



GOV. MSG. NO. 832

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 18, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 18, 2008, the following bill was signed into law:

SB3023 SD2 HD2 CD1

A BILL FOR AN ACT RELATING TO INSURANCE.
(ACT 190)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUN 18 2008

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

ACT 190

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:

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding two new parts to article 19 to be
3 appropriately designated and to read as follows:
4 **"PART II. SPECIAL PURPOSE FINANCIAL CAPTIVE**
5 **INSURANCE COMPANIES**
6 **§431:19-A Purpose.** This part provides for the creation of
7 special purpose financial captive insurance companies for the
8 exclusive purpose of facilitating the securitization of one or
9 more risks as a means of accessing alternative sources of
10 capital and achieving the benefits of securitization. This part
11 intends to allow the organizers of special purpose financial
12 captive insurance companies to achieve greater efficiencies in
13 structuring and executing insurance securitization, to diversify
14 and broaden access to sources of capital, to facilitate access
15 to insurance securitization and capital markets financing
16 technology, and to further the economic development
17 opportunities of the State.



1 **§431:19-B Applicable law.** (a) A special purpose
2 financial captive insurance company shall be subject to the
3 provisions of this part and to part I. If there is any conflict
4 between this part and part I, this part shall control.

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

10 (c) The commissioner, by order, may exempt a special
11 purpose financial captive insurance company from any provision
12 of this article or from any rule adopted pursuant to section
13 431:19-114 if the commissioner determines the provision to be
14 inappropriate, given the nature of risks to be insured by the
15 special purpose financial captive insurance company or its
16 approved plan of operation, and that the public interest is
17 being served or protected, and that reasonable expectations of
18 the policyholders and consumers will be maintained.

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

21 **§431:19-C Definitions.** For purposes of this part:



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

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

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

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

18 "Insurance securitization" and "securitization" mean a
19 transaction or a group of related transactions, which may
20 include capital market offerings, that are effected through
21 related risk transfer instruments and facilitating
22 administrative agreements, where all or part of the result of



1 the transactions is used to fund the special purpose financial
2 captive insurance company's obligations to the counterparty
3 under the special purpose financial captive insurance company
4 contract in accordance with the terms of the transaction, and by
5 which:

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

11 (2) A person provides one or more letters of credit or
12 other assets for the benefit of the special purpose
13 financial captive insurance company that the
14 commissioner authorizes the special purpose financial
15 captive insurance company to treat as admitted assets
16 for the purposes of the special purpose financial
17 captive insurance company's annual report and where
18 all or any part of the proceeds, letters of credit, or
19 assets, as applicable, are used to fund the special
20 purpose financial captive insurance company's
21 obligations under the special purpose financial



1 captive insurance company contract with a
2 counterparty.

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

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

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

21 "Special purpose financial captive insurance company" means
22 a captive insurance company that has received a certificate of



1 authority from the commissioner to operate as a special purpose
2 financial captive insurance company pursuant to this part.

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

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

20 "Surplus note" means an unsecured subordinated debt
21 obligation possessing characteristics consistent with paragraph
22 3 of the National Association of Insurance Commissioners



1 Statement of Statutory Accounting Principles No. 41, as amended
2 from time to time by the National Association of Insurance
3 Commissioners, and as modified or supplemented by rule or order
4 of the commissioner.

5 **§431:19-D Certificate of authority.** (a) Any special
6 purpose financial captive insurance company, when permitted by
7 its organizational documents, may apply to the commissioner for
8 a certificate of authority to transact insurance or reinsurance
9 business as authorized in this part. A special purpose
10 financial captive insurance company may only insure or reinsure
11 the risks of its counterparty. Notwithstanding any other
12 provision of this part, a special purpose financial captive
13 insurance company may purchase reinsurance to cede the risks
14 assumed under the special purpose financial captive insurance
15 contracts, subject to the prior approval of the commissioner.

16 (b) In conjunction with the issuance of a certificate of
17 authority to a special purpose financial captive insurance
18 company, the commissioner may issue an order that includes any
19 provisions, terms, and conditions regarding the organization,
20 licensing, and operation of the special purpose financial
21 captive insurance company that are deemed appropriate by the
22 commissioner and that are not inconsistent with this part.



