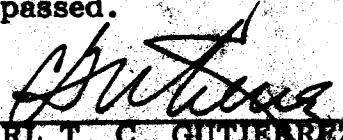


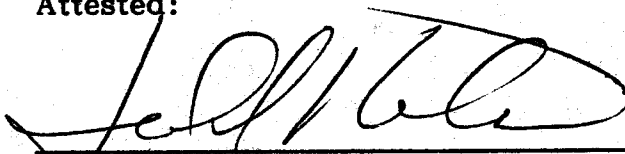
SEVENTEENTH GUAM LEGISLATURE  
1984 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

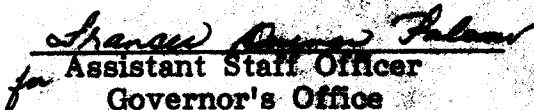
This is to certify that Substitute Bill No. 540, " AN ACT TO ADD A NEW CHAPTER VII TO TITLE XXXIX OF THE GOVERNMENT CODE OF GUAM TO PERMIT AND REGULATE CAPTIVE INSURANCE COMPANIES INCORPORATED IN THE TERRITORY OF GUAM AND TO AMEND CHAPTER I, TITLE LIV OF THE GOVERNMENT CODE TO ESTABLISH STANDARDS FOR ISSUANCE OF A QUALIFYING CERTIFICATE TO CAPTIVE INSURANCE COMPANIES," was on the 7th day of December 1984, duly and regularly passed.

  
CARL T. C. GUTIERREZ  
Speaker

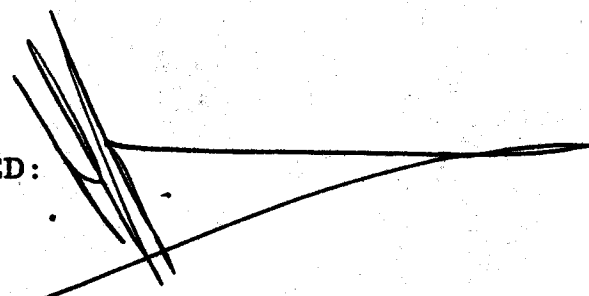
Attested:

  
TED S. NELSON  
Senator and Acting Legislative Secretary

-----  
This Act was received by the Governor this 13<sup>th</sup> day of December 1984, at 10:45 o'clock A.m.

  
for Assistant Staff Officer  
Governor's Office

APPROVED:

  
RICARDO J. BORDALLO  
Governor of Guam

Date: 12/24/84 9:15AM

Public Law/No. 17-85

SEVENTEENTH GUAM LEGISLATURE  
1983 (FIRST) Regular Session

Bill No. 540  
Substitute by Committee  
on Ways & Means

Introduced by:

J. T. San Agustin  
C. T. C. Gutierrez  
J. F. Ada

---

F. R. Santos

AN ACT TO ADD A NEW CHAPTER VII TO TITLE  
XXXIX OF THE GOVERNMENT CODE OF GUAM TO  
PERMIT AND REGULATE CAPTIVE INSURANCE  
COMPANIES INCORPORATED IN THE TERRITORY OF  
GUAM AND TO AMEND CHAPTER I, TITLE LIV OF THE  
GOVERNMENT CODE TO ESTABLISH STANDARDS FOR  
ISSUANCE OF A QUALIFYING CERTIFICATE TO  
CAPTIVE INSURANCE COMPANIES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:  
2 Section 1. A new Chapter VII, Title XXXIX of the Government Code  
3 of Guam is hereby added to read as follows:

4 "Chapter VII

5 Captive Insurance Companies

6 Section 43701. Definitions. As used in this Chapter, unless the  
7 context requires otherwise:

8 (1) 'Affiliated company' means any company in the same  
9 corporate system as a parent or member organization by virtue of  
10 common ownership, control, operation, or management.

