

GOV. MSG. NO. 832

EXECUTIVE CHAMBERS

HONOLULU

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,

LINDA LINGLE

Approved by the Governor

on ______JUN 1 8 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:

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



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§431:19-B Applicable law. (a) A special purpose 1 financial captive insurance company shall be subject to the 2 provisions of this part and to part I. If there is any conflict 3 between this part and part I, this part shall control. 4 (b) A special purpose financial captive insurance company 5 shall be subject to all applicable rules adopted pursuant to 6 section 431:19-114 that are in effect as of the effective date 7 of this part and that are adopted after the effective date of 8 this part. 9 (c) The commissioner, by order, may exempt a special 10 purpose financial captive insurance company from any provision 11 of this article or from any rule adopted pursuant to section 12 431:19-114 if the commissioner determines the provision to be 13 inappropriate, given the nature of risks to be insured by the 14 special purpose financial captive insurance company or its 15 approved plan of operation, and that the public interest is 16

17 being served or protected, and that reasonable expectations of18 the policyholders and consumers will be maintained.

19 (d) Nothing in this part shall be construed to affect20 chapter 485A in any manner.

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

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C.D.1 "Counterparty" means the insurer that cedes risk to a special purpose financial captive insurance company which,

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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.

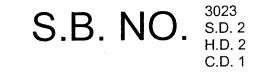
6 "Insolvency" or "insolvent," for the purpose of applying
7 the provisions of article 15 to a special purpose financial
8 captive insurance company, means:

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



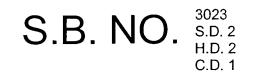


1 the transactions is used to fund the special purpose financial 2 captive insurance company's obligations to the counterparty 3 under the special purpose financial captive insurance company 4 contract in accordance with the terms of the transaction, and by 5 which:

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

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





captive insurance company contract with a 1 2 counterparty. The terms "insurance securitization" and "securitization" do not 3 include the issuance of a letter of credit for the benefit of 4 the commissioner to satisfy all or part of the special purpose 5 financial captive insurance company's capital and surplus 6 requirements under section 431:19-104. 7 "Management" means the board of directors, managing board, 8 or other individual or individuals vested with overall 9 responsibility for the management of the affairs of the special 10 purpose financial captive insurance company, including but not 11 limited to officers or agents elected or appointed to act on 12 behalf of the special purpose financial captive insurance 13 14 company. "Organizational document" means the special purpose 15 financial captive insurance company's articles of incorporation, 16 articles of organization, bylaws, operating agreement, or any 17 other document that establishes the special purpose financial 18

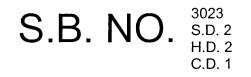
19 captive insurance company as a legal entity or prescribes its20 existence.

21 "Special purpose financial captive insurance company" means 22 a captive insurance company that has received a certificate of 2008-2469 SB3023 CD1 SMA.doc

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authority from the commissioner to operate as a special purpose 1 financial captive insurance company pursuant to this part. 2 "Special purpose financial captive insurance company 3 contract" means a contract between the special purpose financial 4 captive insurance company and the counterparty pursuant to which 5 the special purpose financial captive insurance company agrees 6 to provide insurance or reinsurance protection to the 7 counterparty for risks associated with the counterparty's 8 insurance or reinsurance business. 9 "Special purpose financial captive insurance company 10 security" means a security defined in section 485A-102, and 11 shall also include any other form of debt obligation, equity, 12 surplus certificate, surplus note, funding agreement, 13 derivative, or other financial instrument that the commissioner 14 designates, by rule or order, as a security, and that is issued 15 by a special purpose financial captive insurance company, or a 16 third party, where the proceeds from the security are obtained 17 directly or indirectly by a special purpose financial captive 18 insurance company. 19

20 "Surplus note" means an unsecured subordinated debt
21 obligation possessing characteristics consistent with paragraph
22 3 of the National Association of Insurance Commissioners
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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 5 purpose financial captive insurance company, when permitted by 6 its organizational documents, may apply to the commissioner for 7 a certificate of authority to transact insurance or reinsurance 8 business as authorized in this part. A special purpose 9 financial captive insurance company may only insure or reinsure 10 the risks of its counterparty. Notwithstanding any other 11 provision of this part, a special purpose financial captive 12 insurance company may purchase reinsurance to cede the risks 13 assumed under the special purpose financial captive insurance 14 contracts, subject to the prior approval of the commissioner. 15

(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.