1 Except as provided in sections 431:19-L and 431:19-M, a
2 certificate of authority issued to a special purpose financial
3 captive insurance company pursuant to this part shall not be
4 revoked, suspended, amended, or modified other than as follows:

- 5 (1) The special purpose financial captive insurance
6 company consents to the revocation, suspension,
7 amendment, or modification; or
- 8 (2) The commissioner makes a showing of clear and
9 convincing evidence demonstrating that the revocation,
10 suspension, amendment, or modification is necessary to
11 avoid irreparable harm to the special purpose
12 financial captive insurance company, investors who
13 hold special purpose financial captive insurance
14 company securities, the public, or a counterparty, if
15 applicable.

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

- 20 (1) The special purpose financial captive insurance
21 company shall submit its plan of operation to the



1 commissioner for approval. The plan of operation
2 shall include:

3 (A) Draft documentation or, at the discretion of the
4 commissioner, a written summary, of all
5 agreements and material transactions, including
6 but not limited to the name of the counterparty,
7 the nature of risk being assumed, and the nature
8 and purpose of the interrelationships between the
9 various transactions that are entered into to
10 effectuate the special purpose financial captive
11 insurance company contract and the insurance
12 securitization;

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

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

19 (D) A description of the underwriting, reporting, and
20 claims reserving and payment methods by which
21 losses covered by the special purpose financial



1 captive insurance company are reported, accounted
2 for, and settled; and

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

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

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

18 (B) That the special purpose financial captive
19 insurance company's strategic investment policy
20 reflects and takes into account the liquidity of
21 assets and the reasonable preservation,
22 administration, and management of the assets with



1 respect to the risks associated with the special
2 purpose financial captive insurance company
3 contract and the insurance securitization
4 transaction; and

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

14 (3) The special purpose financial captive insurance
15 company shall submit other documents or statements of
16 the special purpose financial captive insurance
17 company's officer as may be required by the
18 commissioner to evaluate the special purpose financial
19 captive insurance company's application for licensure;
20 and

21 (4) The application shall include an opinion of qualified
22 legal counsel, in a form acceptable to the



1 commissioner, that the offer and sale of any special
2 purpose financial captive insurance company securities
3 comply with all applicable registration requirements,
4 or applicable exemptions from or exceptions to the
5 requirements of the federal securities laws and that
6 the offer and sale of securities by the special
7 purpose financial captive insurance company itself
8 comply with all registration requirements or
9 applicable exemptions from or exceptions to the
10 requirements of the security laws of this State. The
11 legal opinions shall not be required as part of the
12 application if the special purpose financial captive
13 insurance company includes a specific statement in its
14 plan of operation that the opinions shall be provided
15 to the commissioner prior to the offer or sale of any
16 special purpose financial captive insurance company
17 securities.

18 (d) The commissioner may issue a certificate of authority
19 to transact insurance and reinsurance business as a special
20 purpose financial captive insurance company in this State that
21 shall be valid through the term of the insurance securitization
22 and automatically renewed each April 1 following the date of



1 initial issuance, except as provided for in section 431:19-L,
2 and upon the commissioner's finding that:

- 3 (1) The proposed plan of operation provides for a
4 reasonable and expected successful operation;
- 5 (2) The terms of the special purpose financial captive
6 insurance company contract and related transactions
7 comply with this part; and
- 8 (3) The insurance regulator of the home domicile of each
9 counterparty has notified the commissioner in writing
10 or otherwise provided assurance satisfactory to the
11 commissioner that it has approved or has not
12 disapproved the transaction; provided that the
13 commissioner shall not be precluded from issuing or
14 renewing a certificate of authority the insurance
15 regulator of the home domicile of a counterparty has
16 not responded with respect to all or any part of the
17 transaction.