11 (2) 'Association' means any legal association of  
12 individuals, corporations, partnerships, or associations, the  
13 member organizations of which collectively:

14 (a) own, control, or hold with power to vote all of the  
15 outstanding voting securities of an association captive  
16 insurance company incorporated as a stock insurer, or

17 (b) have complete voting control over an association  
18 captive insurance company incorporated as a mutual insurer.

1 (3) 'Association captive insurance company' means any  
2 company that insures risks of the member organizations of that  
3 association, and their affiliated companies.

4 (4) 'Captive insurance company' means any pure captive  
5 insurance company or association captive insurance company  
6 formed or licensed under the provisions of this Chapter.

7 (5) 'Commissioner' means the Insurance Commissioner.

8 (6) 'Member organization' means a corporation, partnership,  
9 or association that belongs to an association.

10 (7) 'Parent' means a corporation, partnership or individual  
11 that directly or indirectly owns, controls, or holds with power to  
12 vote more than 50 per centum (50%) of the outstanding voting  
13 securities of a pure captive insurance company.

14 (8) 'Pure captive insurance company' means any company  
15 that insures risks of its parent and affiliated companies and no  
16 more than three unaffiliated companies.

17 Section 43702. Licensing Authority. (a) Any captive insurance  
18 company, when permitted by its Articles of association or Charter, may  
19 apply to the Commissioner for a license to do any and all insurance  
20 comprised in Article 1 of Chapter III of Title XXXIX, Government  
21 Code; provided, however, that;

22 (1) No pure captive insurance company may insure any  
23 risks other than those of its parent and affiliated companies,  
24 except that it may also insure up to three (3) unaffiliated  
25 companies, provided that at least sixty percent (60%) of its  
26 premiums derive from its parent and affiliates of its parent.

27 (2) No association captive insurance company may  
28 insure any risks other than those of the member  
29 organizations of its association, and their affiliated  
30 companies;

31 (3) No captive insurance company may accept or cede  
32 reinsurance except as provided in §43711 of this Chapter.

33 (b) No captive insurance company shall do any insurance

1 business on Guam unless:

2 (1) It first obtains from the Commissioner a license  
3 authorizing it to do business on Guam;

4 (2) Its Board of Directors holds at least one (1)  
5 meeting

6 each year on Guam;

7 (3) It maintains its principal place of business on  
8 Guam; and

9 (4) It appoints a resident registered agent to accept  
10 service of process and to otherwise act on its behalf on  
11 Guam. Whenever such registered agent cannot with  
12 reasonable diligence be found at the registered office of the  
13 captive insurance company, the Director of Revenue and  
14 Taxation shall be an agent of such captive insurance  
15 company upon whom any process, notice, or demand may be  
16 served.

17 (5) It is incorporated in Guam, except that a  
18 non-domestic insurance company that has operated as an  
19 insurance company on Guam pursuant to a Guam Certificate  
20 of Authority during the five (5) years immediately preceding  
21 enactment of this Chapter shall be issued a license under  
22 this Chapter provided that it maintains a place of business  
23 on Guam and otherwise qualifies for a license under this  
24 Chapter, except it shall not be required to comply with  
25 Subsections 43702(b)(2) and 43702(b)(3) of this Section and  
26 Section 43706 of this Chapter.

27 (c)(1) Before receiving a license, a captive insurance  
28 company shall file with the Commissioner a certified copy of its Charter  
29 and By-Laws, a statement under oath of its President and Secretary  
30 showing its financial condition, and any other statements or documents  
31 required by the Commissioner.

1 (2) In addition to the information required by  
2 Subdivision (1) of Subsection (c), each applicant captive  
3 insurance company shall file with the Commissioner evidence  
4 of the following:

5 (A) The amount and liquidity of its assets  
6 relative to the risks to be assumed;

7 (B) The adequacy of the expertise, experience,  
8 and character of the person or persons who will manage  
9 it;

10 (C) The overall soundness of its plan of  
11 operation;

12 (D) The adequacy of the loss prevention programs  
13 of its parent or member organizations; and

14 (E) Such other factors deemed relevant by the  
15 Commissioner in ascertaining whether the proposed  
16 captive insurance company will be able to meet its  
17 policy obligations.

