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TO THE HOUSE COMMITTEE ON FINANCE
TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

LATE

Friday, February 22, 2008
12:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2248, H.D. 1 – RELATING TO INSURANCE.

TO THE HONORABLE MARCUS OSHIRO, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”).

The Department supports this measure.

The purpose of this version of the bill is to amend: (1) the definitions of “insurer”
and “reciprocal insurer” in the Insurance Code, Hawaii Revised Statutes (“HRS”)
chapter 431; and (2) the in-lieu provision in HRS § 431:7-204 to clarify that the attorney-
in-fact of a reciprocal insurer is subject to all taxes, except for taxes on income derived
from its principal business as attorney-in-fact.

In *Director of Taxation v. Medical Underwriters of California*, 115 Haw. 180
(2007), the Hawaii Supreme Court ruled that Medical Underwriters of California (“MUC”)
was not an insurance company exempt from payment of the Hawaii general excise
(“GE”) tax. MUC is the attorney-in-fact of Medical Insurance Exchange of California
(“MIEC”), a reciprocal insurance exchange, and the managing agent for Claremont
Liability Insurance Company (“CLIC”). Based on its understanding that it was an
“insurance company” exempted from the GE tax, MUC did not file GE tax returns and

did not pay GE taxes on funds received in exchange for its services rendered to MIEC and CLIC.

Under current law, the reciprocal insurer is required to appoint an attorney-in-fact through which the reciprocal insurer operates. The reciprocal insurer is entitled to the GE tax exemption. But if its attorney-in-fact is taxed anyway, that contradicts the exemption statute.

The intent of this measure is to ensure that: (1) the reciprocal insurer and its attorney-in-fact are treated as a single entity for tax purposes; and (2) the general excise ("GE") tax exemption applies to "insurers", rather than to "insurance companies".

We thank this Committee for the opportunity to present testimony on this matter and request your favorable consideration.