



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUL 26 1996

The Honorable Judith Won-Pat Borja
Acting Lt. Governor and Acting Speaker
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	<u>And</u>
Time	<u>2:45 p.m.</u>
Date	<u>7/26/96</u>

Dear Speaker Won-Pat Borja:

Enclosed please find a copy of Substitute Bill No. 299 (LS), "AN ACT TO AMEND §2404(9), §2405.6, §2427.5, §2442 AND §2443 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED; TO ADD NEW §2428.4 TO TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND SECTION 23713 OF CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, ALL RELATIVE TO AUTHORIZING THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS", which I have signed into law today as **Public Law No. 23-109**.

This bill was introduced and moved through the legislature as a result of work done by members of the Governor's Council of Economic Advisors, specifically the subcommittee chaired by Mr. Al Pickens, and the Financial Services Section of the Vision 2001 Task Force, who worked closely in conjunction with the Legislature's Chairman of the Committee on Economic-Agricultural Development and Insurance, Senator Joe T. San Agustin.

This legislation offers significant tax neutrality in the form of Guam Economic Development Authority Qualifying Certificates in order to increase, also significantly, the insurance business on Guam, specifically underwriters. This legislation does not affect existing service entities in the insurance industry, nor does it change Guam's insurance laws, however this legislation will encourage new underwriters to do business here. It is designed to obtain for Guam the same type of business presently enjoyed in other locations, such as the Cayman Islands and Bermuda in the

Caribbean, which enjoy record-breaking growth in the development of insurance business and other financial business, such as banking.


This legislation is designed to enable Guam to position itself as a location for Asian companies to enter the captive insurance industry, just as North American and European companies now are able to enter the captive insurance industry in various locations in the Caribbean. Since captive insurance is a new opportunity in the Asian region, Guam is uniquely situated to be the Asian region's insurance center. This will be a new business for Guam; to diversify Guam's economy which is now concentrated on the visitor industry.

This new law will be effective in January, 1997, but only when required rules and regulations to implement the provisions are completed by the Department of Revenue and Taxation and the Guam Economic Development Authority. These rules will be necessary to this legislation.

I am enthusiastic about the prospect of locating a new type of financial business on Guam, linked to the vital Asian economies, which are so important to the welfare of the economy of Guam. The nurturing of new financial markets on Guam will provide wider stability and prosperity to Guam's economy. We must make this new industry successful.

A copy has also been delivered to the Office of the Legislative Secretary.

Very truly yours,



Carl T. C. Gutierrez
Governor of Guam

Attachment
231362



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

JUL 26 1996

The Honorable Sonny L. Orsini
Acting Legislative Secretary
Twenty-Third Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Agana, Guam 96910


OFFICE OF THE LEGISLATIVE SECRETARY		
ACKNOWLEDGMENT RECEIPT		
Received By	<u>Anne</u>	
Time	<u>11:38 am.</u>	
Date	<u>29 July 96</u>	

Dear Mr. Legislative Secretary:

Enclosed please find a copy of Governor's message and Substitute Bill No. 299 (LS), "AN ACT TO AMEND §2404(9), §2405.6, §2427.5, §2442 AND §2443 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED; TO ADD NEW §2428.4 TO TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND SECTION 23713 OF CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, ALL RELATIVE TO AUTHORIZING THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS", which I have signed into law today as **Public Law No. 23-109**.

A copy has also been delivered to the Office of the Speaker.

Very truly yours,


Carl T. C. Gutierrez
Governor of Guam

Attachments
231380

COMMITTEE ON RULES		
Rec'd by: <u>AM</u>	Date: <u>7/26/96</u>	Time: <u>9:30</u>
Routing: _____	Date: _____	Sen's Init. _____
_____	_____	_____
_____	_____	_____
Action: _____	_____	

TWENTY-THIRD GUAM LEGISLATURE
1996 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 299 (LS), "AN ACT TO AMEND §2404(9), §2405.6, §2427.5, §2442 AND §2443 OF CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED; TO ADD NEW §2428.4 TO TITLE 12, GUAM CODE ANNOTATED; AND TO AMEND SECTION 23713 OF CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, ALL RELATIVE TO AUTHORIZING THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS," was on the 11th day of July, 1996, duly and regularly passed.