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 i	nsurance 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 f	inancial captive insurance company shall be subject, in	
18	addition	to the requirements of section 431:19-102, to the	

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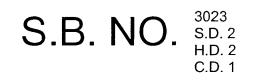
19 following:

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





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1	comm	issioner for approval. The plan of operation
2	shal	l 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



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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		comp	any shall submit an affidavit of or a declaration	
10		by i	ts president, a vice president, the treasurer, or	
11		the	chief financial officer, that includes the	
12		foll	owing statements, to the best of that person's	
13		know	ledge 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	
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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

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legal counsel, in a form acceptable to the



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

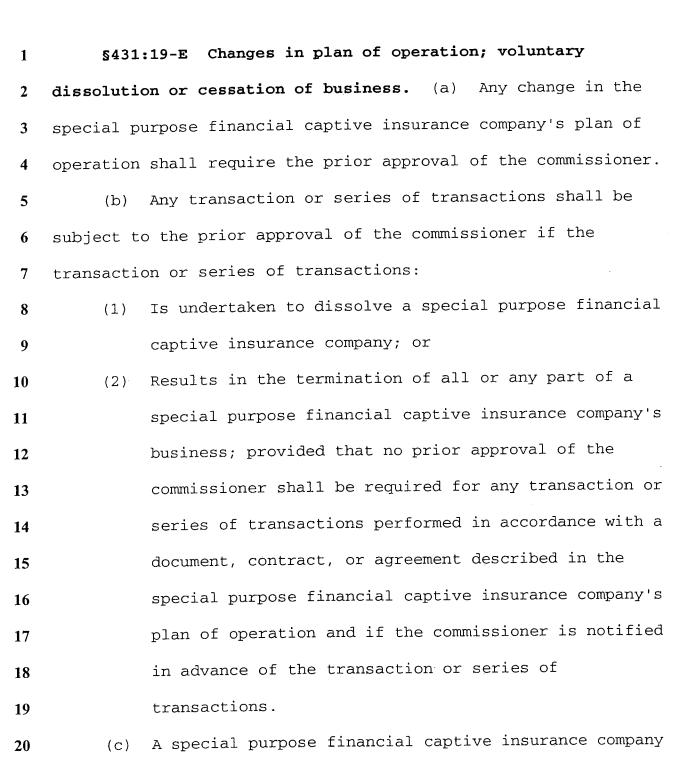




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1	initial i	ssuance, except as provided for in section 431:19-L,
2	and upon	the commissioner's finding that:
3	(1)	The proposed plan of operation provides for a
.4		reasonable and expected successful operation;
5	(2)	The terms of the special purpose 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.

(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).



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21 shall notify the commissioner in advance of any change in the

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

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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



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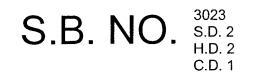
defined in section 485A-102, subject to and in accordance with 1 its approved plan of operation and its organizational documents. 2 A special purpose financial captive insurance company, 3 (b) in connection with the issuance of securities, may enter into 4 and perform all of its obligations under any required contracts 5 to facilitate the issuance of these securities. 6 A special purpose financial captive insurance company 7 (C) 8 may: Subject to the approval of the commissioner, account (1)9 for the proceeds of surplus notes as surplus; and 10 Submit for prior approval of the commissioner, (2)11 periodic written requests for payments of interest on 12 and repayment of principal surplus notes, and any 13 other debt obligations issued by the special purpose 14 financial captive insurance company; provided that the 15 commissioner may, in lieu of the approval of periodic 16 written requests, approve a formula or plan that 17 provides for the payment of interest, principal, or 18 both. 19 Securities issued by a special purpose financial (đ) 20 captive insurance company pursuant to an insurance 21 securitization shall not be considered to be insurance or

