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## A BILL FOR AN ACT

RELATING TO INSURANCE TAXATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to address the  
2 taxation of insurance commissions. More specifically, this Act:

3           (1) Increases the general excise tax rate on insurance  
4           commissions to four per cent from 0.15 per cent; and

5           (2) Amends the insurance code to authorize the premium for  
6           an insurance policy to include an amount intended to  
7           compensate an insurance producer for part of the  
8           general excise tax imposed on the producer's  
9           commission for the sale of the policy.

10           This Act takes effect on July 1, 2010 and sunsets on June  
11 30, 2015.

12           SECTION 2. Section 237-8.6, Hawaii Revised Statutes, is  
13 amended by amending subsection (d) to read as follows:

14           "(d) No county surcharge on state tax shall be established  
15 on any:

16           (1) Gross income or gross proceeds taxable under this  
17           chapter at the one-half per cent tax rate; or



1       ~~[-(2) Gross income or gross proceeds taxable under this~~  
2           ~~chapter at the 0.15 per cent tax rate; or~~  
3       ~~+(3)]~~ (2) Transactions, amounts, persons, gross income, or  
4           gross proceeds exempt from tax under this chapter."

5       SECTION 3. Section 237-13, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "**§237-13 Imposition of tax.** There is hereby levied and  
8 shall be assessed and collected annually privilege taxes against  
9 persons on account of their business and other activities in the  
10 State measured by the application of rates against values of  
11 products, gross proceeds of sales, or gross income, whichever is  
12 specified, as follows:

13       (1) Tax on manufacturers.

14           (A) Upon every person engaging or continuing within  
15           the State in the business of manufacturing,  
16           including compounding, canning, preserving,  
17           packing, printing, publishing, milling,  
18           processing, refining, or preparing for sale,  
19           profit, or commercial use, either directly or  
20           through the activity of others, in whole or in  
21           part, any article or articles, substance or  
22           substances, commodity or commodities, the amount



1 of the tax to be equal to the value of the  
2 articles, substances, or commodities,  
3 manufactured, compounded, canned, preserved,  
4 packed, printed, milled, processed, refined, or  
5 prepared for sale, as shown by the gross proceeds  
6 derived from the sale thereof by the manufacturer  
7 or person compounding, preparing, or printing  
8 them, multiplied by one-half of one per cent.

9 (B) The measure of the tax on manufacturers is the  
10 value of the entire product for sale, regardless  
11 of the place of sale or the fact that deliveries  
12 may be made to points outside the State.

13 (C) If any person liable for the tax on manufacturers  
14 ships or transports the person's product, or any  
15 part thereof, out of the State, whether in a  
16 finished or unfinished condition, or sells the  
17 same for delivery to points outside the State  
18 (for example, consigned to a mainland purchaser  
19 via common carrier f.o.b. Honolulu), the value of  
20 the products in the condition or form in which  
21 they exist immediately before entering interstate  
22 or foreign commerce, determined as hereinafter



1 provided, shall be the basis for the assessment  
2 of the tax imposed by this paragraph. This tax  
3 shall be due and payable as of the date of entry  
4 of the products into interstate or foreign  
5 commerce, whether the products are then sold or  
6 not. The department shall determine the basis  
7 for assessment, as provided by this paragraph, as  
8 follows:

- 9 (i) If the products at the time of their entry  
10 into interstate or foreign commerce already  
11 have been sold, the gross proceeds of sale,  
12 less the transportation expenses, if any,  
13 incurred in realizing the gross proceeds for  
14 transportation from the time of entry of the  
15 products into interstate or foreign  
16 commerce, including insurance and storage in  
17 transit, shall be the measure of the value  
18 of the products;
- 19 (ii) If the products have not been sold at the  
20 time of their entry into interstate or  
21 foreign commerce, and in cases governed by  
22 clause (i) in which the products are sold



1 under circumstances such that the gross  
2 proceeds of sale are not indicative of the  
3 true value of the products, the value of the  
4 products constituting the basis for  
5 assessment shall correspond as nearly as  
6 possible to the gross proceeds of sales for  
7 delivery outside the State, adjusted as  
8 provided in clause (i), or if sufficient  
9 data are not available, sales in the State,  
10 of similar products of like quality and  
11 character and in similar quantities, made by  
12 the taxpayer (unless not indicative of the  
13 true value) or by others. Sales outside the  
14 State, adjusted as provided in clause (i),  
15 may be considered when they constitute the  
16 best available data. The department shall  
17 prescribe uniform and equitable rules for  
18 ascertaining the values;

19 (iii) At the election of the taxpayer and with the  
20 approval of the department, the taxpayer may  
21 make the taxpayer's returns under clause (i)  
22 even though the products have not been sold



1 at the time of their entry into interstate  
2 or foreign commerce; and

3 (iv) In all cases in which products leave the  
4 State in an unfinished condition, the basis  
5 for assessment shall be adjusted so as to  
6 deduct the portion of the value as is  
7 attributable to the finishing of the goods  
8 outside the State.