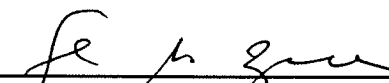
DON PARKINSON
Speaker

Attested:



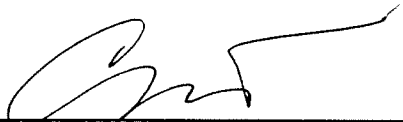
JUDITH WON PAT-BORJA
Senator and Legislative Secretary

This Act was received by the Governor this 15th day of July,
1996, at 9:17 o'clock A.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 7-26-96

Public Law No. 23-109

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) Regular Session

Bill No. 299 (LS)

As further substituted by the
Committee on Economic Agricultural
Development & Insurance - June 5, 1996
and as substituted on the floor.

Introduced by:

J. T. San Agustin
E. Barrett-Anderson
S. L. Orsini

A. C. Blaz
V. C. Pangelinan
T. C. Ada
J. P. Aguon
J. M. S. Brown
F. P. Camacho
M. C. Charfauros
H. A. Cristobal
M. Forbes
A. C. Lamorena V
C. Leon Guerrero
L. Leon Guerrero
T. S. Nelson
D. Parkinson
A. L. G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

AN ACT TO AMEND §2404(9), §2405.6, §2427.5, §2442
AND §2443 OF CHAPTER 2, TITLE 12, GUAM CODE
ANNOTATED; TO ADD NEW §2428.4 TO TITLE 12,
GUAM CODE ANNOTATED; AND TO AMEND
SECTION 23713 OF CHAPTER VII, TITLE XXXIV,
GOVERNMENT CODE, ALL RELATIVE TO
AUTHORIZING THE ISSUANCE OF QUALIFYING
CERTIFICATES TO GUAM INSURERS AND TO
CLARIFY THE TAXATION OF CAPTIVE INSURERS.

1 **BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:**

2 **Section 1. Legislative findings and intent.** The Legislature finds that it

3 is desirable to broaden the base of the Guam economy to include more than
4 tourism and military base employment, and that one of the most attractive
5 economic opportunities available to the island is to utilize its unique
6 geographic location to become a financial/insurance capital of the Pacific,
7 much like Bermuda in the Atlantic. Persuading insurance issuers, whether
8 reinsurer, commercial insurers, or so-called "captive insurers," to locate their
9 Pacific headquarters in Guam requires the establishment of an environment
10 that permits them to operate their companies aggressively both outside of
11 and within Guam without paying taxes on anything locally, thereby having
12 the advantage of being located in a modern American community with some
13 of the world's finest communication tools, with access to American courts and
14 to the American school and health systems and yet free of local taxes on their
15 worldwide income. The Legislature further finds that the action taken in the
16 past to encourage so-called "export trading companies" to headquarter
17 themselves in Guam in return for freedom from local taxes has worked out
18 quite beneficially for the territory, there being hundreds of such companies
19 now operating in Guam, employing local people and paying substantial local
20 licensing and surveillance fees. The Legislature therefore, in view of the
21 foregoing findings, declares that the intention of the following amendments
22 and additions to the GEDA Law is to encourage insurers to establish
23 headquarters in Guam by agreeing that their premium income will not be
24 locally taxed. Because of current income tax relations between the United
25 States and Guam, such tax exemption requires using both the rebate and
26 abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam

1 Code Annotated), which procedures have been upheld by the U.S. Court of
2 Appeals for the Ninth Circuit. See Ramsey v. Chaco, 549 F.2d (1977).

3 **Section 2. Amendments to GEDA Law.** (a) Subitem (9) of §2404, Title
4 12, Guam Code Annotated, as amended in P.L. 22-159:2, is hereby amended to
5 read as follows:

6 "9. Insurance issuance, either by commercial insurers,
7 reinsurers, or captive insurers which meet the requirements
8 of Chapter III (Domestic Insurers), Title XXXIX, Government
9 Code;"

10 (b) §2405.6 of Title 12, Guam Code Annotated, as added in P.L.
11 No. 22-159:2, is hereby amended to read as follows:

12 "§2405.6. Insurance. Establishment of Guam as a
13 financial/insurance center for the Pacific, and increasing the
14 availability and lowering the cost of insurance in Guam."

