

STAND. COM. REP. NO. 743

Honolulu, Hawaii
March 6, 2009

RE: H.B. No. 1748
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1748 entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE PREMIUM TAXES,"

begs leave to report as follows:

The purpose of this bill is to temporarily increase the insurance premium tax rates on insurers of life insurance contracts from 2.75 percent to 4.265 percent and ocean marine insurance contracts from 0.8775 percent to 4.265 percent. These increases are repealed on December 31, 2015.

The Department of Commerce and Consumer Affairs, National Association of Insurance and Financial Advisors - Hawaii, American Council of Life Insurers, and Pacific Guardian Life testified in opposition to this bill. The Tax Foundation of Hawaii offered comments.

Your Committee has amended this bill by:

- (1) Deleting the new tax rates to encourage further discussion;
- (2) Clarifying that when the amendments contained in this bill are repealed, the existing provisions of section 431:7-202(b) and (c), Hawaii Revised Statutes, shall be reenacted in the form in which that section read prior to the effective date of this bill; and

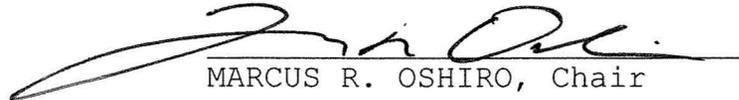
HB1748 HD1 HSCR FIN HMS 2009-2798



(3) Changing the effective date to July 1, 2020.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1748, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1748, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



A BILL FOR AN ACT

RELATING TO INSURANCE PREMIUM TAXES.

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

1 SECTION 1. Section 431:7-202, Hawaii Revised Statutes, is
2 amended by amending subsections (b) and (c) to read as follows:

3 "(b) Each authorized insurer shall, with respect to life
4 insurance contracts, [~~shall~~] pay to the director of finance
5 through the commissioner a tax of [~~2.75~~] _____ per cent on the
6 gross premiums received from all risks resident within this
7 State, during the year ending on the preceding December 31, less
8 return premiums, dividends paid or credited to policyholders,
9 and reinsurance accepted (the tax upon such business being
10 payable by the direct writing insurer).

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

17 (c) Each authorized insurer shall, with respect to all
18 ocean marine insurance contracts written within the State,



1 during the year ending on the preceding December 31, pay to the
2 director of finance through the commissioner a tax of [~~.8775~~
3 _____] per cent on its gross underwriting profit. The gross
4 underwriting profit shall be ascertained by deducting from the
5 net premiums (i.e., gross premiums less all return premiums and
6 premiums for reinsurance ceded) on such ocean marine insurance
7 contracts, the net losses paid (i.e., gross losses paid less
8 salvage and recoveries on reinsurance ceded) during such year
9 under such contracts. In the case of an insurer issuing
10 participating contracts, the gross underwriting profit shall not
11 include, for computation of the tax prescribed by this
12 subsection, the amount refunded, or paid as participation
13 dividends, by such insurer to the holders of such contracts."

14 SECTION 2. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 3. This Act shall take effect on July 1, 2020, and
17 shall be repealed on December 31, 2020; provided that section
18 431:7-202(b) and (c), Hawaii Revised Statutes, shall be
19 reenacted in the form in which that section read on the day
20 before the effective date of this Act.



Report Title:

Insurance Premium Tax

Description:

Changes until 12/31/20 the insurance premium tax rates for life insurance and ocean marine insurance contracts. (HB1748 HD1)



A BILL FOR AN ACT

RELATING TO INSURANCE PREMIUM TAXES.

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10 payable by the direct writing insurer).

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12 on individuals residing outside the State unless the direct
13 writing insurer shall show the payment of a comparable tax to
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15 required as to any premium written, procured, or received in the
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4 underwriting profit shall be ascertained by deducting from the
5 net premiums (i.e., gross premiums less all return premiums and
6 premiums for reinsurance ceded) on such ocean marine insurance
7 contracts, the net losses paid (i.e., gross losses paid less
8 salvage and recoveries on reinsurance ceded) during such year
9 under such contracts. In the case of an insurer issuing
10 participating contracts, the gross underwriting profit shall not
11 include, for computation of the tax prescribed by this
12 subsection, the amount refunded, or paid as participation
13 dividends, by such insurer to the holders of such contracts."