18 (d) Each captive insurance company shall pay to the  
19 Commissioner a nonrefundable fee of Two Hundred Dollars  
20 (\$200.00) for examining, investigating, and processing its  
21 application for license. In addition, it shall pay a license fee for  
22 the year of registration and a renewal fee for each year  
23 thereafter of Three Hundred Dollars (\$300.00).

24 (e) Any insurance company already chartered and doing  
25 business in the Territory of Guam that is a captive insurance  
26 company in compliance with the provisions of this Chapter shall  
27 automatically qualify for licensure.

28 (f) If the Commissioner is satisfied that the documents and  
29 statements that such captive insurance company has filed comply  
30 with the provisions of this Chapter, he may grant a licensure  
31 authorizing it to do insurance business on Guam until April 1  
32 thereafter, which license may be renewed.

1           Section 43703. Names of Companies. No captive insurance  
2 company shall adopt a name that is the same, deceptively similar, or  
3 likely to be confused with or mistaken for any other existing business  
4 name registered on Guam.

5           Section 43704. Minimum Capital; Letter of Credit. No pure  
6 captive insurance company or association captive insurance company  
7 incorporated as a stock insurer shall be issued a license unless it shall  
8 possess and thereafter maintain unimpaired paid-in capital of:

9           (1) In the case of a pure captive insurance company, not  
10 less than One Hundred Thousand Dollars (\$100,000.00), and

11           (2) In the case of an association captive insurance  
12 company incorporated as a stock insurer, not less than Two  
13 Hundred Fifty Thousand Dollars (\$250,000.00).

14           Such capital may be in the form of cash or an irrevocable  
15 letter of credit issued by a bank chartered by the Territory of  
16 Guam or a member bank of the Federal Reserve System and  
17 approved by the Commissioner.

18           Section 43705. Minimum Surplus; Letter of Credit. No captive  
19 insurance company shall be issued a license unless it shall possess and  
20 thereafter maintain free surplus of:

21           (1) In the case of a pure captive insurance company, not  
22 less than One Hundred Fifty Thousand Dollars (\$150,000.00),

23           (2) In the case of an association captive insurance company  
24 incorporated as a stock insurer, not less than Two Hundred Fifty  
25 Thousand Dollars (\$250,000.00), and

26           (3) In the case of an association captive insurance company  
27 incorporated as a mutual insurer, not less than Five Hundred  
28 Thousand Dollars (\$500,000.00).

29           Such surplus may be in the form of cash or an irrevocable  
30 letter of credit issued by a bank chartered by the Territory of  
31 Guam or member bank of the Federal Reserve System and  
32 approved by the Commissioner.

1           Section 43706.   Formation of Captive Insurance Companies on  
2   Guam.

3           (a) A pure captive insurance company shall be incorporated  
4   as a stock insurer with its capital divided into shares and held  
5   by the Stockholders.

6           (b) An association captive insurance company may be  
7   incorporated:

8           (1) As a stock insurer with its capital divided into  
9   shares and held by the Stockholders, or

10          (2) As a mutual insurer without capital stock, the  
11   governing body of which is elected by the member  
12   organizations of its association.

13          (c) A captive insurance company shall have not less than  
14   three (3) incorporators of whom not less than one shall be a  
15   resident of Guam.

16          (d) Before the articles of association are transmitted to  
17   the Director of Revenue and Taxation, the incorporators shall  
18   petition the Commissioner to issue a certificate setting forth his  
19   findings that the establishment and maintenance of the proposed  
20   corporation will promote the general good of Guam. In arriving  
21   at such finding, the Commissioner shall consider:

22           (1) The character, reputation, financial standing and  
23   purpose of the incorporators;

24           (2) The character, reputation, financial responsibility,  
25   insurance experience, and business qualifications of the  
26   officers and directors; and

27           (3) Such other aspects as the Commissioner shall deem  
28   advisable.