15 (c) §2427.5 of Title 12, Guam Code Annotated, as added by P.L.
16 No. 22-159:2, is hereby amended to read as follows:

17 "§2427.5. *Insurance premiums.* All taxes now levied by
18 virtue of Article 2, Chapter 26, Title 11, Guam Code
19 Annotated, known as gross receipts taxes, shall be abated for
20 a period of up to twenty (20) years from the effective date of
21 the Qualifying Certificates therefor, for those gross receipts
22 derived from underwriting insurance risks either in or out of
23 Guam, including gross receipts derived from investing funds
24 generated from insurance underwriting in Guam by an
25 insurance company that has qualified and continues to qualify
26 for a Qualifying Certificate. Such insurance Qualifying
27 Certificates may be renewed for additional periods for

1 twenty (20) years at the conclusion of the first or later periods
2 so long as the Beneficiary remains in good standing under the
3 laws of Guam and under the rules and regulations of the
4 Authority."

5 (d) §2442 of Title 12, Guam Code Annotated, as added by P.L. No.
6 22-159:2, is hereby amended to read as follows:

7 "§2442. Investment of abated or rebated tax in Guam.
8 Each Qualifying Certificate, except for a Qualifying
9 Certificate issued to an insurer pursuant to the provisions of
10 §§2427 and 2428 of this Article, shall require a Beneficiary to
11 invest within Guam no less than fifty percent (50%) of any
12 taxes rebated or abated under §§2427 and 2428 of this Article
13 for a period of five (5) years following the rebate or
14 abatement. A Beneficiary shall report all such investments to
15 the Authority."

16 (e) §2443 of Title 12, Guam Code Annotated, as added by P.L.
17 No. 22-159:2, is hereby amended by amending that line entitled
18 "Captive insurance companies" to read as follows:

19 "Insurers \$750.00, \$1,000.00."

20 **Section 3. Addition to GEDA Law.** A new §2428.4 is hereby added to
21 Title 12, Guam Code Annotated, to read as follows:

22 "§2428.4. **One hundred percent rebate on certain**
23 **insurance income.** A rebate of one hundred percent (100%)
24 of all income tax paid to the government of Guam by a
25 Beneficiary on all income received from underwriting either
26 inside or outside of Guam, including all income derived
27 from investing funds derived from operating an insurance

1 underwriting business on Guam, may be issued for a period
2 not to exceed twenty (20) consecutive years from the
3 effective date of a Qualifying Certificate therefor; provided,
4 that as to Guam risks and policy holders the Beneficiary
5 does not issue a policy directly to the policy holder but only
6 issues the same through a licensed Guam insurance broker.
7 Such insurance Qualifying Certificates may be renewed for
8 additional periods of twenty (20) years at the conclusion of
9 the first or later periods so long as the Beneficiary remains
10 in good standing under the laws of Guam and under the
11 rules and regulations of the Authority."

12 **Section 4. Amendment to Captive Insurance Law.** Section 43713 of
13 Chapter VII, Title XXXIX, Government Code, as added in P.L. 17-85:1, is
14 hereby amended to read:

15 **"Section 43713. Tax on premiums collected.**

16 No taxes on qualified captive insurers. Each captive
17 insurance company to which is issued a Qualifying Certificate
18 pursuant to the provisions of Article 4 of Chapter 2, Title 12,
19 Guam Code Annotated, shall pay no taxes to government of
20 Guam on its premium or other insurance income except to the
21 extent that it is first required to pay its territorial income tax
22 liability thereon before the same is rebated in full, pursuant to
23 its Qualifying Certificates."

24 **Section 5. Severability.** If any of the provisions of this act, or the
25 application thereof to any person or circumstance, is held invalid, such
26 invalidity shall not affect any other provision or application of this act which

1 can be given effect without the invalid provision or application, and to this
2 end the provisions of this act are *severable*.

