hawaii Revised Statutes, is repealed.

~~["**§431:19-106.3** **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 8. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2008.