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



1 **§431:19-E Changes in plan of operation; voluntary**
2 **dissolution or cessation of business.** (a) Any change in the
3 special purpose financial captive insurance company's plan of
4 operation shall require the prior approval of the commissioner.
5 (b) Any transaction or series of transactions shall be
6 subject to the prior approval of the commissioner if the
7 transaction or series of transactions:
8 (1) Is undertaken to dissolve a special purpose financial
9 captive insurance company; or
10 (2) Results in the termination of all or any part of a
11 special purpose financial captive insurance company's
12 business; provided that no prior approval of the
13 commissioner shall be required for any transaction or
14 series of transactions performed in accordance with a
15 document, contract, or agreement described in the
16 special purpose financial captive insurance company's
17 plan of operation and if the commissioner is notified
18 in advance of the transaction or series of
19 transactions.
20 (c) A special purpose financial captive insurance company
21 shall notify the commissioner in advance of any change in the

1 legal ownership of any security issued by the special purpose
2 financial captive insurance company.

3 **§431:19-F Formation.** (a) A special purpose financial
4 captive insurance company may be incorporated as a stock
5 corporation, limited liability company, mutual association,
6 partnership, or other form of organization approved by the
7 commissioner.

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

15 **§431:19-G Minimum capital and surplus.** A special purpose
16 financial captive insurance company shall not be issued a
17 license unless it possesses and thereafter maintains unimpaired
18 capital and surplus of not less than \$250,000 in the form of
19 cash or other assets approved by the commissioner.

20 **§431:19-H Issuance of securities.** (a) A special purpose
21 financial captive insurance company may issue securities, as



1 defined in section 485A-102, subject to and in accordance with
2 its approved plan of operation and its organizational documents.

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

7 (c) A special purpose financial captive insurance company
8 may:

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

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

20 (d) Securities issued by a special purpose financial
21 captive insurance company pursuant to an insurance
22 securitization shall not be considered to be insurance or



1 reinsurance contracts. An investor in these securities or a
2 holder of these securities, by sole means of this investment or
3 holding, shall not be considered to be transacting the business
4 of insurance in this State. The underwriter's placement or
5 selling agents and their partners, directors, officers, members,
6 managers, employees, agents, representatives, and advisors
7 involved in an insurance securitization pursuant to this part
8 shall not be considered to be insurance producers or brokers or
9 conducting business as an insurance or reinsurance company or
10 agency, brokerage, intermediary, advisory, or consulting
11 business only by virtue of their activities in conjunction with
12 the insurance securitization.

13 **§431:19-I Authorized contracts and agreements.** (a) A
14 special purpose financial captive insurance company shall insure
15 only the risks of a counterparty and shall not issue a contract
16 for assumption of risk or indemnification of loss other than a
17 special purpose financial captive insurance company contract;
18 provided that the special purpose financial captive insurance
19 company may cede risks assumed through a special purpose
20 financial captive insurance company to third party reinsurers
21 through the purchase of reinsurance or retrocession protection
22 on terms approved by the commissioner.



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

- 12 (1) Entering into special purpose financial captive
13 insurance company contracts;
- 14 (2) Issuing of special purpose financial captive insurance
15 company securities;
- 16 (3) Complying with the terms of the special purpose
17 financial captive insurance company contracts or
18 securities;
- 19 (4) Entering into trust, tax, administration,
20 reimbursement, or fiscal agent transactions; or
- 21 (5) Complying with trust indenture, reinsurance or
22 retrocession and other contracts, agreements, and



1 activities necessary or incidental to effectuate an
2 insurance securitization in compliance with the
3 special purpose financial captive insurance company's
4 plan of operation approved by the commissioner or as
5 authorized by this part.

6 (c) A special purpose financial captive insurance company
7 may enter into swap agreements, or other forms of asset
8 management agreements, including guaranteed investment
9 contracts, or other transactions that have the objective of
10 leveling timing differences in funding of up-front or ongoing
11 transaction expenses or managing asset, credit, or interest rate
12 risk of the investments in the trust to ensure that the
13 investments are sufficient to assure payment or repayment of the
14 securities, and related interest or principal payments issued
15 pursuant to a special purpose financial captive insurance
16 company insurance securitization transaction or the obligations
17 of a special purpose financial captive insurance company under a
18 special purpose financial captive insurance company contract.

