

Honolulu, Hawaii

FEB 04 2008

RE: S.B. No. 2315
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and
Affordable Housing, to which was referred S.B. No. 2315 entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE,"

begs leave to report as follows:

The purpose of this measure is to streamline the taxation of
insurers by recognizing that, for general excise tax purposes, a
reciprocal insurer and its attorney-in-fact is a single entity
that is not subject to double taxation under state law.

Specifically, this measure:

- (1) Ensures that a reciprocal insurer and its attorney-in-fact shall be considered as a single entity for general excise tax purposes;
- (2) Clarifies that the general excise tax exemption applies to insurers, and not insurance companies, authorized to do business under chapter 431, Hawaii Revised Statutes; and
- (3) Makes various amendments for purposes of clarity and consistency.

Testimony in support of this measure was submitted by the
Department of Commerce and Consumer Affairs, the Hawaii Medical
Association, the Medical Insurance Exchange of California, and the



Medical Underwriters of California. The Tax Foundation of Hawaii submitted comments.

A reciprocal or reciprocal insurer is recognized under chapter 431, Hawaii Revised Statutes, as an insurance company that provides insurance through unincorporated associations of individuals, partnerships, or corporations called "subscribers," and is directly owned by its policyholders. The reciprocal operates through an attorney-in-fact that is common to all subscribers, and as a result, the reciprocal and the attorney-in-fact are virtually indistinguishable.

Your Committee finds that a misinterpretation in the law exists regarding reciprocal insurers resulting in double taxation of reciprocal insurers and their attorneys-in-fact, who unlike their incorporated stock or mutual insurer counterparts, are not exempt from the general excise tax. The Insurance Division of the Department of Commerce and Consumer Affairs has recognized a reciprocal and its attorney-in-fact as a single entity for regulatory purposes, but since the term "insurance company" is not defined in chapter 237, Hawaii Revised Statutes, relating to general excise taxation, or the Insurance Code under chapter 431, Hawaii Revised Statutes, the law has been interpreted to not apply to a reciprocal and its attorney-in-fact. As a result, the reciprocal and its attorney-in-fact have been singled out and subjected to double taxation, which ultimately affects the premium rates paid by subscribers who are private practice physicians in the State.

The Medical Insurance Exchange of California suggested to your Committee that further amendments to this measure be made to ensure that each attorney-in-fact of a reciprocal will be subject to all taxes imposed upon corporations or others doing business in the State, other than taxes on income or gross proceeds derived from its principal business as attorney-in-fact.

Accordingly, your Committee has amended this measure by:

- (1) Clarifying that one of the purposes of this measure is to ensure that the reciprocal insurer and its attorney-in-fact shall be considered a single entity that qualifies for a general excise tax exemption under section 237-29.7, Hawaii Revised Statutes;

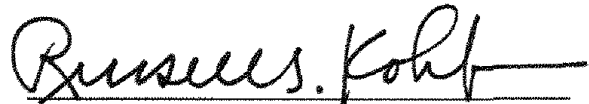


- (2) Adding language to provide an exemption under section 431:7-204, Hawaii Revised Statutes, to ensure that each corporate or other attorney-in-fact of a reciprocal insurer shall be subject to all taxes imposed upon corporations or others doing business in the State, other than taxes on income or gross receipts derived from its principal business as attorney-in-fact;
- (3) Adding a definition for "attorney-in-fact" under section 431:7-204, Hawaii Revised Statutes; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and style.

Your Committee believes that recognizing a reciprocal insurer and its attorney-in-fact as a single entity fulfills the intent of this measure, which is to streamline the taxation of insurers.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2315, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2315, S.D. 1, and be referred to the Committee on Economic Development and Taxation.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,



RUSSELL S. KOKUBUN, Chair



