H.B. NO. 3101

# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

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

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

**§431:19-A Purpose.** This part provides for the creation of special purpose financial captive insurance companies for the exclusive purpose of facilitating the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. These provisions are intended to allow the organizers of special purpose financial captive insurance companies to achieve greater efficiencies in structuring and executing insurance securitization, to diversify and broaden access to sources of capital, to facilitate access to insurance securitization and capital markets financing technology, and to further the economic development opportunities of the State of Hawaii.

**§431:19-B Applicable law.** (a) A special purpose financial captive insurance company shall be subject to the provisions of this part and to part I. In the event of any conflict between

the provisions of this part and part I, the provisions of this part shall control.

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

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

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

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

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

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

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

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

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

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

(2) A person provides one or more letters of credit or other assets for the benefit of the special purpose

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

captive insurance company as a legal entity or prescribes its existence.

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

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

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

"Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3

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

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

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

captive insurance company pursuant to this part shall not be revoked, suspended, amended, or modified other than as follows:

(1) The special purpose financial captive insurance company consents to the revocation, suspension, amendment, or modification; or

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

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

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

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

effectuate the special purpose financial captive insurance company contract and the insurance securitization;

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

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

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

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

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

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

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

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

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

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

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

(d) The commissioner may issue a certificate of authority to transact insurance and reinsurance business as a special purpose financial captive insurance company in this State, that shall be valid through the next April 1 following the date of

initial issuance and may be renewed annually thereafter, upon the commissioner's finding that:

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

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

(3) The proposed plan of operation is not hazardous to any counterparty; and

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

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

**§431:19-E Changes in plan of operation; voluntary dissolution or cessation of business.** (a) Any change in the

special purpose financial captive insurance company's plan of operation shall require the prior approval of the commissioner.

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

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

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

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

**§431:19-F Formation.** (a) A special purpose financial captive insurance company may be incorporated as a stock corporation, limited liability company, mutual association,

partnership, or other form of organization approved by the commissioner.

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

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

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

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

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

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

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

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

1 **§431:19-I Authorized contracts and agreements.** (a) A
2 special purpose financial captive insurance company shall insure
3 only the risks of a counterparty and shall not issue a contract
4 for assumption of risk or indemnification of loss other than a
5 special purpose financial captive insurance company contract;
6 provided that the special purpose financial captive insurance
7 company may cede risks assumed through a special purpose
8 financial captive insurance company to third party reinsurers
9 through the purchase of reinsurance or retrocession protection on
10 terms approved by the commissioner.
11 (b) A special purpose financial captive insurance company
12 may enter into contracts and agreements with affiliated entities
13 and third parties to conduct other activities related or
14 incidental to and necessary to fulfill the purposes of the
15 special purpose financial captive insurance company contract, the
16 insurance securitization, and this part; provided that the
17 contracts and activities are included in the special purpose
18 financial captive insurance company's plan of operation or are
19 otherwise approved in advance by the commissioner. Those
20 contracts, agreements, and activities may include but are not
21 limited to:
22 (1) Entering into special purpose financial captive
23 insurance company contracts;
24 (2) Issuing of special purpose financial captive insurance
25 company securities;

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

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

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

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

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

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

(1) Issue or otherwise administer primary insurance contracts;

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

(3) Enter into a special purpose financial captive insurance contract that contains any provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the contract to any person other than the counterparty or receiver;

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

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

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

1 captive insurance company, the insurance securitization, and
2 other related contracts and agreements.
3 (b) Unless waived by the commissioner, any security
4 offering memorandum or other document issued to prospective
5 investors regarding the offer and sale of a surplus note or other
6 special purpose financial captive insurance company securities
7 shall include a disclosure that all or part of the proceeds of
8 the insurance securitization will be used to fund the special
9 purpose financial captive insurance company's obligations to the
10 counterparty.
11 (c) A special purpose financial captive insurance company
12 shall not be subject to any restriction on investments; provided
13 that the special purpose financial captive insurance company:
14 (1) Maintains compliance with the strategic investment
15 policy adopted by the special purpose financial captive
16 insurance company; and
17 (2) Shall not make a loan to any person other than as
18 permitted under its plan of operation or as otherwise
19 approved in advance by the commissioner;
20 provided further that the commissioner may prohibit or limit any
21 investment that threatens the solvency or liquidity of the
22 special purpose financial captive insurance company unless the
23 investment is otherwise approved in its plan of operation or in
24 an order issued to the special purpose financial captive
25 insurance company pursuant to section 431:19-B(c).

1 **§431:19-K Annual reporting; books and records.** (a) For
2 purposes of section 431:19-107(a), the commissioner may require
3 any appropriate or necessary modification or supplemental or
4 additional information to be filed with the required financial
5 statements.
6 (b) Unless otherwise approved in advance by the
7 commissioner, a special purpose financial captive insurance
8 company shall maintain its books, records, documents, accounts,
9 vouchers, and agreements in this State. A special purpose
10 financial captive insurance company shall make its books,
11 records, documents, accounts, vouchers, and agreements available
12 for inspection by the commissioner at any time. A special
13 purpose financial captive insurance company shall keep its books
14 and records in a manner such that its financial condition,
15 affairs, and operations can be readily ascertained and so that
16 the commissioner may readily verify its financial statements and
17 determine its compliance with this part.
18 (c) Unless otherwise approved in advance by the
19 commissioner, all original books, records, documents, accounts,
20 vouchers, and agreements shall be preserved and kept available in
21 this State for the purpose of examination and inspection and
22 until such time as the commissioner approves the destruction or
23 other disposition of the books, records, documents, accounts,
24 vouchers, and agreements. If the commissioner approves the
25 keeping of the items listed in this subsection outside this

State, then the special purpose financial captive insurance company shall maintain in this State a complete and true copy of each original. Books, records, documents, accounts, vouchers, and agreements may be photographed, reproduced on film, or stored and reproduced electronically.

