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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 reciprocal insurers  
2 are insurers or insurance companies as set forth in section  
3 431:1-202, Hawaii Revised Statutes. Unlike stock or mutual  
4 insurers that are incorporated entities, a reciprocal insurer is  
5 an unincorporated association of individuals, partnerships, or  
6 corporations, which are called "subscribers," who act and  
7 exchange insurance contracts through an attorney-in-fact common  
8 to all subscribers.

9           Accordingly, section 431:3-108, Hawaii Revised Statutes,  
10 defines a reciprocal insurer as "an unincorporated aggregation  
11 of subscribers operating individually and collectively through  
12 an attorney-in-fact common to all such persons to provide  
13 reciprocal insurance among themselves." As a result, a  
14 reciprocal insurer cannot conduct the business of insurance in  
15 Hawaii without its attorney-in-fact. Since the reciprocal  
16 insurer cannot accomplish anything without its designated



1 attorney-in-fact, a reciprocal insurer and its attorney-in-fact  
2 are virtually indistinguishable.

3 All authorized insurers, are subject to the insurance  
4 premium tax, which is imposed upon them in lieu of the general  
5 excise and net income tax on the gross premiums received by such  
6 insurers, pursuant to article 7 of chapter 431, Hawaii Revised  
7 Statutes. For many years, insurance companies have been exempt  
8 from paying general excise tax on gross premiums. This  
9 exemption was enacted by the legislature in Act 141, Session  
10 Laws of Hawaii 1935, and subsequently codified as section  
11 237-23(a)(4), Hawaii Revised Statutes.

12 Act 286, Session Laws of Hawaii 1991, modified the general  
13 excise tax exemption for insurance companies in section  
14 237-29.7, Hawaii Revised Statutes, to specify that while the  
15 gross income or gross proceeds of insurance companies authorized  
16 to do business under chapter 431, Hawaii Revised Statutes, are  
17 exempt from the general excise tax, this exemption does not  
18 apply to gross income or gross proceeds from real property  
19 rentals.

20 While chapter 431, Hawaii Revised Statutes, specifically  
21 defines "insurer" in section 431:1-202, Hawaii Revised Statutes,  
22 there is no definition of "insurance company" or "insurance



1 companies" anywhere in chapter 431, Hawaii Revised Statutes.  
2 While "insurers" and "insurance companies" may refer to the same  
3 thing, "insurers" and not "insurance companies" are authorized  
4 to do business under chapter 431, Hawaii Revised Statutes. The  
5 legislature finds that the ambiguous use of the term "insurance  
6 companies" in section 237-29.7, Hawaii Revised Statutes, should  
7 be corrected to accurately reflect application to "an insurer"  
8 or "insurers" as defined in chapter 431, Hawaii Revised  
9 Statutes.

10 Existing law has been interpreted so that the gross income  
11 or gross proceeds earned by a reciprocal insurer's attorney-in-  
12 fact for services rendered on behalf of a reciprocal insurer are  
13 subject to the general excise tax because the attorney-in-fact  
14 is not expressly defined as being part of a reciprocal insurer  
15 under section 237-29.7, Hawaii Revised Statutes. That  
16 definition has resulted in double taxation and the unfair  
17 treatment of reciprocal insurers and their attorneys-in-fact,  
18 who unlike their stock or mutual insurer counterparts, are not  
19 exempt from the general excise tax, which in turn may ultimately  
20 affect the premium rates paid by subscribers who are insured by  
21 the reciprocal insurer.



1           The purpose of this Act is to recognize that a reciprocal  
2 insurer and its attorney-in-fact shall be considered as a single  
3 entity and shall not be subject to double taxation under Hawaii  
4 law. Specifically, this Act:

- 5           (1) Ensures that when a reciprocal insurer is conducting  
6 the business of insurance in Hawaii through its  
7 attorney-in-fact, the reciprocal insurer and its  
8 attorney-in-fact shall be considered a single entity  
9 that qualifies for the general excise tax exemption  
10 under section 237-29.7, Hawaii Revised Statutes;
- 11           (2) Clarifies that the general excise tax exemption  
12 applies to insurers, and not insurance companies,  
13 authorized to do business under chapter 431, Hawaii  
14 Revised Statutes; and
- 15           (3) Makes other amendments for purposes of clarity and  
16 consistency.

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

19           "**§237-29.7 Exemption of [~~insurance companies~~] insurers.**

20 This chapter shall not apply to the gross income or gross  
21 proceeds of [~~insurance companies~~] insurers authorized to do  
22 business under chapter 431; except this exemption shall not



1 apply to any gross income or gross proceeds received after  
2 December 31, 1991, as rents from investments in real property in  
3 this State; provided that gross income or gross proceeds from  
4 investments in real property received by [~~insurance companies~~]  
5 insurers after December 31, 1991, under written contracts  
6 entered into before January 1, 1992, that do not provide for the  
7 passing on of taxes or tax increases shall not be taxed until  
8 the contracts are renegotiated, renewed, or extended."

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

11 **"§431:1-202 Insurer defined.** Insurer means every person  
12 engaged in the business of making contracts of insurance and  
13 includes reciprocal insurers or interinsurance exchanges."

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

16 **"§431:3-108 Reciprocal or reciprocal insurer.** A  
17 reciprocal or reciprocal insurer means an unincorporated  
18 aggregation of subscribers operating individually and  
19 collectively through an attorney-in-fact common to all such  
20 persons to provide reciprocal insurance among themselves."

21 SECTION 5. Section 431:7-204, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           **"§431:7-204 In lieu provision.** (a) As to insurers, the  
2 taxes and fees imposed by section 431:7-201 to section 431:7-  
3 204, and the fees imposed by this code, when paid shall be in  
4 settlement of and in lieu of all demands for taxes, licenses, or  
5 fees of every character imposed by the laws of this State, the  
6 ordinances or other laws, rules, or regulations of any county of  
7 [~~this~~] the State, except:

- 8           (1) As expressly otherwise provided;
- 9           (2) Taxes on real property;
- 10          (3) Taxes on the purchase, use, or ownership of tangible  
11             personal property; [~~and~~]
- 12          (4) Taxes on gross income, gross proceeds, gross rental,  
13             or gross rental proceeds under chapter 237 or 237D[-];  
14             and
- 15          (5) Each corporate or other attorney-in-fact of a  
16             reciprocal insurer shall be subject to all taxes  
17             imposed upon corporations or others doing business in  
18             the State, other than taxes on income or gross  
19             receipts derived from its principal business as  
20             attorney-in-fact.

21 Nothing in this section shall be deemed to exempt insurers from  
22 liability for withholding taxes payable by their employees and



1 paying the same to the proper collection officers, or from  
2 keeping [~~such~~] records, and making such returns and reports, as  
3 may be required in the case of other persons enjoying tax  
4 exemption.

5 (b) As used in this section, "attorney-in-fact" means the  
6 attorney-in-fact authorized to act for an unincorporated  
7 aggregation of subscribers of a reciprocal insurer as a whole  
8 and not for the benefit of an individual subscriber or group of  
9 subscribers less than the entire membership of the reciprocal  
10 insurer pursuant to section 431:3-108. For the purpose of this  
11 section, a reciprocal insurer and its attorney-in-fact shall be  
12 considered a single entity."

13 SECTION 6. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect on July 1, 2008.



**Report Title:**

Taxation; Insurance Companies; Exemption; General Excise Taxes

**Description:**

Recognizes that a reciprocal insurer and its attorney-in-fact shall be considered as a single entity for tax purposes and not be subject to general excise taxes in order to avoid the effect of double taxation. (SD1)