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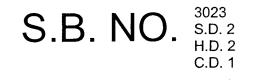
reinsurance contracts. An investor in these securities or a 1 holder of these securities, by sole means of this investment or 2 holding, shall not be considered to be transacting the business 3 of insurance in this State. The underwriter's placement or 4 selling agents and their partners, directors,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

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



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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	incidenta	l to and necessary to fulfill the purposes of the
5	special pu	irpose financial captive insurance company contract,
6	the insura	ance 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	D:
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
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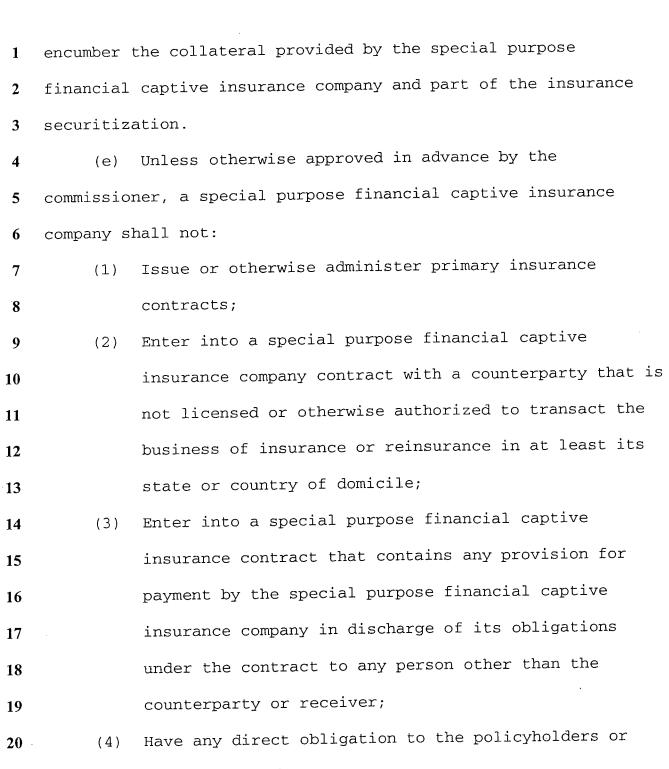
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1 activities necessary or incidental to effectuate an 2 insurance securitization in compliance with the 3 special purpose financial captive insurance company's 4 plan of operation approved by the commissioner or as 5 authorized by this part.

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

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



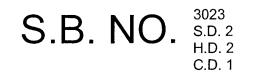


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reinsured of the counterparty; or





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

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

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.

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

(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

20 permitted under its plan of operation or as otherwise 21 approved in advance by the commissioner;



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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).

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5431:19-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

11 statements.

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

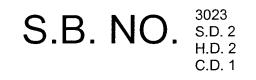


commissioner may readily verify its financial statements and
 determine its compliance with this part.

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

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

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financial captive insurance company shall be afforded the 1 opportunity for a hearing pursuant to chapter 91. 2 Notwithstanding subsection (a) and section 91-9.5, the 3 (b) commissioner may cause the immediate suspension or restriction 4 of the special purpose financial captive insurance company's 5 certificate of authority, subject to timely subsequent notice 6 and opportunity for a hearing, upon the commissioner's 7 determination that the failure to take an action may result in 8 the material deterioration of the financial condition or 9 soundness of the special purpose financial captive insurance 10 company, and that for the protection of the public from the 11 possible consequences of practices, the special purpose 12 financial captive insurance company's certificate of authority 13 should be immediately suspended or restricted. 14

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



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.