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LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, March 18, 2009
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 1748, H.D. 1 – RELATING TO INSURANCE
PREMIUM TAXES.**

TO THE HONORABLE ROSALYN BAKER, 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 opposes this bill. The Department defers to the
Department of Taxation on the impact of this measure.

The purpose of this version of the bill is to change the insurance premium tax on
life insurance contracts and ocean marine insurance contracts from the current rate of
2.75% of gross premiums and 0.8775% of gross underwriting profit, respectively.

Insurers would likely pass any increase in the premium tax to policyholders and
charge a higher premium.

The impact of the increase in the ocean marine insurance premium tax would be
borne by all consumers. Given our geographic location, Hawaii is highly dependent on
ocean transportation for the shipment of goods into our State. Almost all of our food,
building materials, manufactured goods, and energy products are imported. The

DCCA Testimony of J.P. Schmidt

H.B. No. 1748, H.D. 1

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premium tax increase in ocean marine insurance contracts would increase shipping costs and would likely to be passed on to consumers in the form of higher prices.

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that this bill be held.

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN OPPOSITION TO HB 1748, HD 1, RELATING
TO INSURANCE PREMIUM TAXES

March 18, 2009

Via E Mail: cpntestimony@capitol.hawaii.gov
Honorable Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State House of Representatives
Hawaii State Capital, Conference Room 229
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to testify in opposition to HB 1748, HD 1, relating to insurance premium taxes.

Our firm represents the American Council of Life Insurers (“ACLI”), a national trade association whose three hundred forty (340) member company’s account for 94% of the life insurance premiums and 94% of the annuity considerations in the United States among legal reserve life insurance companies. ACLI member company assets account for 93% of legal reserve company total assets. Two hundred fifty-three (253) ACLI member companies currently do business in the State of Hawaii.

When House Bill 1478 was originally introduced the bill sought to increase the gross premium tax on life insurance from 2.75% so that it was the same as the tax rate imposed on property and casualty (P & C) insurance premiums, 4.265%. This tax increase would become effective upon approval and sunset on December 31, 2015. In order to “encourage further discussion”, as last amended House Bill 1748 now changes the premium tax on life insurers from 2.75% to an unstated amount; and it becomes effective on July 1, 2020 and sunsets on December 31, 2020.

ACLI strongly opposes this Bill.

Increasing the tax on life insurers punishes an industry that already pays its fair share of taxes.

At 2.75%, Hawaii already has one of the highest life insurance premium tax rates in the nation (the national average is 1.9%).

Unlike non-insurance corporations which are subject to a tax on their net income, life insurance companies are subject to a premium tax on their gross premiums, without any deductions for claims or expenses and which must be paid regardless of whether a life insurer is profitable.

In order to generate the \$25.4 million that life insurers already pay under the 2.75% gross premium tax, life insurers would have to be taxed at a corporate net income tax rate of 15.8%, a rate much higher than the rates of almost any other business.

The Hawaii corporate tax rate for non-insurers ranges from 4.4% to 6.4% of a company's net income. For banks and financial institutions the rate is 7.92%.

The 2.75% tax on life insurance premiums is lower than the existing 4.265% tax paid on P & C insurance premiums in recognition of the fact that the components of the life insurance and P & C insurance premium are fundamentally different.

Unlike P & C premiums the components of many life insurance premiums include not only the cost to cover the pure insurance risk but also the investment portion (cash value) of the life insurance policy. Imposing the tax on the entire premium is akin to taxing both the corpus and interest earned on a savings account. As a result, under current law life insurance premiums are taxed at the lower 2.75% rate than the existing 4.265% tax paid on P & C insurance premiums.

Secondly, unlike P & C policies which are typically annual contracts, many, many life insurance policies insure the insured for extended periods of time which may be as long as the insured's lifetime. As a result, life insurers do not have the flexibility as do P & C insurers to adjust their premium rates to reflect changes in the cost of their insurance as a result of changed conditions and circumstances.

Increasing the tax rate will hurt Hawaii's economy.

Hawaii domestic life insurers are currently subject to additional "retaliatory taxes" in other states because of Hawaii's already high premium tax rate on life insurance. Increasing the premium tax rate for life insurers will dramatically increase the amount of retaliatory taxes paid by Hawaii domestic life insurers to other states.

Special pricing of a policy to take into account a temporary increase in the Hawaii market will result in an increased expense for insurers doing business in this State. Insurers will be required to decide whether to absorb the tax increase or increase their premiums in pricing Hawaii policies. Alternatively, an insurer may decide to leave the Hawaii market, thereby decreasing competition for life insurance in this State.