19 (d) A special purpose financial captive insurance company
20 shall immediately notify the commissioner of any threatened or
21 pending action by a counterparty or any other person to
22 foreclose or otherwise take possession of or control over or



1 encumber the collateral provided by the special purpose
2 financial captive insurance company and part of the insurance
3 securitization.

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

- 7 (1) Issue or otherwise administer primary insurance
8 contracts;
- 9 (2) Enter into a special purpose financial captive
10 insurance company contract with a counterparty that is
11 not licensed or otherwise authorized to transact the
12 business of insurance or reinsurance in at least its
13 state or country of domicile;
- 14 (3) Enter into a special purpose financial captive
15 insurance contract that contains any provision for
16 payment by the special purpose financial captive
17 insurance company in discharge of its obligations
18 under the contract to any person other than the
19 counterparty or receiver;
- 20 (4) Have any direct obligation to the policyholders or
21 reinsured of the counterparty; or



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

20 **§431:19-J Disposition of assets; investments.** (a) The
21 assets of a special purpose financial captive insurance company
22 shall be preserved and administered by or on behalf of the



1 special purpose financial captive insurance company to satisfy
2 the liabilities and obligations of the special purpose financial
3 captive insurance company, the insurance securitization, and
4 other related contracts and agreements.

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

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

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

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



1 provided further that the commissioner may prohibit or limit any
2 investment that threatens the solvency or liquidity of the
3 special purpose financial captive insurance company unless the
4 investment is otherwise approved in its plan of operation or in
5 an order issued to the special purpose financial captive
6 insurance company pursuant to section 431:19-B(c).

7 **§431:19-K Annual reporting; books and records.** (a) For
8 purposes of section 431:19-107(a), the commissioner may require
9 any appropriate or necessary modification or supplemental or
10 additional information to be filed with the required financial
11 statements.

12 (b) Unless otherwise approved in advance by the
13 commissioner, a special purpose financial captive insurance
14 company shall maintain its books, records, documents, accounts,
15 vouchers, and agreements in this State. A special purpose
16 financial captive insurance company shall make its books,
17 records, documents, accounts, vouchers, and agreements available
18 for inspection by the commissioner at any time. A special
19 purpose financial captive insurance company shall keep its books
20 and records in a manner that its financial condition, affairs,
21 and operations can be readily ascertained and so that the



1 commissioner may readily verify its financial statements and
2 determine its compliance with this part.

3 (c) Unless otherwise approved in advance by the
4 commissioner, all original books, records, documents, accounts,
5 vouchers, and agreements shall be preserved and kept available
6 in this State for the purpose of examination and inspection and
7 until a time as the commissioner approves the destruction or
8 other disposition of the books, records, documents, accounts,
9 vouchers, and agreements. If the commissioner approves the
10 keeping of the items listed in this subsection outside this
11 State, then the special purpose financial captive insurance
12 company shall maintain in this State a complete and true copy of
13 each original. Books, records, documents, accounts, vouchers,
14 and agreements may be photographed, reproduced on film, or
15 stored and reproduced electronically.

16 **§431:19-L Suspension and revocation of certificate of**
17 **authority.** (a) The commissioner shall notify a special purpose
18 financial captive insurance company not less than thirty days
19 before suspending or revoking its certificate of authority
20 pursuant to section 431:19-109, which notice shall state the
21 basis for the suspension or revocation. The special purpose



1 financial captive insurance company shall be afforded the
2 opportunity for a hearing pursuant to chapter 91.

3 (b) Notwithstanding subsection (a) and section 91-9.5, the
4 commissioner may cause the immediate suspension or restriction
5 of the special purpose financial captive insurance company's
6 certificate of authority, subject to timely subsequent notice
7 and opportunity for a hearing, upon the commissioner's
8 determination that the failure to take an action may result in
9 the material deterioration of the financial condition or
10 soundness of the special purpose financial captive insurance
11 company, and that for the protection of the public from the
12 possible consequences of practices, the special purpose
13 financial captive insurance company's certificate of authority
14 should be immediately suspended or restricted.