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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.

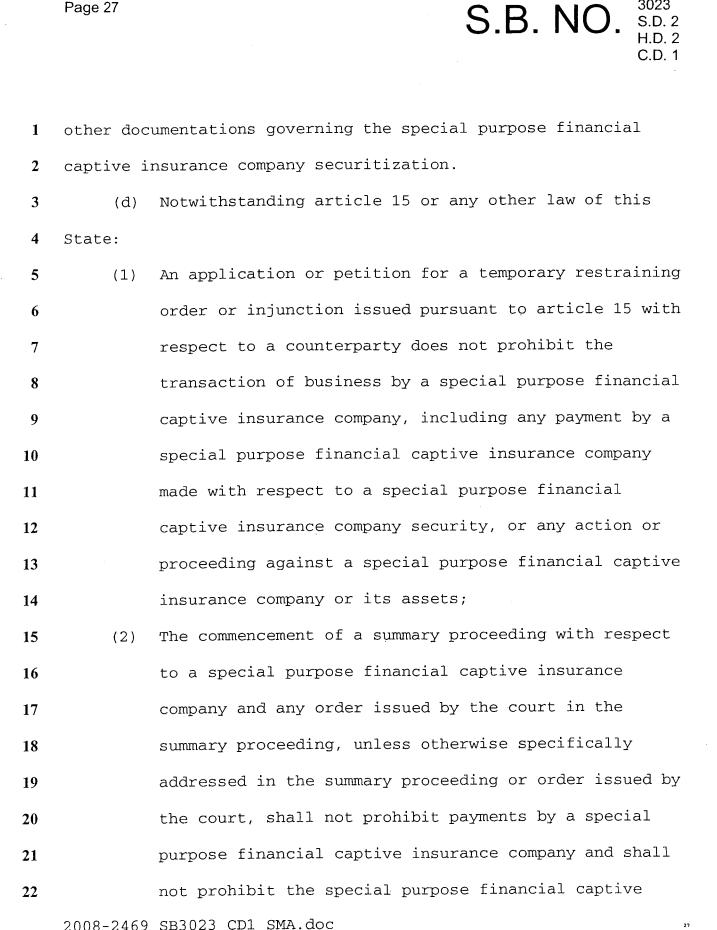
§431:19-M Supervision, rehabilitation, liquidation. (a)
9 Except as otherwise provided in this part, article 15 shall
10 apply in full to a special purpose financial captive insurance
11 company.

(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 2008-2469 SB3023 CD1 SMA.doc



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insurance company from taking any action required to 1 make payments; provided that payments are made: 2 Pursuant to a special purpose financial captive (A) 3 insurance company security or special purpose 4 financial captive insurance company contract; and 5 Consistent with the special purpose financial (B) 6 captive insurance company's plan of operation and 7 any order issued to the special purpose financial 8 captive insurance company pursuant to section 9 431:19-D(b), as either is amended from time to 10 time; 11 A receiver of a counterparty may not void a 12 (3)nonfraudulent transfer by a counterparty to a special 13 purpose financial captive insurance company of money 14 or other property made pursuant to a special purpose 15 financial captive insurance company contract; and 16 A receiver of a special purpose financial captive (4)17 insurance company may not void a nonfraudulent 18 transfer by the special purpose financial captive 19 insurance company of money or other property: 20 Made to a counterparty pursuant to a special (A) 21

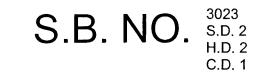
purpose financial captive insurance company

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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

(e) With the exception of the fulfillment of theobligations under a special purpose financial captive insurance

amended from time to time.

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





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

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

18

PART III. SPONSORED CAPTIVE INSURANCE COMPANIES

30

19 \$431:19-0 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

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provisions of this part shall apply to sponsored captive
 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 manager7 managed limited liability company.