9 (2) Tax on business of selling tangible personal property;  
10 producing.

11 (A) Upon every person engaging or continuing in the  
12 business of selling any tangible personal  
13 property whatsoever (not including, however,  
14 bonds or other evidence of indebtedness, or  
15 stocks), there is likewise hereby levied, and  
16 shall be assessed and collected, a tax equivalent  
17 to four per cent of the gross proceeds of sales  
18 of the business; provided that insofar as the  
19 sale of tangible personal property is a wholesale  
20 sale under section [†]237-4(a)(8)[†], the sale  
21 shall be subject to section 237-13.3. Upon every  
22 person engaging or continuing within this State



1           in the business of a producer, the tax shall be  
2           equal to one-half of one per cent of the gross  
3           proceeds of sales of the business, or the value  
4           of the products, for sale, if sold for delivery  
5           outside the State or shipped or transported out  
6           of the State, and the value of the products shall  
7           be determined in the same manner as the value of  
8           manufactured products covered in the cases under  
9           paragraph (1) (C).

10          (B) Gross proceeds of sales of tangible property in  
11           interstate and foreign commerce shall constitute  
12           a part of the measure of the tax imposed on  
13           persons in the business of selling tangible  
14           personal property, to the extent, under the  
15           conditions, and in accordance with the provisions  
16           of the Constitution of the United States and the  
17           Acts of the Congress of the United States which  
18           may be now in force or may be hereafter adopted,  
19           and whenever there occurs in the State an  
20           activity to which, under the Constitution and  
21           Acts of Congress, there may be attributed gross



1                   proceeds of sales, the gross proceeds shall be so  
2                   attributed.

3                   (C) No manufacturer or producer, engaged in such  
4                   business in the State and selling the  
5                   manufacturer's or producer's products for  
6                   delivery outside of the State (for example,  
7                   consigned to a mainland purchaser via common  
8                   carrier f.o.b. Honolulu), shall be required to  
9                   pay the tax imposed in this chapter for the  
10                  privilege of so selling the products, and the  
11                  value or gross proceeds of sales of the products  
12                  shall be included only in determining the measure  
13                  of the tax imposed upon the manufacturer or  
14                  producer.

15                  (D) When a manufacturer or producer, engaged in such  
16                  business in the State, also is engaged in selling  
17                  the manufacturer's or producer's products in the  
18                  State at wholesale, retail, or in any other  
19                  manner, the tax for the privilege of engaging in  
20                  the business of selling the products in the State  
21                  shall apply to the manufacturer or producer as  
22                  well as the tax for the privilege of





1 manufacturing or producing in the State, and the  
2 manufacturer or producer shall make the returns  
3 of the gross proceeds of the wholesale, retail,  
4 or other sales required for the privilege of  
5 selling in the State, as well as making the  
6 returns of the value or gross proceeds of sales  
7 of the products required for the privilege of  
8 manufacturing or producing in the State. The  
9 manufacturer or producer shall pay the tax  
10 imposed in this chapter for the privilege of  
11 selling its products in the State, and the value  
12 or gross proceeds of sales of the products, thus  
13 subjected to tax, may be deducted insofar as  
14 duplicated as to the same products by the measure  
15 of the tax upon the manufacturer or producer for  
16 the privilege of manufacturing or producing in  
17 the State; provided that no producer of  
18 agricultural products who sells the products to a  
19 purchaser who will process the products outside  
20 the State shall be required to pay the tax  
21 imposed in this chapter for the privilege of  
22 producing or selling those products.



1 (E) A taxpayer selling to a federal cost-plus  
2 contractor may make the election provided for by  
3 paragraph (3) (C), and in that case the tax shall  
4 be computed pursuant to the election,  
5 notwithstanding this paragraph or paragraph (1)  
6 to the contrary.

7 (F) The department, by rule, may require that a  
8 seller take from the purchaser of tangible  
9 personal property a certificate, in a form  
10 prescribed by the department, certifying that the  
11 sale is a sale at wholesale; provided that:

12 (i) Any purchaser who furnishes a certificate  
13 shall be obligated to pay to the seller,  
14 upon demand, the amount of the additional  
15 tax that is imposed upon the seller whenever  
16 the sale in fact is not at wholesale; and

17 (ii) The absence of a certificate in itself shall  
18 give rise to the presumption that the sale  
19 is not at wholesale unless the sales of the  
20 business are exclusively at wholesale.