29          (e) The articles of association, such certificate, and the  
30   organization fee shall be transmitted to the Director of Revenue  
31   and Taxation, who shall thereupon record both the articles of  
32   association and the certificate.

1 (f) The capital stock of a captive insurance company  
2 incorporated as a stock insurer shall be issued at not less than  
3 par value.

4 (g) At least one of the members of the Board of Directors  
5 of a  
6 captive insurance company incorporated on Guam shall be a  
7 resident of Guam.

8 (h) Captive insurance companies formed under the  
9 provisions of

10 this Chapter shall have the privileges and be subject to the  
11 provisions of the general corporation law as well as the applicable  
12 provisions contained in this Chapter. In the event of conflict  
13 between the provisions of said general corporation law and the  
14 provisions of this Chapter, the latter shall control.

15 Section 43707. Reports and Statements. (a) Captive insurance  
16 companies shall not be required to make any annual report except as  
17 provided in this Chapter.

18 (b) Prior to March 1 of each year, each captive insurance  
19 company shall submit to the Commissioner a report of its financial  
20 condition, verified by oath of two of its Executive Officers. The  
21 Commissioner shall by rule propose the form in which captive  
22 insurance companies shall report.

23 Section 43708. Examinations and Investigations. At least once in  
24 three years, and whenever the Commissioner determines it to be  
25 prudent, he shall personally, or by some competent person appointed  
26 by him, visit each captive insurance company and thoroughly inspect  
27 and examine its affairs to ascertain its financial condition, its ability to  
28 fulfill its obligations and whether it has complied with the provisions of  
29 this Chapter. The Commissioner upon application, in his discretion,  
30 may enlarge the aforesaid three-year period to five (5) years,  
31 provided said captive insurance company is subject to a comprehensive  
32 annual audit during such period of a scope satisfactory to the  
33 Commissioner by independent auditors approved by him. The expenses  
34 and charges of the examination shall be paid to Guam by the company



1 or companies examined and the Commissioner shall issue his warrants  
2 for the proper charges incurred in all examinations.

3 Section 43709. Grounds and Procedures for Suspension or  
4 Revocation of License. (a) The license of a captive insurance  
5 company to do an insurance business on Guam may be suspended or  
6 revoked by the Commissioner for any of the following reasons:

7 (1) Insolvency or impairment of capital or surplus;

8 (2) Failure to meet the requirements of §§43704 or  
9 43705 of this Chapter;

10 (3) Refusal or failure to submit an annual report, as  
11 required by §43707 of this Chapter; or any other report or  
12 statement required by law or by lawful order of the  
13 Commissioner;

14 (4) Failure to comply with the provisions of its own  
15 Charter or By-Laws;

16 (5) Failure to submit to examinations or any legal  
17 obligation relative thereto, as required by §43708 of this  
18 Chapter.

19 (6) Refusal or failure to pay the cost of examination as  
20 required by §43708 of this Chapter.

21 (7) Use of methods that, although not otherwise  
22 specifically prohibited by law, nevertheless render its  
23 operation detrimental or its condition unsound with respect  
24 to the public or to its policyholders;

25 (8) Failure otherwise to comply with the laws of Guam.

26 (b) If the Commissioner finds, upon examination, hearing,  
27 any of the acts specified in Subsection (a), he may suspend or  
28 revoke such license if he deems it in the best interest of the  
29 public and the policyholders of such captive insurance company,  
30 notwithstanding any other provision of this Title.

31 Section 43710. Legal Investments. (a) No pure captive  
32 insurance company or association captive insurance company shall be  
33 subject to any restrictions on allowable investments whatever,  
34 including those limitations contained in §43166 of this Title, provided,

1 however, that the Commissioner may prohibit or limit any investment  
2 that threatens the solvency or liquidity of any such company.

3 Section 43711. Reinsurance. (a) Any captive insurance  
4 company may provide reinsurance, comprised in Article VIII of Chapter  
5 III of this Title, on risks ceded by any other insurer.