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§431:19-P Supplemental application materials. In addition 8 to the information required in section 431:19-102(c) and (d), 9 each sponsored captive insurance company applicant that 10 segregates the risks of its participants through one or more 11 protected cells shall file with the commissioner the following: 12 (1) All contracts or draft contracts between the sponsored 13 captive insurance company and its participants; 14 A description of the means by which the assets, 15 (2) liabilities, income, and expenses of each protected 16

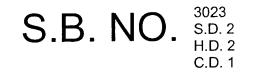
18 cells in the sponsored captive insurance company, and
19 reported to the commissioner; and

cell shall be segregated from those of other protected

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



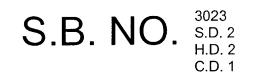


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1	§431	:19-Q Protected cells. A sponsored captive insurance		
2	company f	ormed and licensed under this article may establish and		
3	maintain	one or more protected cells to insure risks of one or		
4	4 more participants, subject to the following: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





33

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	. 1	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



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

17 \$431:19-\$ 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.



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

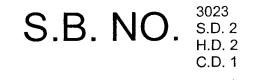
3 (c) A participant need not be a shareholder or member of
4 the sponsored captive insurance company or any affiliate
5 thereof.

6 (d) A participant shall insure only its own risks through7 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



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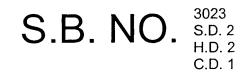
(2) Its capital and surplus shall at all times be 1 available to pay any expenses of or claims against the 2 sponsored captive insurance company. 3 **§431:19-V** Applicable laws. A sponsored captive insurance 4 company shall be subject to this part and to part . If there 5 is any conflict between this part and part , this part shall 6 control. 7 §431:19-W Existing licenses. Except as otherwise 8 determined by the commissioner, a captive insurance company that 9 has been issued a certificate of authority by the commissioner 10 pursuant to section 431:19-102 as of July 1, 2008, and is 11 licensed as a Class 4 captive shall not be required to re-apply 12 for a certificate of authority under this part, but shall 13 otherwise be subject to this part as a sponsored captive 14 insurance company; provided that the commissioner may by order 15 require the captive insurance company to take any action that 16 the commissioner determines is reasonably necessary to bring the 17 captive insurance company into compliance with this part." 18 SECTION 2. Chapter 431, article 19, Hawaii Revised 19 Statutes, is amended by designating sections 431:19-101 to 20 431:19-116 as part I, to read: 21

22

"PART I. GENERAL PROVISIONS"



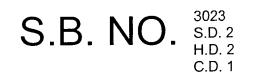
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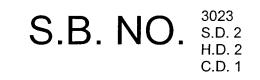
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SECTION 3. Section 431:19-101, Hawaii Revised Statutes, is 1 amended as follows: 2 1. By adding five new definitions to be appropriately 3 inserted and to read: 4 ""Participant" means an entity that meets the requirements 5 of section 431:19-S, and any affiliates thereof that are insured 6 by a sponsored captive insurance company where the losses of the 7 participant may be limited through a participant contract to the 8 participant's pro rata share of the assets of one or more 9 protected cells identified in the participant contract. 10 "Participant contract" means a contract by which a 11 sponsored captive insurance company insures the risks of a 12 participant and may also limit the losses of each participant to 13 its pro rata share of the assets of one or more protected cells 14 identified in such participant contract. 15 "Protected cell" means a separate account established by a 16 sponsored captive insurance company formed or licensed under 17 this part in which assets are maintained for one or more 18 participants in accordance with the terms of one or more 19 participant contracts to fund the liability of the sponsored 20 captive insurance company assumed on behalf of the participants 21 as set forth in the participant contracts. 22





