

Report Title:*Captives***Description:**

Allows captive insurance companies to be formed as limited liability companies. Clarifies minimum capital and surplus requirements. Increases investment flexibility for pure captives.

HOUSE OF REPRESENTATIVES
 TWENTY-FOURTH LEGISLATURE, 2007
 STATE OF HAWAII

H.B. NO.²⁷²

A BILL FOR AN ACT

RELATING TO CAPTIVE INSURANCE COMPANIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definitions of "association", "member organization", and "parent" to read as follows:

"Association" means any legal association of individuals, corporations, limited liability companies, partnerships, [or] associations, or other entities, except labor organizations, the member organizations of which [~~collectively~~] or which does itself, whether or not in conjunction with some or all of the member organizations:

(1) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; [or]

(2) Have complete voting control over an association captive insurance company incorporated as a mutual insurer[.]; or

(3) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

"Member organization" means any individual, corporation, limited liability company, partnership, [or] association, or other entity that belongs to an association.

"Parent" means a [~~company,~~] corporation, limited liability company, partnership, [person, or] other [legal] entity, or individual, that directly or indirectly owns, controls, or holds with power to vote more than fifty per cent of the outstanding voting [~~securities]~~ interests of a pure captive insurance company [~~-~~] organized as a stock corporation, nonprofit corporation, or limited liability company."

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

"(a) Any captive insurance company, when permitted by its

articles of association [or], articles of incorporation, articles of organization, or other organizational document, may apply to the commissioner for a certificate of authority 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 entities;

(2) No association captive insurance company may insure any risks other than those of the member organizations of its association and their affiliated entities;

(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 entities; or as reinsurance as may be allowed under this article; 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 certificate of authority authorizing it to do insurance

business in this State;

(2) Its board of directors, committee of managers, or subscribers' advisory committee, holds at least one meeting each year in this State;

(3) It maintains its principal place of business and registered office 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 designates a registered resident agent in accordance with chapter 414 [~~0~~], 414D, or 428, as applicable, to accept service of process and to otherwise act on its behalf in this State. Whenever the registered resident 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 in accordance with section 431:2-206.

(c) Before receiving a certificate of authority, a captive insurance company shall file with the commissioner [a]:

(1) A certified copy of its organizational documents, including but not limited to its articles of incorporation [~~0~~], articles of association, or articles of organization, and bylaws[~~7~~-a], as applicable;

(2) A statement under oath of any two of its principal officers, or its attorney-in-fact in the case of a captive insurance company formed as a reciprocal insurer, showing its financial condition~~[, and any]~~; and

(3) Any other statements or documents required by the commissioner."

SECTION 3. Section 431:19-102.3, Hawaii Revised Statutes,

is amended by amending subsection (a) to read as follows:

"(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:

(1) Compliance with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type, and any requirements that the commissioner may adopt by rule;

(2) The articles of incorporation or other organizational document shall be amended in compliance with the laws of this State and restated in its entirety before submission to the commissioner. Before the amended and restated articles of incorporation or other organizational document is transmitted to the department of commerce and consumer affairs, the foreign or alien captive insurance company shall petition the commissioner to issue a certificate setting forth the

commissioner's finding that the redomestication and maintenance of the [corporation] company will promote the general good of the State. In arriving at the finding, the commissioner shall consider:

(A) The character, reputation, financial standing, and purposes of the foreign or alien captive insurance company;

(B) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors~~[+]~~, or manager or managers in the case of a limited liability company; and

(C) Any other aspects as the commissioner deems advisable;

(3) The following shall be transmitted to the department of commerce and consumer affairs for filing:

(A) Articles of redomestication;

(B) Certificate of general good issued by the commissioner;

(C) Certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which the foreign or alien captive insurance company is incorporated; provided that the certificate shall be dated not earlier than

thirty days prior to the filing of the articles of redomestication; and provided further that if the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate;

(D) Amendments to the articles of incorporation or other organizational document in compliance with the laws of this State;

(E) Restatement of the articles of incorporation or other organizational document in its entirety; and

(F) Organization fee; and

(4) The articles of redomestication shall set forth the following:

(A) Name of the [~~corporation;~~] company;

(B) Date of incorporation or organization and state or country of incorporation[+] or organization;

(C) Street address of the principal office in this State;

(D) Names and titles of the manager or managers, officers, and directors of the [~~corporation;~~] company;

(E) A statement that the [~~corporation]~~

company is moving its domicile from its present state or country to this State;

(F) A statement that redomestication will occur upon filing the articles of redomestication and that the [~~corporation~~] company shall be subject to the laws of this State; and

(G) A statement that copies of the articles of incorporation or other organizational document and any amendments certified by the proper officer of the state or country under the laws of which the [~~corporation~~] company is incorporated or organized are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents."

SECTION 4. Section 431:19-102.4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The notice of change in domicile, the certificate of transfer issued by the commissioner, the proof of redomestication, and the filing fee shall be transmitted to the department of commerce and consumer affairs. The notice of change in domicile shall set forth the following:

- (1) Name of the [~~corporation;~~] company;
- (2) Dates that notice of the [~~corporation's~~]

company's intent to transfer domicile from this State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in this State;

(3) Date of the transfer of its domicile; and

(4) State or country to which its domicile will be transferred."