3 **Section 6. Effective date.** This act shall take effect on January 1, 1997;
4 provided, however, that before the act may take effect, the Governor of
5 Guam shall certify to the Legislative Secretary that (i) the Guam Economic
6 Development Authority, pursuant to 12 GCA §2408, as amended in P.L. 20-
7 159:2, has adopted rules and regulations to govern the application for, and
8 issuance of qualifying certificates for insurers, as authorized by this act; and
9 (ii) the Insurance Commissioner, pursuant to Section 43036 of Chapter I, Title
10 XXXIX, Government Code, has formulated rules and regulations to
11 administer the insurance laws to appropriately govern the greatly increased
12 number of insurers doing business in Guam as a result of this act.

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) Regular Session

Date: 7/11/96

VOTING SHEET

Bill No. 299
 Resolution No. _____
 Question: _____

NAME	YEAS	NAYS	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
BARRETT-ANDERSON, Elizabeth	✓			
BLAZ, Anthony C.	✓			
BROWN, Joanne S.				✓
CAMACHO, Felix P.	✓			
CHARFAUROS, Mark C	✓			
CRISTOBAL, Hope A.	✓			
FORBES, MARK	✓			
LAMORENA, Alberto C., V	✓			
LEON GUERRERO, Carlotta	✓			
LEON GUERRERO, Lou	✓			
NELSON, Ted S.	✓			
ORSINI, Sonny L.	✓			
PANGELINAN, Vicente C	✓			
PARKINSON, Don	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Angel L. G.	✓			
SANTOS, Francis E.		4	✓	
UNPINGCO, Antonio R.	✓			
WONPAT-BORJA, Judith	✓			

TOTAL

19 1 0 1

CERTIFIED TRUE AND CORRECT:

Recording Secretary

notwithstanding the House
 Rules, Senator F.E. Santos was
 present at the roll call.

PL-23-109

✓



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

June 6, 1996

Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
Suite 222, Julale Shopping Center
424 W. O'Brien Drive
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Economic-Agricultural Development and Insurance to which was referred Bill #299, has had the same under consideration and now wishes to report back the same as substituted and amended with the recommendation to do pass.

The Committee votes are as follows:

To Do Pass	<u>9/11</u>
Not To Pass	<u> </u>
Abstain	<u> </u>
Other	<u> </u>

A copy of the Committee's Report and other pertinent documents are enclosed for your reference and information.

Sincerely yours,

JOE T. SAN AGUSTIN
Chairman



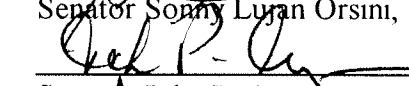
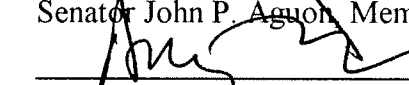
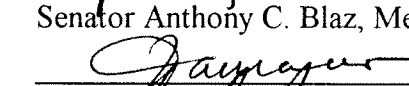
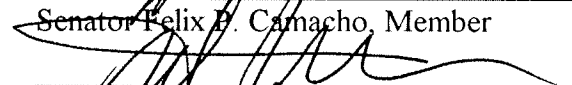
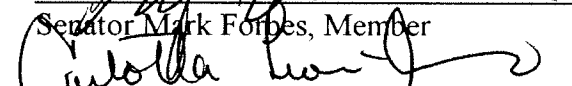
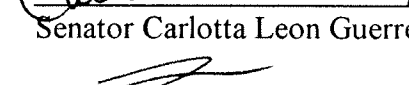
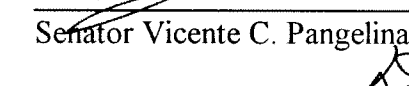
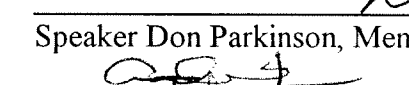
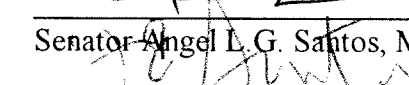
**Committee on Economic-Agricultural
Development and Insurance**

Twenty-Third Guam Legislature
Senator Joe T. San Agustin, Chairman

VOTE SHEET

Substitute BILL NO: 299 As Amended

**“AN ACT TO AMEND SUBSECTION SUBITEM 9, 2405.6, 2427,
2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE
ANNOTATED, TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4,
AND TO REPEAL AND REENACT SUBSECTION 43713, CHAPTER VII,
TITLE XXXIV, GOVERNMENT CODE TO AUTHORIZE THE ISSUANCE
OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO
CLARIFY THE TAXATION OF CAPTIVE INSURERS.”**

