

Honolulu, Hawaii

March 20, 2008

RE: S.B. No. 2315
S.D. 2
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 S.B. No. 2315, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE,"

begs leave to report as follows:

The purpose of this bill is to recognize a reciprocal insurer and its attorney-in-fact 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, Hawaii Medical Association, and Medical Insurance Exchange of California testified in support of this bill. The Department of Taxation supported the intent of this measure.

A reciprocal insurer provides insurance through unincorporated associations of individuals, partnerships, or corporations called "subscribers." The reciprocal insurer is directly owned by its policyholders. Under current law, the reciprocal insurer is required to appoint an attorney-in-fact through which the reciprocal insurer operates.



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 under section 431:7-204, HRS. The Insurance Division has recognized a reciprocal insurer and its attorney-in-fact as a single entity for regulatory purposes. However, because Chapter 237, HRS (general excise tax law) does not expressly define the attorney-in-fact as being part of the reciprocal insurer, the general excise tax exemption has been interpreted as inapplicable to the gross income or gross proceeds earned by the attorney-in-fact for services rendered on behalf of the reciprocal insurer.

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

This bill seeks to ensure that a reciprocal insurer and its attorney-in-fact are treated as a single entity that qualifies for the general excise tax exemption.

Your Committee has amended this bill by replacing its entire contents with the provisions of H.B. No. 2248, H.D. 2. As amended, this bill differs from the draft received by your Committee by:

- (1) Excluding language referring to the attorney-in-fact as a "corporate" attorney-in-fact;
- (2) Specifying in the amendments made to the in-lieu provision of the Insurance Code that the tax exemption for a reciprocal insurer's attorney-in-fact under this bill is a general excise tax exemption under Chapter 237, HRS;
- (3) Taking effect on July 1, 2020, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for clarity 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 S.B. No. 2315, S.D. 2, as amended herein, and



recommends that it pass Second Reading in the form attached hereto as S.B. No. 2315, S.D. 2, 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