15 The commissioner may order the summary suspension of the
16 certificate of authority for a period not to exceed the later of
17 thirty days or, if a hearing is requested by the special purpose
18 financial captive insurance company pursuant to chapter 91, the
19 conclusion of the hearing. Any attempt by the special purpose
20 financial captive insurance company to continue its operations
21 while its certificate of authority has been summarily suspended
22 shall be sufficient to warrant a permanent revocation of the



1 certificate of authority and shall subject the special purpose
2 financial captive insurance company to all penalties prescribed
3 by this article, or any rule or order issued by the
4 commissioner.

5 (c) For purposes of this section, any reference to section
6 431:19-104 in section 431:19-109(a)(2) shall be construed to
7 also reference section 431:19-G.

8 **§431:19-M Supervision, rehabilitation, liquidation.** (a)

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

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

17 (c) Amounts recoverable by the receiver of a special
18 purpose financial captive insurance company under a special
19 purpose financial captive insurance company contract shall not
20 be reduced or diminished as a result of the entry of an order of
21 conservation, rehabilitation, or liquidation with respect to a
22 counterparty, notwithstanding any provision in the contracts or



1 other documentations governing the special purpose financial
2 captive insurance company securitization.

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

5 (1) An application or petition for a temporary restraining
6 order or injunction issued pursuant to article 15 with
7 respect to a counterparty does not prohibit the
8 transaction of business by a special purpose financial
9 captive insurance company, including any payment by a
10 special purpose financial captive insurance company
11 made with respect to a special purpose financial
12 captive insurance company security, or any action or
13 proceeding against a special purpose financial captive
14 insurance company or its assets;

15 (2) The commencement of a summary proceeding with respect
16 to a special purpose financial captive insurance
17 company and any order issued by the court in the
18 summary proceeding, unless otherwise specifically
19 addressed in the summary proceeding or order issued by
20 the court, shall not prohibit payments by a special
21 purpose financial captive insurance company and shall
22 not prohibit the special purpose financial captive



1 insurance company from taking any action required to
2 make payments; provided that payments are made:

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

6 (B) Consistent with the special purpose financial
7 captive insurance company's plan of operation and
8 any order issued to the special purpose financial
9 captive insurance company pursuant to section
10 431:19-D(b), as either is amended from time to
11 time;

12 (3) A receiver of a counterparty may not void a
13 nonfraudulent transfer by a counterparty to a special
14 purpose financial captive insurance company of money
15 or other property made pursuant to a special purpose
16 financial captive insurance company contract; and

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

21 (A) Made to a counterparty pursuant to a special
22 purpose financial captive insurance company



1 contract or made to or for the benefit of any
2 holder of a special purpose financial captive
3 insurance company security with respect to the
4 special purpose financial captive insurance
5 company security; and

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

12 (e) With the exception of the fulfillment of the
13 obligations under a special purpose financial captive insurance
14 contract and notwithstanding any other provision of this part or
15 other laws of this State, the assets of a special purpose
16 financial captive insurance company, including assets held in
17 trust, on a funds-withheld basis, or in any other arrangement to
18 secure the special purpose financial captive insurance company's
19 obligations under a special purpose financial captive insurance
20 company contract, shall not be consolidated with or included in
21 the estate of a counterparty in any delinquency proceeding
22 against the counterparty pursuant to this part for any purpose



1 including, without limitation, distribution to creditors of the
2 counterparty.

3 **§431:19-N Existing licenses.** Except as otherwise
4 determined by the commissioner, a captive insurance company,
5 that has been issued a certificate of authority by the
6 commissioner pursuant to section 431:19-102 as of July 1, 2008,
7 and is engaged in or will be engaged in an insurance
8 securitization, need not obtain a certificate of authority
9 pursuant to section 431:19-D, but shall otherwise be subject to
10 this part as a special purpose financial captive insurance
11 company; provided that the commissioner may require the captive
12 insurance company to take any action that the commissioner
13 determines is reasonably necessary to bring the captive
14 insurance company into compliance with this part; provided
15 further that the commissioner may issue an order described in
16 section 431:19-D(b) with respect to the captive insurance
17 company.