	Committee Members	To Do Pass	Not To Pass	Abstain	Inactive File
1.	 Senator Joe T. San Agustin, Chairman	✓			
2.	 Senator Sonny Lujan Orsini, Vice-Chairman	✓			
3.	 Senator John P. Aguon, Member	✓			
4.	 Senator Anthony C. Blaz, Member	✓			
5.	 Senator Felix D. Camacho, Member	✓			
6.	 Senator Mark Forbes, Member	✓			
7.	 Senator Carlotta Leon Guerrero, Member	✓			
8.	 Senator Vicente C. Pangelinan, Member	✓			
9.	 Speaker Don Parkinson, Member	✓			
10.	 Senator Angel L. G. Santos, Member	✓			
11.	 Senator Francis E. Santos, Member	✓			

COMMITTEE ON ECONOMIC-AGRICULTURAL
DEVELOPMENT & INSURANCE
TWENTY-THIRD GUAM LEGISLATURE

COMMITTEE REPORT ON

SUBSTITUTE BILL NO. 299 AS AMENDED

AN ACT TO AMEND SUBSECTION SUBITEM 9,
2405.6, 2427, 2442 AND 2443 OF ARTICLE 4,
CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED,
TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4,
AND TO REPEAL AND REENACT SUBSECTION 43713,
CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE TO
AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES
TO GUAM INSURERS AND TO CLARIFY THE TAXATION
OF CAPTIVE INSURERS.

COMMITTEE MEMBERS

Senator Joe T. San Agustin - Chairman
Senator Sonny L. Orsini - Vice Chairman

Senator John P. Aguon, Member
Senator Anthony C. Blaz, Member
Senator Mark Forbes, Member
Senator Angel L.G. Santos, Member
Senator Carlotta Leon Guerrero, Member
Senator Vicente C. Pangelinan, Member
Senator Lou Leon Guerrero, Member
Senator Francis E. Santos, Member
Speaker Don Parkinson

OVERVIEW

Bill No. 299 introduced on June 30, 1995, introduced by J.T. San Agustin, E. Barrett-Anderson, and S.L. Orsini, is an act to amend Government Code Subsection 43385, 43386 and 43387 relating to insurance rates under the insurance law. Said Bill No. 299 as introduced had a public hearing on September 18, 1995 (summary of testimony, refer to Appendix II of this report).

After a Committee mark-Up on April 12, 1996, attended by representatives of the Department of Revenue & Taxation, GEDA, Insurance Association of Guam, Senator Ben Pangelinan and Senator Joe T. San Agustin, it was agreed that a substitute Bill No. 299 be prepared with the view towards the issuance of qualifying tax certificates for insurance companies. Substitute Bill No. 299 was the subject of public hearing on May 16, 1996, reported here as Appendix I.

Committee members present at that hearing were: Senators Joe T. San Agustin and Ben Pangelinan.

The original Bill No. 299 was first held on September 18, 1995. The result of this public hearing produced an amended version which was considerably amended during a mark-up meeting on April 12, 1996. The amended version resulted in a substitute version towards the issuance of qualifying tax certificates. Since the substitute version of Bill No. 299 differed in scope, a second public hearing was held on May 16, 1996. It is this substitute Bill No. 299 that is now being reported by the Committee. It should be pointed out that an identical bill to substitute bill No. 299 was introduced as Bill No. 638 which essentially had a public hearing. Therefore, substitute Bill No. 299 is now being reported to the Legislature for approval. Bill No. 638 could likewise be reported simultaneously, and if Bill No. 299 as substituted which is identical and the same as Bill No. 638 is accepted as non-germaine - then Bill No. 638 is then,

therefore, offered for consideration, hearing the same bill under public consideration by the Committee on three separate occasions; namely, September 18, 1995, April 12, 1996, and May 16, 1996.