21 (3) Tax upon contractors.



- 1 (A) Upon every person engaging or continuing within  
2 the State in the business of contracting, the tax  
3 shall be equal to four per cent of the gross  
4 income of the business.
- 5 (B) In computing the tax levied under this paragraph,  
6 there shall be deducted from the gross income of  
7 the taxpayer so much thereof as has been included  
8 in the measure of the tax levied under  
9 subparagraph (A), on:
- 10 (i) Another taxpayer who is a contractor, as  
11 defined in section 237-6;
- 12 (ii) A specialty contractor, duly licensed by the  
13 department of commerce and consumer affairs  
14 pursuant to section 444-9, in respect of the  
15 specialty contractor's business; or
- 16 (iii) A specialty contractor who is not licensed  
17 by the department of commerce and consumer  
18 affairs pursuant to section 444-9, but who  
19 performs contracting activities on federal  
20 military installations and nowhere else in  
21 this State;



1 provided that any person claiming a deduction  
2 under this paragraph shall be required to show in  
3 the person's return the name and general excise  
4 number of the person paying the tax on the amount  
5 deducted by the person.

6 (C) In computing the tax levied under this paragraph  
7 against any federal cost-plus contractor, there  
8 shall be excluded from the gross income of the  
9 contractor so much thereof as fulfills the  
10 following requirements:

11 (i) The gross income exempted shall constitute  
12 reimbursement of costs incurred for  
13 materials, plant, or equipment purchased  
14 from a taxpayer licensed under this chapter,  
15 not exceeding the gross proceeds of sale of  
16 the taxpayer on account of the transaction;  
17 and

18 (ii) The taxpayer making the sale shall have  
19 certified to the department that the  
20 taxpayer is taxable with respect to the  
21 gross proceeds of the sale, and that the  
22 taxpayer elects to have the tax on gross



1 income computed the same as upon a sale to  
2 the state government.

3 (D) A person who, as a business or as a part of a  
4 business in which the person is engaged, erects,  
5 constructs, or improves any building or  
6 structure, of any kind or description, or makes,  
7 constructs, or improves any road, street,  
8 sidewalk, sewer, or water system, or other  
9 improvements on land held by the person (whether  
10 held as a leasehold, fee simple, or otherwise),  
11 upon the sale or other disposition of the land or  
12 improvements, even if the work was not done  
13 pursuant to a contract, shall be liable to the  
14 same tax as if engaged in the business of  
15 contracting, unless the person shows that at the  
16 time the person was engaged in making the  
17 improvements the person intended, and for the  
18 period of at least one year after completion of  
19 the building, structure, or other improvements  
20 the person continued to intend to hold and not  
21 sell or otherwise dispose of the land or  
22 improvements. The tax in respect of the



1 improvements shall be measured by the amount of  
2 the proceeds of the sale or other disposition  
3 that is attributable to the erection,  
4 construction, or improvement of such building or  
5 structure, or the making, constructing, or  
6 improving of the road, street, sidewalk, sewer,  
7 or water system, or other improvements. The  
8 measure of tax in respect of the improvements  
9 shall not exceed the amount which would have been  
10 taxable had the work been performed by another,  
11 subject as in other cases to the deductions  
12 allowed by subparagraph (B). Upon the election  
13 of the taxpayer, this paragraph may be applied  
14 notwithstanding that the improvements were not  
15 made by the taxpayer, or were not made as a  
16 business or as a part of a business, or were made  
17 with the intention of holding the same. However,  
18 this paragraph shall not apply in respect of any  
19 proceeds that constitute or are in the nature of  
20 rent; all such gross income shall be taxable  
21 under paragraph (9); provided that insofar as the  
22 business of renting or leasing real property



1                   under a lease is taxed under section 237-16.5,  
2                   the tax shall be levied by section 237-16.5.

3           (4) Tax upon theaters, amusements, radio broadcasting  
4           stations, etc.

5           (A) Upon every person engaging or continuing within  
6           the State in the business of operating a theater,  
7           opera house, moving picture show, vaudeville,  
8           amusement park, dance hall, skating rink, radio  
9           broadcasting station, or any other place at which  
10           amusements are offered to the public, the tax  
11           shall be equal to four per cent of the gross  
12           income of the business, and in the case of a sale  
13           of an amusement at wholesale under section 237-  
14           4(a)(13), the tax shall be subject to section  
15           237-13.3.