18 **PART III. SPONSORED CAPTIVE INSURANCE COMPANIES**

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



1 provisions of this part shall apply to sponsored captive
2 insurance companies.

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

8 **§431:19-P Supplemental application materials.** In addition
9 to the information required in section 431:19-102(c) and (d),
10 each sponsored captive insurance company applicant that
11 segregates the risks of its participants through one or more
12 protected cells shall file with the commissioner the following:

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

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

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



1 **§431:19-Q Protected cells.** A sponsored captive insurance
2 company formed and licensed under this article may establish and
3 maintain one or more protected cells to insure risks of one or
4 more participants, subject to the following:

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

10 (2) Each protected cell shall be accounted for separately
11 on the books and records of the sponsored captive
12 insurance company to reflect the financial condition
13 and results of operations of the protected cell, net
14 income or loss, dividends or other distributions to
15 participants, and other factors as may be provided in
16 the participant contract or required by the
17 commissioner;

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



- 1 (4) No sale, exchange, or other transfer of assets may be
2 made by a sponsored captive insurance company between
3 or among any of its protected cells without the
4 consent of the protected cells;
- 5 (5) No sale, exchange, transfer of assets, dividend, or
6 distribution may be made from a protected cell to a
7 sponsor or participant without the commissioner's
8 approval, and in no event shall the approval be given
9 if the sale, exchange, transfer dividend, or
10 distribution would result in insolvency or impairment
11 with respect to a protected cell;
- 12 (6) Each sponsored captive insurance company shall
13 annually file with the commissioner, financial reports
14 as the commissioner shall require, that shall include,
15 without limitation, accounting statements detailing
16 the financial experience of each protected cell;
- 17 (7) Each sponsored captive insurance company shall notify
18 the commissioner in writing within ten business days
19 of any protected cell that is insolvent or otherwise
20 unable to meet its claim or expense obligations; and
- 21 (8) No participant contract shall take effect without the
22 commissioner's prior written approval, and the



1 addition of each new protected cell and withdrawal of
2 any participant or termination of any existing
3 protected cell shall constitute a change in business
4 plan requiring the commissioner's prior written
5 approval.

6 **§431:19-R Qualification of sponsors.** A sponsor of a
7 sponsored captive insurance company shall be an insurer licensed
8 under laws of any state, a reinsurer authorized or approved
9 under the laws of any state, a captive insurance company formed
10 or licensed under this article, or any other person, company, or
11 organization approved by the commissioner in the exercise of the
12 commissioner's discretion, after finding that the approval of
13 that person, company, or organization as a sponsor is not
14 inconsistent with the purposes of this article. A risk
15 retention group shall not be either a sponsor or a participant
16 of a sponsored captive insurance company.

17 **§431:19-S Participants in sponsored captive insurance**
18 **companies.** (a) Associations, corporations, limited liability
19 companies, partnerships, trusts, and other business entities may
20 be participants in any sponsored captive insurance company
21 formed or licensed under this chapter.



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

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

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

8 **§431:19-T Investments by sponsored captive insurance**
9 **companies.** Notwithstanding section 431:19-Q, the assets of two
10 or more protected cells may be combined for purposes of
11 investments, and the combination shall not be construed as
12 defeating the segregation of the assets for accounting or other
13 purposes. Sponsored captive insurance companies shall comply
14 with the investment requirements under section 431:19-110.

15 **§431:19-U Delinquency of sponsored captive insurance**
16 **companies.** In the case of a sponsored captive insurance
17 company, article 15 shall apply; provided that:

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



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

4 §431:19-V Applicable laws. A sponsored captive insurance
5 company shall be subject to this part and to part . If there
6 is any conflict between this part and part , this part shall
7 control.