COMMITTEE RECOMMENDATION

Based on public testimonies received on three separate occasions; namely, September 18, 1995, April 12, 1996, and May 16, 1996, and upon insuring that local insurance companies are adequately protected, giving a statutory time frame for the issuance of adequate insurance regulation by the Department of Revenue & Taxation, as well as GEDA's issuance of regulation regarding qualifying tax certificates, before the effective date of the substitute Bill No. 299, the Committee; therefore, recommends the passage of Substitute Bill No. 299 as amended.

Executive Summary

Substituted Bill 299 as Amended

Present at the Public Hearing on May 16, 1996 were Chairman Joe T. San Agustin, along with Senator Ben Pangelinan. Also present were members of GEDA, as well as the Director of Revenue and Taxation and members of the Insurance Association of Guam.

The Public Hearing was opened by Chairman Joe T. San Agustin, whereby the intent and relevance was established for the members and public attending.

Immediately following the start of the public hearing, the members of the Guam Economic Development Authority's management team began a presentation on the positive ramifications of Captive Insurers, the captive financial prosperity in Bermuda with possible capital induction to Guam, and lastly, the added incentives of GEDA jurisdiction to regulate the Qualifying Certificates (QC's) in order to corner the untouched Asian Pacific Captive market. In retrospect, GEDA consistently expressed its views on Guam ultimately becoming the Insurance Capital in the Pacific, hence prompting for Guam to enter the Global insurance market.

Following after the GEDA presentation/testimony, discussion on various aspects of the bill were examined. Senator Pangelinan, a previous chairman for the Committee on Economic Agriculture and Insurance Development, expressed various views regarding the similarity and differences between Guam's bill 299

and Bermuda's current state of prosperity. Senator Pangelinan voiced his overwhelming favor for the bill, however he commented on the possible negative implications that such companies as captives insurers would have on the local insurance market, while further conveying and inquiring more on Guam and Bermuda's dissimilarities; geopolitically and economically. (Trends/Stats)

The Committee further discussed the proposed changes to Bill 299 as substituted. Throughout the public hearing, GEDA reiterated that the bill would address two parts as publicly heard. The bill, would allow for the Guam Economic Development Authority to first establish specific criteria for Companies trying to access Qualifying Certificates, whereby establishing their headquarters here on Guam. Following next, GEDA again clarified that the substituted bill 299 would also work with the Department of Revenue and Taxation, in order to enhance the insurance laws, consequently protecting the current local insurance brokers here on Guam. Moreover, various avenues of the bill were discussed in comparison to Bermuda, and its captive markets. The financial aspects, long-term effects, economic growth, regulations on QC's and foresight on the pro's and con's, was shared by both the Guam Economic Development Authority panel and later by the Insurance Association of Guam.

According to Al Pickens, of Deloitte and Touche, "The captives are insurance companies, they are legitimate insurance companies, but they are owned by the insured...Captives have not gained popularity yet in Asia. In the last 20 years, they have gained significant popularity in North America and in Europe."

Throughout the hearing, GEDA's main focus hovered over the sense of urgency, because of the changing global economy within the pacific region. Furthermore, it was emphasized that the Asian pacific region represented a tremendous challenge for Guam to exert itself, whereas specifically referring that once we've lost this opportunity, we would have lost it forever.

It was agreed by the Director of Revenue and Taxation (Joseph T. Duenas), that the substituted bill with its capital infusion aspects should include several aspects in securing the local livelihood and interest of Guam's longtime local insurance companies. Within the hearing, it was discussed intensely that the insurance laws of Guam, should be revised to include an enhanced security segment within the soon to be updated insurance laws, in order to protect the local insurance brokers.

Others present to testify, were the Insurance Association of Guam (IAG). Initially, the IAG began with reading a position paper regarding bill 299. Originally, the position was apparently negative towards the introduction of captive insurance companies, however further on within the IAG's testimony calmed. Specifically within the position paper, the IAG's focus fluctuated around the issue of the open invitation to bring captives to Guam, with its lower rates. Following on further, the next focus of dismay for the IAG, was the invitation to other insurers to come to Guam and enjoy the tax free environment, produced by the GEDA's regulated Qualifying Certificates. Specifically, the IAG were displeased with the fact that outside insurers would not be subject to the insurance laws of Guam.