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

"(b) The minimum capital requirements prescribed in subsection (c)(1) through (5) 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. Any additional capital required by this section shall be invested in accordance with section 431:19-110."

SECTION 6. Section 431:19-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The minimum surplus requirements prescribed in section 431:19-104(c)(1) through (5) 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 member bank of the Federal Reserve System, or other security approved by the commissioner. Any additional surplus required by section 431:19-104 shall be

invested in accordance with section 431:19-110."

SECTION 7. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-106 Formation of captive insurance companies in this State. (a) A pure captive insurance company [~~shall~~] may 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.

(b) A captive insurance company, which is other than a pure captive insurance company, may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association; [~~or~~]

(3) Organized as a reciprocal insurer, for other than credit life and credit disability insurance and group term life insurance, without capital stock, whose affairs shall be coordinated through an attorney-in-fact as provided in the power of attorney or other agreement given to the attorney-in-fact by the subscribers[~~-~~]; or

(4) Organized as a member-managed or manager-managed limited liability company.

(c) A captive insurance company other than one that is formed as a reciprocal insurer shall have no fewer than three incorporators or three organizers of whom no fewer than two shall be residents of this State.

(d) [~~Before~~] In the case of a captive insurance company:

(1) Formed as a corporation, before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:

~~[(1)]~~ (A) The character, reputation, financial standing, and purposes of the incorporators;

~~[(2)]~~ (B) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

~~[(3)]~~ (C) Other aspects as the commissioner deems advisable.

(2) Formed as a reciprocal insurer, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed company

will promote the general good of the State. In arriving at such a finding the commissioner shall consider:

(A) The character, reputation, financial standing, and purposes of the organizers and attorney-in-fact;

(B) The character, reputation, financial responsibility, insurance experience, and business qualifications of the subscribers, advisory committee, and attorney-in-fact; and

(C) Other aspects as the commissioner deems advisable.

(3) Formed as a limited liability company, before the organizational documents are transmitted to the department of commerce and consumer affairs, the organizers shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed company will promote the general good of the State. In arriving at such a finding the commissioner shall consider:

(A) The character, reputation, financial standing, and purposes of the organizers;

(B) The character, reputation, financial responsibility, insurance experience, and business

qualifications of the members, managers, and officers; and

(C) Other aspects as the commissioner deems advisable.

(e) The articles of incorporation~~[,]~~ or other organizational documents, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation or other organizational documents and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) ~~[A]~~ In the case of a captive insurance company:

(1) Formed as a corporation, at least one of the members of the board of directors [of a captive insurance company incorporated in this State] shall be a resident of this State[-];

(2) Formed as a reciprocal insurer, at least one of the members of the subscriber's advisory committee shall be a resident of this State;

(3) Formed as a limited liability company, at least one of the managers shall be a resident of this State.

(h) ~~[Captive insurance companies formed under this~~

article, except for pure nonprofit captive insurance companies,] Other than captive insurance companies formed as limited liability companies pursuant to the limited liability company law of this State or as nonprofit corporations pursuant to the nonprofit corporation law of this State, captive insurance companies formed as corporations under the provisions of this chapter shall have the privileges and be subject to the general corporation law of this State, as well as this article. In the event of conflict between [the general corporation law] any of the foregoing applicable laws of this State and this article, the latter shall control.

(i) [Pure] Captive insurance companies formed under the provisions of this chapter:

(1) As limited liability companies shall have the privileges and be subject to the provisions of the limited liability company law of this State as well as the applicable provisions contained in this chapter. In the event of a conflict between the limited liability company law and this article, the latter shall control;
or

(2) As nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law of this State as well as this article. In the event of conflict

between the nonprofit corporation law and this article, the latter shall control."

SECTION 8. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(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;

(D) In the case of a nonprofit corporation, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the corporation, or by unanimous written consent of all the members; or

(E) In the case of a limited liability company, by at least two-thirds of the voting interest of the members at a duly called meeting of the members of the limited liability company, or by unanimous written consent of the members;

(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 limited liability company, 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 consumer affairs, appropriate articles of amendment, articles of conversion, or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer or limited liability company insurer to a stock or mutual insurer, the existing reciprocal or limited liability company 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 414 [~~or~~], 414D[-], or 428, as to the extent that these laws are applicable to the conversion or merger."

SECTION 9. Section 431:19-110, Hawaii Revised Statutes, is amended to read as follows:

"§431:19-110 Legal investments. (a) Each captive insurance company shall be subject to the restrictions on allowable investments provided under sections 431:6-101 to 431:6-501; provided that the commissioner may approve other

investments and investment provisions as the commissioner deems appropriate for each captive insurance company licensed under this article.

(b) Notwithstanding subsection (a) to the contrary, a pure captive insurance company shall not be subject to any restrictions on allowable investments; provided that the commissioner may prohibit, limit, or require divestiture of, any investment that threatens the solvency or liquidity of the pure captive insurance company.

(c) A pure captive insurance company may make a loan to or an investment in its parent or affiliated company; provided that the loan shall:

(1) Receive prior written approval from the commissioner;

(2) Be evidenced by documentation that it is in a form that is approved by the commissioner; and

(3) Not include any money that has been set aside as capital or surplus as required by section 431:19-104."

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

SECTION 11. This Act shall take effect on July 1, 2007.

INTRODUCED BY: _____