16           (B) The department may require that the person  
17           rendering an amusement at wholesale take from the  
18           licensed seller a certificate, in a form  
19           prescribed by the department, certifying that the  
20           sale is a sale at wholesale; provided that:

21           (i) Any licensed seller who furnishes a  
22           certificate shall be obligated to pay to the



1 person rendering the amusement, upon demand,  
2 the amount of additional tax that is imposed  
3 upon the seller whenever the sale is not at  
4 wholesale; and

5 (ii) The absence of a certificate in itself shall  
6 give rise to the presumption that the sale  
7 is not at wholesale unless the person  
8 rendering the sale is exclusively rendering  
9 the amusement at wholesale.

10 (5) Tax upon sales representatives, etc. Upon every  
11 person classified as a representative or purchasing  
12 agent under section 237-1, engaging or continuing  
13 within the State in the business of performing  
14 services for another, other than as an employee, there  
15 is likewise hereby levied and shall be assessed and  
16 collected a tax equal to four per cent of the  
17 commissions and other compensation attributable to the  
18 services so rendered by the person.

19 (6) Tax on service business.

20 (A) Upon every person engaging or continuing within  
21 the State in any service business or calling  
22 including professional services not otherwise





1 specifically taxed under this chapter, there is  
2 likewise hereby levied and shall be assessed and  
3 collected a tax equal to four per cent of the  
4 gross income of the business, and in the case of  
5 a wholesaler under section 237-4(a)(10), the tax  
6 shall be equal to one-half of one per cent of the  
7 gross income of the business. Notwithstanding  
8 the foregoing, a wholesaler under section 237-  
9 4(a)(10) shall be subject to section 237-13.3.

10 (B) The department may require that the person  
11 rendering a service at wholesale take from the  
12 licensed seller a certificate, in a form  
13 prescribed by the department, certifying that the  
14 sale is a sale at wholesale; provided that:

15 (i) Any licensed seller who furnishes a  
16 certificate shall be obligated to pay to the  
17 person rendering the service, upon demand,  
18 the amount of additional tax that is imposed  
19 upon the seller whenever the sale is not at  
20 wholesale; and

21 (ii) The absence of a certificate in itself shall  
22 give rise to the presumption that the sale



1           is not at wholesale unless the person  
2           rendering the sale is exclusively rendering  
3           services at wholesale.

4           (C) Where any person is engaged in the business of  
5           selling interstate or foreign common carrier  
6           telecommunication services within and without the  
7           State, other than as a home service provider, the  
8           tax shall be imposed on that portion of gross  
9           income received by a person from service which is  
10          originated or terminated in this State and is  
11          charged to a telephone number, customer, or  
12          account in this State notwithstanding any other  
13          state law (except for the exemption under section  
14          237-23(a)(1)) to the contrary. If, under the  
15          Constitution and laws of the United States, the  
16          entire gross income as determined under this  
17          paragraph of a business selling interstate or  
18          foreign common carrier telecommunication services  
19          cannot be included in the measure of the tax, the  
20          gross income shall be apportioned as provided in  
21          section 237-21; provided that the apportionment



1 factor and formula shall be the same for all  
2 persons providing those services in the State.

3 (D) Where any person is engaged in the business of a  
4 home service provider, the tax shall be imposed  
5 on the gross income received or derived from  
6 providing interstate or foreign mobile  
7 telecommunications services to a customer with a  
8 place of primary use in this State when such  
9 services originate in one state and terminate in  
10 another state, territory, or foreign country;  
11 provided that all charges for mobile  
12 telecommunications services which are billed by  
13 or for the home service provider are deemed to be  
14 provided by the home service provider at the  
15 customer's place of primary use, regardless of  
16 where the mobile telecommunications originate,  
17 terminate, or pass through; provided further that  
18 the income from charges specifically derived from  
19 interstate or foreign mobile telecommunications  
20 services, as determined by books and records that  
21 are kept in the regular course of business by the  
22 home service provider in accordance with section



1           239-24, shall be apportioned under any  
2           apportionment factor or formula adopted under  
3           subparagraph (C). Gross income shall not  
4           include:

5           (i) Gross receipts from mobile  
6                 telecommunications services provided to a  
7                 customer with a place of primary use outside  
8                 this State;

9           (ii) Gross receipts from mobile  
10                telecommunications services that are subject  
11                to the tax imposed by chapter 239;

12           (iii) Gross receipts from mobile  
13                telecommunications services taxed under  
14                section 237-13.8; and

15           (iv) Gross receipts of a home service provider  
16                acting as a serving carrier providing mobile  
17                telecommunications services to another home  
18                service provider's customer.