Other members of the IAG were content with the Captives, however they were not happy with the open door policy for commercial insurers to come in as well. The IAG members went further to express the impacts of fly by night insurance companies and the possible catastrophic ramifications from the loss of disaster aide programs for Guam. In general, there was little objections regarding captives, however they did feel that before there was to be an introduction of wholesale company operations, there should be regulations in place first to protect the local insurers. In conclusion of the IAG's testimony, a member of the IAG tried to emphasize that Bermuda and Guam's conditions should be looked at from a realistic insurance stand point, mentioning that the initial market in Bermuda start off hard, consequently cluttering their insurance market with scams and fraud.

During this discussion, it was agreed that the bill be amended to that effective date upon the issuance of the updated insurance regulations as well as GEDA's criteria for issuing Qualifying Tax Certificates.

Basically, it was agreed by the IAG and the Committee, that captives were, primarily needed in targeting two practical industries on Guam, the Hotel industry and the Medical Liability profession. In conclusion, the Committee recognized the importance for Guam to strive within the Asian Pacific Global Business economy. The reality of Guam expanding into more than just one industry (Tourism) was a realistic goal to achieve, hence this would be an achievable aspiration for the people of Guam.

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299

As further substituted by the Committee on
Economic Agricultural Development & Insurance - June 5, 1996

Introduced by:

J.T. San Agustin
E.B. Anderson
S.L. Orsini

AN ACT TO AMEND SS 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SS 2428.4, AND TO AMEND SS 23713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurer, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's finest communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further

finds that the action taken in the past to encourage so-called "export trading companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. See Ramsey v. Chaco, 549 F.2d (1977).

Section 2. *Amendments to GEDA Law.* (a) SS 2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

"9. ~~Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code;~~ Insurance issuance, either by commercial insurers, reinsurers, or captive insurers which meet the requirements of Chapter III (Domestic Insurers), Title XXXIX, Government Code;"

(b) SS 2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2405.6. ~~Reinsurance. Increasing the availability of insurance including reinsurance.~~ Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam."

(c) SS 2427.5 of Article 4, Chapter 2, title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2427.5. *Insurance premiums.* All taxes now levied by virtue of ~~SS 43714, chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes,~~ shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificates therefor, for those gross receipts derived from underwriting insurance risks either in or out of Guam, including gross receipts derived from investing funds generated from insurance underwriting in Guam by an captive insurance company licensed under said Chapter VII that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods for twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) SS 2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2442. Investment of abated or rebated tax in Guam. Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of SS 2427 and 2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxers rebated or abated under SS 2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) SS 2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitle "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers \$750.00 \$1,000.00."

Section 3. *Addition to GEDA Law.* New SS 2428.4 is hereby added to Article 4, Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"SS 2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor; provided, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rule and regulations of the Authority."

Section 4. *Amendment to Captive Insurance Law.* SS 23713, Chapter VII, Title XXXIV, Government Code, is hereby Amended to read:

"SS 2371.3. No taxes on qualified captive insurers. Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax liability thereon before the same is rebated in full, pursuant to its Qualifying Certificates."
Severability

Section 5. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. *Effective date.* This act shall take effect on January 1, 1997; provided, however, that before the act may take effect, the Governor of Guam shall certify to the Legislative Secretary that (i) the Guam Economic Development Authority, pursuant to SS 2408, Chapter 2, Title 12, Guam Code Annotated, has adopted rules and regulations to govern the

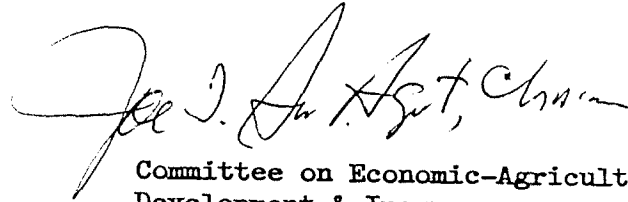
application for, and issuance of qualifying certificates for insurers, as authorized by this act; and (ii) the Insurance Commissioner, pursuant to SS 43036, Chapter I, Title XXXIX, Government Code, has formulated rules and regulations to administer the insurance laws to appropriately govern the greatly increased number of insurers doing business in Guam as a result of this act.