6 (b) Any captive insurance company may take credit for  
7 reserves on risks ceded to a reinsurer; provided, however, that  
8 no captive insurance company shall reinsure a risk or part  
9 thereof with reinsurers not complying with the provisions of  
10 §43451 of this Title.

11 Section 43712. Exemption from compulsory associations. No  
12 captive insurance company shall be permitted to join or contribute  
13 financially to any plan, pool, association, or guaranty or insolvency  
14 fund on Guam, nor shall any captive insurance company, or its  
15 insured, or its parent or any affiliated company, or any member  
16 organization of its association, receive any benefits from any such  
17 plan, pool, association, or guaranty or insolvency fund for claims  
18 arising out of the operations of such captive insurance company.

19 Section 43713. Tax on premiums collected. (a) Each captive  
20 insurance company shall pay to the Director of Revenue and Taxation,  
21 in the month of February of each year, a tax at the rate of one-half  
22 of one percent (.5%) on the gross amount of all premiums collected or  
23 contracted for on policies or contracts of insurance covering property  
24 or risks on Guam and on risks and property situated elsewhere upon  
25 which no premium tax is otherwise paid during the year ending  
26 December 31 next preceding, after deducting from the gross amount of  
27 premiums subject to the tax the amount received as reinsurance  
28 premiums on business on Guam and the amounts paid on unabsorbed  
29 premiums or premium deposits returned or credited to policyholders.

30 (b) The tax provided for in this Section shall constitute all  
31 taxes collectible under the laws of Guam from any captive  
32 insurance company, and no other occupation tax or other taxes  
33 shall be levied or collected from any captive insurance company  
34 by Guam or any county, city, or municipality within Guam.

1           except ad valorem taxes on real and personal property used in  
2           the production of income, even if the tax provided for in this  
3           Section is abated or rebated pursuant to Title LIV of the  
4           Government Code of Guam (12 GCA).

5           Section 43714. Rules and Regulations. The Commissioner may  
6           establish and from time to time amend such rules relating to captive  
7           insurance companies as are necessary to enable him to carry out the  
8           provisions of this Chapter.

9           Section 43715. Laws Applicable. No provisions of this Title,  
10          other than those contained in this Chapter or contained in specific  
11          references contained in this Chapter, shall apply to captive insurance  
12          companies.

13          Section 2. 12 GCA §2403 is amended to read as follows:

14                "§2403. Eligibility Defined. The following shall be  
15                deemed to be a business eligible for consideration by the Corporation  
16                for issuance of a Qualifying Certificate.

17                Any corporation as defined in §2405, engaged, or about to  
18                engage in (1) agriculture, manufacturing, commercial fishing, services,  
19                or improvement of real property for purposes which are specifically  
20                determined by the Corporation to be beneficial, desirable, and  
21                necessary for the economic development of Guam, or captive insurance  
22                business as permitted by Chapter VII, Title XXXIX, Government Code;  
23                and (2) which activity meets one (1) or more of the following criteria:

- 24                   a. Creation of new employment;  
25                   b. Replacement of imports;  
26                   c. Reduction of consumer prices;  
27                   d. Creation of vitally needed facilities;  
28                   e. Insurance providing for or facilitating the provision  
29                   of health care services to the people of Guam.

1 In addition, such otherwise eligible applicants must meet the  
2 minimum financial requirements.

3 MINIMUM INVESTMENT

4	Agriculture	\$ 15,000.00
5	Watch Manufacturing	50,000.00
6	Other Manufacturing	25,000.00
7	Commercial Fishing	25,000.00
8	Services	25,000.00
9	Hotels and Motels	1,000,000.00
10	Other Tourist Facilities	25,000.00
11	Industrial Facilities	100,000.00
12	Captive Insurance Companies	100,000.00

13 The Board, may by regulation, develop such further standards  
14 and criteria for the issuance of Qualifying Certificates as it deems  
15 necessary. Such regulations shall be adopted only after public  
16 hearing thereon in a manner prescribed by law, and then transmitted  
17 to the Governor of Guam, and upon his approval and promulgation,  
18 shall have the force and effect of law.