8 §431:19-W Existing licenses. Except as otherwise
9 determined by the commissioner, a captive insurance company that
10 has been issued a certificate of authority by the commissioner
11 pursuant to section 431:19-102 as of July 1, 2008, and is
12 licensed as a Class 4 captive shall not be required to re-apply
13 for a certificate of authority under this part, but shall
14 otherwise be subject to this part as a sponsored captive
15 insurance company; provided that the commissioner may by order
16 require the captive insurance company to take any action that
17 the commissioner determines is reasonably necessary to bring the
18 captive insurance company into compliance with this part."

19 SECTION 2. Chapter 431, article 19, Hawaii Revised
20 Statutes, is amended by designating sections 431:19-101 to
21 431:19-116 as part I, to read:

22 "PART I. GENERAL PROVISIONS"



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

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

5 "Participant" means an entity that meets the requirements
6 of section 431:19-S, and any affiliates thereof that are insured
7 by a sponsored captive insurance company where the losses of the
8 participant may be limited through a participant contract to the
9 participant's pro rata share of the assets of one or more
10 protected cells identified in the participant contract.

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

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



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

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

17 2. By repealing the definitions of "leased capital
18 facility," "participant," "participant contract," "protected
19 cell," and "sponsor."

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



1 ~~"Participant" means any entity, partners, or joint venture~~
2 ~~partners, or members within the same corporate family of the~~
3 ~~entity that are insured by a leased capital facility, where the~~
4 ~~losses of the participant may be limited through a participant~~
5 ~~contract to the assets of a protected cell. A sponsor may be a~~
6 ~~participant."~~

7 ~~"Participant contract" means a contract by which a leased~~
8 ~~capital facility insures the risks of a participant and, if the~~
9 ~~risks are segregated through one or more protected cells, limits~~
10 ~~the losses of the participant to the assets of a protected~~
11 ~~cell."~~

12 ~~"Protected cell" means a separate account established and~~
13 ~~maintained by a leased capital facility for one participant."~~

14 ~~"Sponsor" means any entity that is approved by the~~
15 ~~commissioner to provide all or part of the capital and surplus~~
16 ~~required by applicable law and to organize and operate a leased~~
17 ~~capital facility."]~~

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

20 "**§431:19-101.3 Classes of captive insurance.** Each captive
21 insurance company formed under this article shall be designated



1 and licensed as one of the following classes of captive
2 insurance companies:

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

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

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

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

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

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

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

1 (1) The commissioner shall take into account the nature
2 and volume of business transacted by each captive
3 insurance company, and any other factors deemed
4 appropriate by the commissioner;

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

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

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

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

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

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

16 (E) Class 5: An amount as determined by the
17 commissioner on a case by case basis."

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

20 "(c) [~~All examination reports conducted by the~~
21 ~~commissioner, or a designated agent of the commissioner, of any~~
22 ~~pure captive insurance company shall remain confidential unless~~



1 ~~the commissioner determines that the pure captive insurance~~
2 ~~company is in an adverse financial condition and the~~
3 ~~commissioner reasonably believes that the interest of the public~~
4 ~~necessitates the opening of the information contained in the~~
5 ~~examination report for public inspection.] All examination
6 reports, preliminary examination reports or results, working
7 papers, recorded information, documents, and copies thereof
8 produced by, obtained by, or disclosed to the commissioner or
9 any person in the course of an examination made under this
10 section are confidential and are not subject to subpoena and may
11 not be made public by the commissioner or an employee or agent
12 of the commissioner without the written consent of the company,
13 except to the extent provided in this subsection. Nothing in
14 this subsection shall prevent the commissioner from using
15 information in furtherance of the commissioner's regulatory
16 authority under this title. The commissioner may grant access
17 to the information to public officers having jurisdiction over
18 the regulation of insurance in any other state or country, or to
19 law enforcement officers of this State or any other state or
20 agency of the federal government at any time, so long as the
21 officers receiving the information agree in writing to hold it
22 in a manner consistent with this section."~~



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

3 [~~§431:19-106.3~~] ~~Leased capital facilities.~~ (a) ~~One or~~
4 ~~more sponsors may form a leased capital facility under this~~
5 ~~article. A leased capital facility shall only insure the risks~~
6 ~~of its participants. The risks of the participants may be~~
7 ~~insured through participant contracts that segregate each~~
8 ~~participant's or related participants' liabilities through one~~
9 ~~or more protected cells.~~