A tax increase may actually reduce premium tax revenues to the State.

The sale of a life insurance policy creates a continuing income stream to the State because unlike P & C policies life insurance policies typically require fixed annual premiums during an extended period of time.

The sale of each new life insurance policy creates a new tax revenue stream to the State of Hawaii.

Increasing the tax rate could result in an increase in the cost of life insurance coverage. If people cannot afford to purchase a life insurance policy, a tax increase (even on a temporary basis) may result in a loss of new tax revenues to the State.

Increasing the tax rate will hurt Hawaii's citizens.

Hawaii's citizens could see the price of life insurance coverage increase.

Because life insurers cannot adjust the premiums on existing policies, any adjustments for a tax increase would fall disproportionately on new life insurance purchasers.

Driving up prices for young families trying to protect their futures (especially during such difficult economic times) is not in the best interests of Hawaii consumers.

At a time when the government is encouraging families and individuals to take more responsibility for their economic well-being and future financial needs, it makes no sense to make it more difficult for them to afford the very products that will improve their financial security.

Life insurers already contribute substantially to Hawaii's economy:

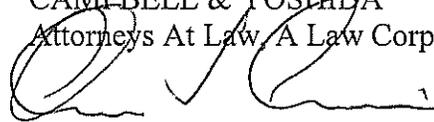
The life insurance industry employs approximately 3,000 people in Hawaii. Those jobs which require advanced education and specialized skills are ranked on the higher end of the pay spectrum.

Life insurance companies invest approximately \$20 billion of their assets in Hawaii's economy. About \$15 billion of this investment is in stocks and bonds that help finance business development, job creation, and services in the state. Life insurers also provide \$1 billion in mortgage loans on farm, residential, and commercial properties.

Life insurers paid \$2 billion to Hawaii residents in the form of death benefits, matured endowments, policy dividends, surrender values, and other payments in 2007.

For all of the foregoing reasons, ACLI respectfully requests that this Committee defer passage of HB 1748, HD 1.

CHAR HAMILTON
CAMPBELL & YOSHIDA
Attorneys At Law, A Law Corporation



Oren T. Chikamoto
737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 524-3800
Facsimile: (808) 523-1714
E mail: ochikamoto@chctlaw.com



HAWAII
Hawaii

National Association of Insurance and Financial Advisors --

516 Kawaihae Street, Suite E
Honolulu, HI 96825

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn H. Baker, Chair

Date of Hearing: Wednesday, March 18, 2009

Time: 8:30 am

RE: HB 1748, HD1 – Relating to Insurance Premium Taxes

Chair Baker and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is made up of insurance agents throughout Hawaii, who primarily sell life insurance, annuities, long term care and disability income policies.

We are strongly opposed to HB 1748, HD1, that will amend Section 431:7-202, HRS, by increasing the rate of the premium tax on life insurance contracts from 2.75% to an undetermined amount. We will reserve our comments to only this part of the measure and not the ocean marine contracts.

Increasing the GET rate will only increase the cost of the life insurance contract on new life insurance policies to the consumer because it is the consumer who will bear that increase in the tax rate because the insurance companies will include the tax into the set premium amount.

This measure is also very problematic for current life insurance policies since the amount of the insurance premium is determined at the onset of the policy as stated in Hawaii Revised Statutes:

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

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

Since the premium amount is set as stated in the policy, increasing the rate of the premium tax **on current life insurance policies** will place the burden on the insurance companies entirely.

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Additionally, the components in a life insurance policy differ greatly from P&C risks. There is also cash value and an investment component that belongs entirely to the policyholder and any gains of the inside buildup does **not** revert to the insurers and therefore, is not considered income to the insurers. This is primarily why the life insurance premium tax rate is lower than other premium tax rates.

We ask that you hold this measure in Committee. We appreciate the opportunity to share our views.

Cynthia Hayakawa
Executive Director
Phone: 391-3451



PACIFIC GUARDIAN LIFE

DOUGLAS M. GOTO
Executive Vice President

March 18, 2009

The Honorable Senator Rosalyn H. Baker, Chair
Committee on Commerce & Consumer Affairs
State Senate
Hawaii State Capitol, Conference Room 229
415 S. Beretania Street
Honolulu, Hawaii 96813

Via e-mail: cpntestimony@capitol.hawaii.gov

Re: HB 1748, HD 1 Relating to Taxation

Dear Chair Baker and Members of the Committee:

Thank you for the opportunity to testify in opposition to HB 1748, HD1 Relating to Taxation.

