

A Bill for an Act Relating to Insurance Premium Taxes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:7-201, Hawaii Revised Statutes, is amended to read as follows:

**“§431:7-201 Annual [tax statement.] and quarterly tax statements. (a)** Each authorized insurer shall file with the commissioner annually, on or before March 1 in each year, a statement signed by [some] a duly authorized person on its behalf, setting forth the total business transacted, and the amount of gross premiums received by the insurer during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner in order to determine the taxability of premiums. The term gross premiums as used in this part shall not include consideration paid for annuities.

**(b)** Each authorized insurer shall file with the commissioner quarterly, on or before the last day of the calendar month following the quarter, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums received by the insurer during the quarter from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums.

**(c)** Any insurer failing or refusing to file the annual tax statement on or before March 1, or the quarterly statement on or before the last day of the calendar month following the quarter, shall be liable for a fine in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 2. Section 431:7-202, Hawaii Revised Statutes, is amended to read as follows:

**“§431:7-202 Taxation. (a)** Each authorized insurer, except with respect to all life insurance contracts, ocean marine insurance contracts, and real property title insurance contracts, shall pay to the director of finance through the commissioner a tax of [4.7 per cent for the period July 1, 1992, to June 30, 1993, and] 4.265 per cent [on July 1, 1993, and thereafter] on the gross premiums received from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31, less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium:

- (1) By showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; or
- (2) By facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium.

**(b)** Each authorized insurer, with respect to life insurance contracts, shall pay to the director of finance through the commissioner a tax of 2.75 per cent on the gross premiums received from all risks resident within this State, during the year ending on the preceding December 31, less return premiums, dividends paid or

credited to policyholders, and reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

The tax also shall apply to premiums for insurance written on individuals residing outside the State unless the direct writing insurer shall show the payment of a comparable tax to another appropriate taxing authority. Such showing may be required as to any premium written, procured, or received in the State.

(c) Each authorized insurer shall, with respect to all ocean marine insurance contracts written within the State, during the year ending on the preceding December 31, pay to the director of finance through the commissioner a tax of .8775 per cent on its gross underwriting profit. The gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance ceded) on such ocean marine insurance contracts, the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such year under such contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amount refunded, or paid as participation dividends, by such insurer to the holders of such contracts.

(d) Each authorized insurer, with respect to real property title insurance contracts written on real property situated within this State during the year ending on the preceding December 31, shall pay to the director of finance through the commissioner a tax of 4.265 per cent of the amount of the risk premium actually received by the authorized insurer for the provision of such insurance. The amount of the risk premium received by the authorized insurer for the provision of real property title insurance shall be an amount equal to the amount actually received by the authorized insurer solely for the provision of real property title insurance coverage in accordance with the underwriting agreement or contract between the authorized insurer and the underwritten title company.

(e) No return premium shall be deductible unless the original gross premium, or an adjustment thereof, in an amount equal to or in excess of the return premium, has been concurrently or previously reported as taxable under this section or a prior similar law of the State.

(f) [The tax shall be due and payable on or before March 1 coinciding with the filing of the statement provided for in section 431:7-201. Any insurer failing or refusing to render the statement and to pay the required taxes above stated shall be liable to a penalty of \$25 for each day of delinquency; the] The taxes imposed by subsections (a), (b), (c), and (d) shall be paid quarterly. The quarterly tax shall be due and payable on or before the last day of the calendar month following the quarter in which it accrues, coinciding with the filing of the statement provided for in section 431:7-201.

In addition to the quarterly tax and quarterly tax statement, the annual tax shall be due and payable on or before March 1 coinciding with the filing of the statement provided for in section 431:7-201.

All amounts paid under this subsection, other than fines, shall be allowed as a credit on the annual tax imposed by subsections (a), (b), (c), and (d).

If the total amount of installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of the annual tax and be allowed as a refund under section 431:7-203.

Any insurer failing or refusing to pay the required taxes above stated when due and payable shall be liable for a fine of \$500 or ten per cent of the tax due, whichever is greater; plus interest at a rate of twelve per cent per annum on the delinquent taxes. The taxes may be collected by distraint, [and the penalty] or the taxes, fine, and interest may be recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The

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commissioner may suspend the certificate of authority of the delinquent insurer until the taxes [and], fine, and interest, should any be imposed, are fully paid.

[(g) Taxes imposed by subsections (a), (b), (c), and (d) shall be paid as follows:

- (1) Insurers whose annual tax liability for the preceding year was more than \$5,000 shall pay their taxes on a monthly basis. The taxes shall be due and payable on or before the last day of the calendar month following the month in which they accrue;
- (2) Insurers whose annual tax liability for the preceding year was more than \$1,000 and up to \$5,000 shall pay their taxes on a quarterly basis. The taxes shall be due and payable on or before the last day of the calendar month following the quarter in which they accrue; and
- (3) Insurers whose annual tax liability for the preceding year was \$1,000 or less shall pay their taxes as provided for in subsection (f).]

[(g) In establishing the prepayment amount of an insurer who has acquired the business of another insurer, the amount of tax liability of the acquiring insurer for the preceding calendar year shall be deemed to include the amount of tax liability of the acquired insurer for that year.

[All amounts paid under this subsection, other than penalties, shall be allowed as a credit on the annual tax imposed by subsections (a), (b), (c), and (d).

If the total amount of installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of annual tax and be allowed as a refund under section 431:7-203. Any insurer failing to pay taxes when due and payable, shall be liable to a penalty of \$25 for each day of delinquency; the taxes may be collected by distraint, and the penalty recovered by an action to be instituted by the commissioner in the name of the State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes and fine, should any be imposed, are fully paid.]”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 1999.

(Approved July 17, 1998.)