10 (b) ~~In addition to the information required by section~~
11 ~~431:19-102, each application for a leased capital facility filed~~
12 ~~with the commissioner shall provide the following:~~

13 (1) ~~A business plan that sets forth in sufficient detail:~~

14 (A) ~~The proposed organizational and operational~~
15 ~~structure of the leased capital facility;~~

16 (B) ~~If the risks of the participants are segregated~~
17 ~~through one or more protected cells, the~~
18 ~~mechanisms by which the assets and liabilities of~~
19 ~~each protected cell will be segregated from those~~
20 ~~of other protected cells in the leased capital~~
21 ~~facility; and~~



1 ~~(C) A fair and equitable plan for allocating direct~~
2 ~~and indirect expenses to each participant; and~~

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

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

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

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

18 ~~(f) No participant contract shall take effect without the~~
19 ~~commissioner's prior written approval. The following shall~~
20 ~~constitute a change in the leased capital facility's business~~
21 ~~plan and shall require the commissioner's prior written~~
22 ~~approval.~~



- 1 ~~(1) The addition of each new protected cell;~~
- 2 ~~(2) The addition of a new participant;~~
- 3 ~~(3) The withdrawal of any protected cell; or~~
- 4 ~~(4) The withdrawal of a participant from a protected cell.~~
- 5 ~~(g) Unless otherwise approved in writing by the~~
- 6 ~~commissioner and all of the participants within the protected~~
- 7 ~~cell, the assets of a protected cell, including any collateral~~
- 8 ~~or other security with respect to the risks insured in that~~
- 9 ~~cell, shall only be used for the payment of expenses, claims,~~
- 10 ~~and liabilities attributable to the risks insured within that~~
- 11 ~~protected cell and not for any expenses, claims, or liabilities~~
- 12 ~~attributable to any other protected cell. The participants~~
- 13 ~~within the protected cell shall not be liable for any expenses~~
- 14 ~~or claims attributable to any other protected cell.~~
- 15 ~~(h) Unless otherwise deemed necessary by the commissioner,~~
- 16 ~~the general assets of the leased capital facility may not be~~
- 17 ~~used to pay the insurance claims or insurance liabilities of a~~
- 18 ~~protected cell. General assets of the leased capital facility~~
- 19 ~~for purposes of this section shall include the capital and~~
- 20 ~~surplus contributed by the sponsors to the leased capital~~
- 21 ~~facility, but not any capital, surplus, or other assets~~



1 ~~contributed by such sponsors as a participant in a protected~~
2 ~~cell of the company.~~

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

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

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

20 ~~(l) No sale, exchange, assignment, or other transfer of~~
21 ~~assets, liabilities, dividends, or distributions may be made~~
22 ~~from a protected cell to a sponsor or participant without the~~



1 ~~commissioner's approval, and in no event shall the approval be~~
2 ~~given if the transaction would result in the insolvency or~~
3 ~~financial impairment with respect to a protected cell.~~

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

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

13 ~~(o) All contracts or other documentation of insurance or~~
14 ~~reinsurance issued by the leased capital facility with respect~~
15 ~~to a protected cell, shall clearly disclose that the assets,~~
16 ~~collateral, reinsurance, or other security, as the case may be,~~
17 ~~of that protected cell, and only the assets, collateral,~~
18 ~~reinsurance or other security, are available to pay the~~
19 ~~insurance obligations of that protected cell. Notwithstanding~~
20 ~~the foregoing, and subject to article 19 and any other~~
21 ~~applicable law or regulation, the failure to include such~~
22 ~~language in the contracts or other documentation shall not be~~

1 ~~used as the sole basis by creditors, reinsurers, or other~~
2 ~~claimants to circumvent this section.~~

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

7 SECTION 8. In codifying the new sections added by section
8 1 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

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

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

APPROVED this 18 day of JUN, 2008



GOVERNOR OF THE STATE OF HAWAII

