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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. The legislature finds that section 237-29.7,  
2 Hawaii Revised Statutes, exempts "insurance companies" from  
3 paying general excise tax on gross premiums. However, the term  
4 "insurance companies" is not defined in this section or in  
5 chapter 431, Hawaii Revised Statutes, which governs the  
6 regulation of insurance. Instead, chapter 431 applies to  
7 "insurers" and provides that "insurer" means "every person  
8 engaged in the business of making contracts of insurance and  
9 includes reciprocal or interinsurance exchanges".

10           Reciprocal insurers, unlike stock or mutual insurers which  
11 are incorporated entities, are unincorporated associations of  
12 individuals, partnerships, or corporations which are called  
13 "subscribers". These subscribers act and exchange insurance  
14 contracts through an attorney-in-fact common to all such  
15 subscribers.

16           Section 431:3-108, Hawaii Revised Statutes, defines a  
17 reciprocal insurer as "an unincorporated aggregation of  
18 subscribers operating individually and collectively through an



1 attorney-in-fact common to all such persons to provide  
2 reciprocal insurance among themselves." As a result, a  
3 reciprocal insurer cannot conduct the business of insurance in  
4 Hawaii without its attorney-in-fact. Since the reciprocal  
5 insurer cannot accomplish anything without its designated  
6 attorney-in-fact, a reciprocal insurer and its attorney-in-fact  
7 are virtually indistinguishable.

8       However, the general excise tax law has been interpreted to  
9 apply the tax to the gross income or gross proceeds earned by a  
10 reciprocal insurer's attorney-in-fact for services rendered on  
11 behalf of a reciprocal insurer. The basis for this  
12 interpretation is that section 237-29.7, Hawaii Revised  
13 Statutes, does not expressly define the reciprocal insurer's  
14 attorney-in-fact as being part of a reciprocal insurer.

15       This interpretation has resulted in double taxation and the  
16 unfair treatment of reciprocal insurers and their attorneys-in-  
17 fact, who unlike their incorporated stock or mutual insurer  
18 counterparts, are not exempt from the general excise tax. This  
19 double taxation, in turn, ultimately affects the premium rates  
20 paid by subscribers who are insureds of the reciprocal insurer.

21       The purpose of this Act is to recognize a reciprocal  
22 insurer and its attorney-in-fact as a single entity that is not



1 subject to double taxation under Hawaii law. Specifically, this  
2 Act:

3 (1) Ensures that a reciprocal insurer and its attorney-in-  
4 fact shall be considered a single entity for tax  
5 purposes; and

6 (2) Clarifies that the general excise tax exemption  
7 applies not to "insurance companies," but to  
8 "insurers" authorized to do business under chapter  
9 431, Hawaii Revised Statutes.

10 SECTION 2. Section 237-29.7, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+]§237-29.7[+] Exemption of [~~insurance companies~~]  
13 insurers. This chapter shall not apply to the gross income or  
14 gross proceeds of [~~insurance companies~~] insurers authorized to  
15 do business under chapter 431; except this exemption shall not  
16 apply to any gross income or gross proceeds received after  
17 December 31, 1991, as rents from investments in real property in  
18 this [~~State~~] state; provided that gross income or gross  
19 proceeds from investments in real property received by  
20 [~~insurance companies~~] insurers after December 31, 1991, under  
21 written contracts entered into before January 1, 1992, that do  
22 not provide for the passing on of taxes or tax increases shall



1 be taxed until the contracts are renegotiated, renewed, or  
2 extended.

3 For purposes of this section, a reciprocal insurer and its  
4 attorney-in-fact shall be considered a single insurer."

5 SECTION 3. Section 431:1-202, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§431:1-202 Insurer defined.** Insurer means every person  
8 engaged in the business of making contracts of insurance and  
9 includes reciprocal insurers or interinsurance exchanges."

10 SECTION 4. Section 431:3-108, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§431:3-108 Reciprocal insurer.** [A] Reciprocal, or  
13 reciprocal insurer means an unincorporated aggregation of  
14 subscribers operating individually and collectively through an  
15 attorney-in-fact common to all such persons to provide  
16 reciprocal insurance among themselves."

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

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

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INTRODUCED BY: W  
JAN 15 2008

**Report Title:**

Reciprocal Insurers; Taxes

**Description:**

Provides that a reciprocal insurer and its attorney-in-fact are considered a single entity for general excise tax purposes.