My name is Douglas M. Goto. I am the Executive Vice President of Pacific Guardian Life Insurance Company, Ltd. ("PGL"). PGL is a Hawaii corporation having its headquarters in Honolulu, Hawaii.

PGL provides life insurance, disability, annuities and temporary disability insurance benefits to the people of Hawaii, 20 other western states, the Territory of Guam, and the Commonwealth of the Northern Mariana Islands.

PGL has approximately 140 employees in the state of Hawaii and employs an additional 20 employees in branch offices, primarily in the state of California. All of our staff members are "white collar" employees with many holding professional and managerial positions. Approximately 38% of PGL's life insurance premium writings are to persons residing outside the state of Hawaii. Accordingly, PGL is and seeks to continue to contribute to the Hawaii economy by generating revenue from customers outside of Hawaii.

Hawaii's current tax rate on life insurance premiums of 2.75% is already one of the highest in the United States.

If enacted into law, HB 1748, HD 1 would increase the gross premium tax which may make it more difficult for PGL to remain competitive in some of the markets in which it serves.

The Honorable Senator Rosalyn H. Baker, Chair
Re: HB 1748, HD 1
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Increasing the tax will result in PGL's having to increase the cost of its premiums on some of its policies. Increasing the premium tax may also subject life insurance companies domiciled in this state, such as PGL, to additional "retaliatory taxes" imposed by other states in which PGL does business.

For example, as PGL does business in the state of California, as its domestic life insurers such as Pacific Life also does business in Hawaii, if HB 1748, HD1 is enacted, PGL will pay an additional tax equal to the difference between Hawaii's tax rate and the tax rate imposed by California.

Two decades ago, the Hawaiian life insurance market was served by a number of domestic life insurers, including Grand Pacific Life, Hawaiian Life, and Investors Equity Life, all of which were larger than PGL at the time. Today, PGL is one of the few remaining, and, we daresay, the only major active life insurance carrier with a Hawaii domicile. If enacted into law, HB 1748, HD1 would serve as a major disincentive to selecting a Hawaii domicile for a regional life insurance carrier doing business in other states due to the economically punitive effect of the retaliatory taxes described above.

At times, it is extremely difficult to effectively compete with other carriers, principally national and regional players, in the life insurance market in Hawaii and the western states. PGL is proud that it has, thus far, been successful in doing so from our home office in Hawaii. We respectfully submit that HB1748, HD1 will introduce another element of competitive disadvantage that we will bear as a result of our choice of a Hawaii domicile.

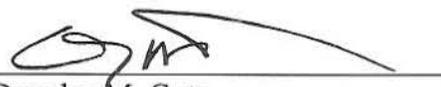
For the foregoing reasons, PGL strongly opposes HB 1748, HD1 and requests that this Committee defer passage of this bill.

Again, thank you for the opportunity to testify in opposition to HB 1748, HD1.

Respectfully submitted,

PACIFIC GUARDIAN LIFE
INSURANCE COMPANY, LIMITED

By:



Douglas M. Goto
Its Executive Vice President

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INSURANCE PREMIUMS, Adjust rate

BILL NUMBER: HB 1748, HD-1

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Amends HRS section 431:7-202 to increase the tax on insurers of life insurance from 2.75% to _____%. Also increases the tax on insurers of ocean marine contracts from .8775% to _____%.

This measure shall be repealed on December 31, 2020.

EFFECTIVE DATE: July 1, 2020

STAFF COMMENTS: It appears that this measure is proposed to generate additional revenue to address the state's financial shortfall by temporarily increasing the insurance premium tax rates on insurers of life insurance and ocean marine contracts. Given that Hawaii is an island state which is so heavily reliant on ocean-going transportation of goods, any increase in insurance premiums on ocean marine contracts may have a substantial impact on the cost of surface transportation of goods and people.

While lawmakers might find an increase in the insurance premiums tax innocuous, the impact will be far greater for insured persons or businesses. At a time when families and businesses are struggling to survive, keep their jobs or operations going, a tax increase of any size will have a deleterious impact on the state's economy as a whole.

Digested 3/13/09