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

(b) Notwithstanding subsection (a) and section 91-9.5, the commissioner may cause the immediate suspension or restriction of the special purpose financial captive insurance company's certificate of authority, subject to timely subsequent notice and opportunity for a hearing, upon the commissioner's determination that the failure to take such an action may result in the material deterioration of the financial condition or soundness of the special purpose financial captive insurance company, and that for the protection of the public from the possible consequences of practices, the special purpose

1 financial captive insurance company's certificate of authority
2 should be immediately suspended or restricted.
3 The commissioner may order the summary suspension of the
4 certificate of authority for a period not to exceed the later of
5 thirty days or if a hearing is requested by the special purpose
6 financial captive insurance company pursuant to chapter 91, the
7 conclusion of the hearing. Any attempt by the special purpose
8 financial captive insurance company to continue its operations
9 while its certificate of authority has been summarily suspended
10 shall be sufficient to warrant a permanent revocation of the
11 certificate of authority and shall subject the special purpose
12 financial captive insurance company to all penalties prescribed
13 by this article, or any rule or order issued by the
14 commissioner.
15 (c) For purposes of this section, any reference to section
16 431:19-104 in section 431:19-109(2) shall be construed to also
17 reference section 431:19-F.
18 **§431:19-M Supervision, rehabilitation, liquidation.** (a)
19 Except as otherwise provided in this part, the provisions of
20 article 15 shall apply in full to a special purpose financial
21 captive insurance company.
22 (b) Upon any order of supervision, rehabilitation, or
23 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 the provisions of this part.

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

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

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

(2) The commencement of a summary proceeding with respect to a special purpose financial captive insurance

company and any order issued by the court in the summary proceeding, unless otherwise specifically addressed in the summary proceeding or order issued by the court, shall not prohibit payments by a special purpose financial captive insurance company and shall not prohibit the special purpose financial captive insurance company from taking any action required to make such payments, provided such payments are made:

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

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

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

(4) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer

by the special purpose financial captive insurance company of money or other property:

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

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

(e) With the exception of the fulfillment of the obligations under a special purpose financial captive insurance contract and notwithstanding another provision of this part or other laws of this State, the assets of a special purpose financial captive insurance company, including assets held in trust, on a funds-withheld basis, or in any other arrangement to secure the special purpose financial captive insurance company's obligations under a special purpose financial captive insurance company contract, shall not be consolidated with or included in the estate of a counterparty in any delinquency proceeding

against the counterparty pursuant to the provisions of this part for any purpose including, without limitation, distribution to creditors of the counterparty.

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

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

"**PART I. GENERAL PROVISIONS**"

SECTION 3. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [~~All examination reports conducted by the commissioner, or a designated agent of the commissioner, of any~~

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

SECTION 4. In codifying the new part added to article 19 of chapter 431, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute the appropriate section numbers for letters used in the designations of and the references to the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2008.

INTRODUCED BY: Calvin K Y Say

BY REQUEST

JAN 22 2008

H.B. NO. 3101

**Report Title:**
Special Purpose Financial Captive Insurance Company

**Description:**
Authorizes the creation and regulation of special purpose financial captive insurance companies (SPFCIC). Establishes confidentiality provisions applicable to captives, including SPFCs.

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# JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To provide for the organization, licensing, operation, and regulation of a special purpose financial captive insurance company ("SPFCIC").

MEANS: Adding a new part to article 19, chapter 431, Hawaii Revised Statutes; designating sections 431:19-101 to 431:19-116 as part I; and amending section 431:19-108(c), Hawaii Revised Statutes.

JUSTIFICATION: This proposed measure will enhance Hawaii's position as one of the world's leading captive insurance jurisdictions by providing the opportunity for captive organizers to pursue the securitization of insurance risks through a Hawaii-licensed captive insurance company. Securitization is a financing process that basically allows a company to obtain current funding from illiquid assets that cannot be readily sold. Large national and international insurance companies utilize SPFCICs to issue securities to capital market investors, and use the proceeds to fund their operations and reserves. The demand for implementing SPFCIC insurance securitization by domestic U.S. life insurers has been very strong over the past few years, and is anticipated to continue for the next several years. Hawaii has the opportunity to attract some of the U.S. demand, as well as potential demand from the emerging Pacific and Asian insurance markets.

Impact on the public: No significant direct impact on the general public is anticipated.

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Impact on the department and other agencies: No significant impact on the department or other agencies is anticipated, except for potential additional resources that may need to be secured by the Captive Insurance Administration Branch to implement and regulate the SPFCICs. There is sufficient funding available in the Captive Insurance Administrative Fund (a special fund); however, an increase in the appropriation level may be necessary.

GENERAL FUND: No impact anticipated.

OTHER FUNDS: No significant dollar impact anticipated on Captive Insurance Administrative Fund (Appropriation Code 317). Revenues may increase by application and license fees (approximately $1,300 for each new SPFCIC. We do not anticipate increase in expenses because initial surveillance and examination requirements will be handled by existing captive insurance administration branch staff and examiners.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2008