19           For the purposes of this paragraph, "charges for  
20           mobile telecommunications services", "customer",  
21           "home service provider", "mobile  
22           telecommunications services", "place of primary



1 use", and "serving carrier" have the same meaning  
2 as in section 239-22.

3 (7) Tax on insurance producers. Upon every person engaged  
4 as a licensed producer pursuant to chapter 431, there  
5 is hereby levied and shall be assessed and collected a  
6 tax equal to [~~0.15~~] four per cent of the commissions  
7 due to that activity.

8 (8) Tax on receipts of sugar benefit payments. Upon the  
9 amounts received from the United States government by  
10 any producer of sugar (or the producer's legal  
11 representative or heirs), as defined under and by  
12 virtue of the Sugar Act of 1948, as amended, or other  
13 Acts of the Congress of the United States relating  
14 thereto, there is hereby levied a tax of one-half of  
15 one per cent of the gross amount received; provided  
16 that the tax levied hereunder on any amount so  
17 received and actually disbursed to another by a  
18 producer in the form of a benefit payment shall be  
19 paid by the person or persons to whom the amount is  
20 actually disbursed, and the producer actually making a  
21 benefit payment to another shall be entitled to claim  
22 on the producer's return a deduction from the gross



1 amount taxable hereunder in the sum of the amount so  
2 disbursed. The amounts taxed under this paragraph  
3 shall not be taxable under any other paragraph,  
4 subsection, or section of this chapter.

5 (9) Tax on other business. Upon every person engaging or  
6 continuing within the State in any business, trade,  
7 activity, occupation, or calling not included in the  
8 preceding paragraphs or any other provisions of this  
9 chapter, there is likewise hereby levied and shall be  
10 assessed and collected, a tax equal to four per cent  
11 of the gross income thereof. In addition, the rate  
12 prescribed by this paragraph shall apply to a business  
13 taxable under one or more of the preceding paragraphs  
14 or other provisions of this chapter, as to any gross  
15 income thereof not taxed thereunder as gross income or  
16 gross proceeds of sales or by taxing an equivalent  
17 value of products, unless specifically exempted."

18 SECTION 4. Section 237-18, Hawaii Revised Statutes, is  
19 amended by amending subsection (e) to read as follows:

20 "(e) Where insurance [~~agents, including general agents,~~  
21 ~~subagents, or solicitors,~~] producers who are not employees and  
22 are licensed pursuant to chapter 431, or real estate brokers or



1 salespersons, who are not employees and are licensed pursuant to  
2 chapter 467, produce commissions which are divided between such  
3 [~~general agents, subagents, or solicitors,~~] insurance producers  
4 or between such real estate brokers or salespersons, as the case  
5 may be, the tax levied under section 237-13(6) as to real estate  
6 brokers or salespersons, or under section 237-13(7) as to  
7 insurance [~~general agents, subagents, or solicitors~~] producers  
8 shall apply to each such person with respect to the person's  
9 portion of the commissions, and no more."

10 SECTION 5. Section 431:10-218, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§431:10-218 Stated premium must include all charges.** (a)  
13 The premium stated in the policy shall be inclusive of all fees,  
14 charges, premiums, or other consideration charged for the  
15 insurance or for its procurement. This subsection shall not  
16 apply to surety or group insurance contracts.

17 (b) No insurer or its officer, employee, producer, or  
18 other representative shall charge or receive any fee,  
19 compensation, or consideration for insurance which is not  
20 included in the premium specified in the policy.

21 (c) This section shall not prohibit the premium for a  
22 policy from including an amount intended to compensate an



1 insurance producer for part of the general excise tax imposed on  
2 the producer's commission for the sale of the policy."

3 SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 7. This Act shall take effect on July 1, 2010 and  
6 shall be repealed on June 30, 2015; provided that sections 237-  
7 8.6(d), 237-13, 237-18(e), and 431:10-218, Hawaii Revised  
8 Statutes, shall be reenacted in the form in which they existed  
9 on the day prior to the effective date of this Act.

10

INTRODUCED BY: Calvin K. Soy  
JAN 27 2010





**Report Title:**

General Excise Tax; Insurance Commissions

**Description:**

Increases the general excise tax rate on insurance commissions to 4% from 0.15%. Amends the insurance code to specify that the premium for an insurance policy may include an amount intended to compensate an insurance producer for part of the general excise tax imposed on the producer's commission. Takes effect on 07/01/2010 and sunsets on 06/30/2015.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