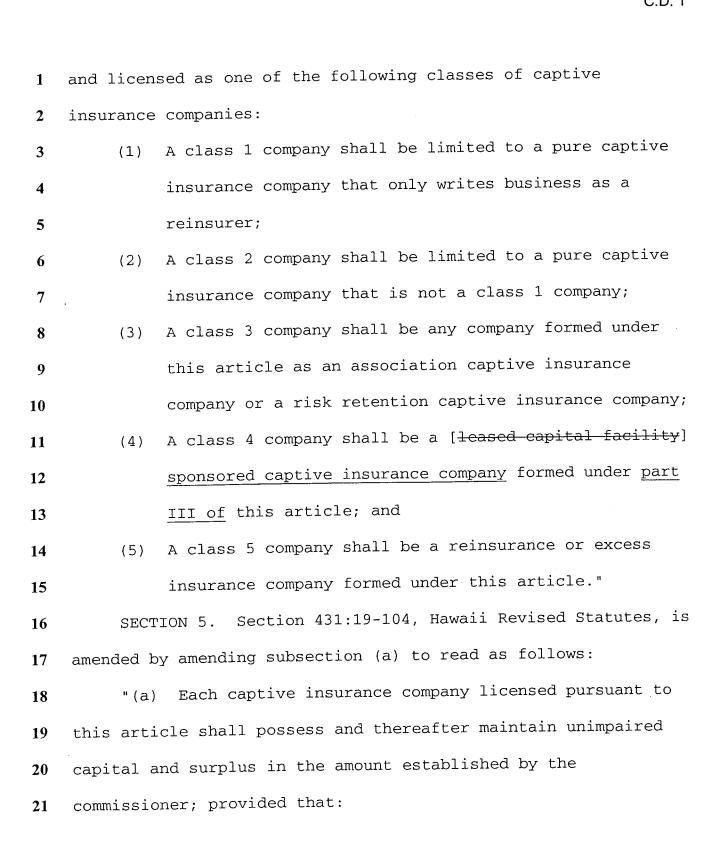
1	"Sponsor" means any entity that meets the requirements of
2	section 431:19-R and is approved by the commissioner to provide
3	all or part of the minimum required capital and surplus of a
4	sponsored captive insurance company and to organize and operate
5	a sponsored captive insurance company.
6	"Sponsored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



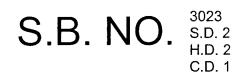
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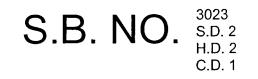
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1	(1)	The commissioner shall take into account the nature
2		and volume of business transacted by each captive
3		insurance company, and any other factors deemed
4		appropriate by the commissioner;
5	(2)	Class 3 captive insurance companies shall be 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;] <u>\$500,000;</u> and
16		(E) Class 5: An amount as determined by the
17		commissioner on a case by case basis."
18	SECT	ION 6. Section 431:19-108, Hawaii Revised Statutes, is
19	amended by	y amending subsection (c) to read as follows:
20	"(C)	[All-examination reports conducted by the
21	commission	ner, or a designated agent of the commissioner, of any
22	pure capt :	ive-insurance-company shall remain confidential unless
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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."

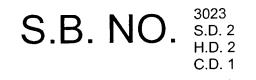


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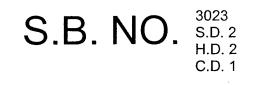
1	SECTION 7. Section 431:19-106.3, Hawaii Revised Statutes,
2	is repealed.
3	[" [§431:19-106.3] Leased capital facilities. (a) One or
4	more-sponsors-may form a leased capital facility under this
5	article. A leased capital facility shall only insure the risks
6	of-its participants. The risks of the 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

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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	(c) 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:





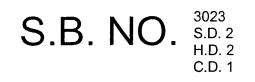
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1	(1) The addition-of-each new-protected cell;
2	(2) The addition of a new participant;
3	(3) The withdrawal of any protected cell; or
4	(4) The withdrawal of a participant from a protected cell.
5	(g) Unless otherwise approved in writing by the
6	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

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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	(1) 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
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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	(0) 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
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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

Ziz Zie

GOVERNOR OF THE STATE OF HAWAII

