

Honolulu, Hawaii
Feb 1, 2008

RE: H.B. No. 2248
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 2248 entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE,"

begs leave to report as follows:

The purpose of this bill is to clarify that a reciprocal insurer and its attorney-in-fact are to be treated as a single entity that qualifies for the general excise tax exemption for insurers.

This bill also clarifies that the general excise tax exemption for insurance companies applies to "insurers," including a reciprocal insurer and its attorney-in-fact, authorized to do business under chapter 431, Hawaii Revised Statutes (HRS).

The Department of Commerce and Consumer Affairs, Medical Insurance Exchange of California, Medical Underwriters of California, and Hawaii Medical Association testified in support of this bill. Tax Foundation of Hawaii submitted comments.

A reciprocal insurer is recognized by the Insurance Code (chapter 431, HRS) as an insurance company or insurer that provides insurance through unincorporated associations of individuals, partnerships, or corporations called "subscribers." The reciprocal insurer is directly owned by its policyholders.



In the case of a stock or mutual insurer, which is required by law to be formed as a corporation, the corporation's officers and employees are responsible for managing and operating the stock or mutual insurer. The reciprocal insurer is an unincorporated association of subscribers that operates through what is called an "attorney-in-fact" common to all of its subscribers. The "attorney-in-fact" is not the same thing as an "attorney-at-law," and should not be confused as such.

Insurers in Hawaii are taxed in lieu of most state taxes because they are subject to the insurance premium tax under section 431:7-204, HRS. Section 237-29.7, HRS, exempts "insurance companies authorized to do business under chapter 431" from paying the general excise tax, as long as the insurance company has paid the insurance premium tax.

The Insurance Division has long recognized a reciprocal insurer and its attorney-in-fact as a single entity for regulatory purposes. However, since the term "insurance company" is not defined in chapter 237, HRS (general excise tax law), or chapter 431, HRS (the Insurance Code), the general excise tax exemption for insurers has been interpreted as inapplicable to a reciprocal insurer and its attorney-in-fact.

As a result, a reciprocal insurer and its attorney-in-fact have been singled out and subjected to the general excise tax. This ultimately affects the premium rates paid by subscribers who are the owners and insureds of the reciprocal insurer.

At the same time, your Committee understands the concerns of the Tax Foundation of Hawaii that the bill, as drafted, may be improperly interpreted to apply the general excise tax exemption to an attorney-in-fact for services that are not related to the reciprocal insurer.

Accordingly, your Committee has amended this bill to address these concerns by:

- (1) Amending the in lieu provision for insurers in section 431:7-204, HRS, to provide that each corporate or other attorney-in-fact of a reciprocal insurer is subject to all taxes imposed upon corporations or others doing business in Hawaii, except for taxes on income or gross receipts derived from its principal business as attorney-in-fact;



- (2) Providing a definition of "attorney-in-fact"; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2248, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2248, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