19 Section 3. 12 GCA §2414 is amended to read as follows:

20 "§2414. Tax Abatement. The following tax abatements are  
21 hereby established and declared, for which Qualifying Certificates may  
22 be issued:

23 1. All taxes now levied by virtue of Chapter IV, Title XX  
24 of the Government Code of Guam, known as Real Property Tax,  
25 shall be abated for a period up to ten (10) years from date of  
26 issuance of Qualifying Certificate thereof, and as long as said  
27 Certificate is in force and effect, provided that the real property  
28 on which said tax is assessed is utilized for a tax exempt  
29 business that has qualified and continues to qualify for a  
30 Qualifying Certificate.

31 2. All taxes now levied on income derived from the lease of  
32 land, buildings, machinery and equipment by virtue of  
33 Subchapter B, Title XX of the Government Code of Guam, shall  
34 be abated for a period up to ten (10) years from date of issuance

1 of a Qualifying Certificate therefor, and as long as said  
2 certificate is in force and effect, provided that said income has  
3 been derived from the lease of land, building, machinery and  
4 equipment to a tax exempt business that has qualified and  
5 continues to qualify for a Qualifying Certificate.

6 3. All taxes now levied by virtue of Subchapter B, Chapter  
7 VI, Title XX of the Government Code of Guam, known as the  
8 gross receipts tax, shall be abated for a period up to ten (10)  
9 years from date of issuance of a Qualifying Certificate therefor,  
10 and as long as said certificate is in force and effect, provided  
11 that the gross receipts on which such tax shall be abated have  
12 been derived from the sale of alcoholic beverages manufactured in  
13 Guam by the manufacturer thereof and that such manufacturer  
14 has qualified and continues to qualify for a Qualifying Certificate  
15 covering such manufacture.

16 4. All taxes levied or paid by virtue of Subchapter B,  
17 Chapter VI, Title XX of the Government Code of Guam, known as  
18 the Gross Receipts Tax, shall be abated or rebated for those  
19 gross receipts derived from the sale of petroleum products  
20 manufactured in Guam and sold to agencies or instrumentalities of  
21 the United States of America, or agencies or instrumentalities of  
22 the Government of Guam by the manufacturer thereof, provided  
23 that a Qualifying Certificate for such a tax abatement is granted  
24 pursuant to the provisions of this Subparagraph, and further  
25 provided that at any such time that a manufacturer possessing  
26 such a Qualifying Certificate no longer continues to qualify for  
27 the certificate, the taxes shall no longer be abated or rebated.  
28 A Qualifying Certificate may grant such a tax abatement or  
29 rebatement for up to a ten (10) year period commencing with the  
30 date of initial commercial production of petroleum products by the  
31 manufacturer.

32 5. All taxes now levied by virtue of §43714, Chapter VII,  
33 Title XXXIX of the Government Code shall be abated for a period  
34 of up to ten (10) years from the date of issuance of the

1 Qualifying Certificate therefor and as long as said certificate is in  
2 force and effect, provided that said premiums are collected by a  
3 captive insurance company licensed under Chapter VII of Title  
4 XXXIX that has qualified and continues to qualify for a Qualifying  
5 Certificate.

6 Section 4. 12 GCA §2424 is amended to read as follows:

7 "§2424. Fees. The following fees shall be assessed  
8 against each corporate applicant and corporate recipient of a Qualifying  
9 Certificate

	<u>FILING FEE</u>	<u>ANNUAL SURVEILLANCE FEE</u>
10		
11		
12	Agriculture \$ 25.00	\$ 25.00
13	Watch Manufacturing 50.00	250.00
14	Other Manufacturing 50.00	100.00
15	Commercial Fishing 25.00	25.00
16	Services 50.00	50.00
17	Hotels and Motels 50.00	100.00
18	Other Tourist Facilities 50.00	50.00
19	Industrial Facilities 50.00	100.00
20	Captive Insurance Companies 50.00	100.00