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 639

Introduced by:

Committee on Economic-Agricultural
Development & Insurance

AN ACT TO AMEND §§2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW §2428.4, AND TO REPEAL AND REENACT §43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurers, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of

and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's finest communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further finds that the action taken in the past to encourage so-called "export trading companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam Code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. *See Ramsey v. Chaco*, 549 F.2d 1335 (1977).

Section 2. *Amendments to GEDA Law.* (a) §2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

"9. ~~Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code;~~ Insurance issuance, either by commercial insurers, reinsurers, or captive insurers which meet the requirements of Chapter III (Domestic Insurers), Title XXXIX, Government Code;"

(b) §2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

~~"§2405.6. Reinsurance. Increasing the availability of insurance including reinsurance. Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam."~~

(c) §2427.5 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2427.5. *Insurance premiums.* All taxes now levied by virtue of ~~§43714, Chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated,~~ known as gross receipts taxes, shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from underwriting insurance risks either in or out of Guam, including gross receipts derived from investing funds generated from insurance underwriting in Guam by an captive insurance company licensed under said Chapter VII that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) §2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2442. Investment of abated or rebated tax in Guam.
 Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of §§2427 and 2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxes rebated or abated under §§2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) §2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitled "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers \$750.00 \$1,000.00."

Section 3. *Addition to GEDA Law.* New §2428.4 is hereby added to Article , Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"§2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20)

consecutive years from the effective date of a Qualifying Certificate therefor; *provided*, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

Section 4. *Amendment to Captive Insurance Law.* §23713, Chapter VII, Title XXXIV, Government Code, is hereby repealed and reenacted to read:

"§2371.3. *No taxes on qualified captive insurers.* Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to the government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax liability thereon before the same is rebated in full, pursuant to its Qualifying Certificate."

Section 5. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect *without* the invalid provision or application, and to this end the provisions of this act are *severable*.



Section 6. *Effective date.* This act shall take effect on January 1, 1997; *provided*, however, that before the act may take effect, the Governor of Guam shall certify to the Legislative Secretary that (i) the Guam Economic Development Authority, pursuant to §2408, Chapter 2, Title 12, Guam Code Annotated, has adopted rules and regulations to govern the application for, and issuance of qualifying certificates for insurers, as authorized by this act; and (ii) the Insurance Commissioner, pursuant to §43036, Chapter I, Title XXXIX, Government Code, has formulated rules and regulations to administer the insurance laws to appropriately govern the greatly increased number of insurers doing business in Guam as a result of this act.

LO2REV.4/12/963:0655-55



**Committee on Economic Agricultural
Development and Insurance**

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

June 6, 1996

Honorable Don Parkinson
Speaker
Twenty-Third Guam Legislature
Suite 222, Julale Shopping Center
424 W. O'Brien Drive
Agana, Guam 96910

Dear Mr. Speaker:

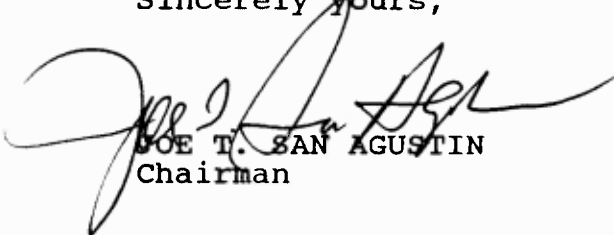
The Committee on Economic-Agricultural Development and Insurance to which was referred Bill #299, has had the same under consideration and now wishes to report back the same as substituted and amended with the recommendation to do pass.

The Committee votes are as follows:

To Do Pass	<u>9/1</u>
Not To Pass	<u> </u>
Abstain	<u> </u>
Other	<u> </u>

A copy of the Committee's Report and other pertinent documents are enclosed for your reference and information.

Sincerely yours,


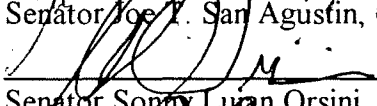
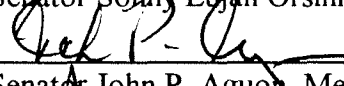
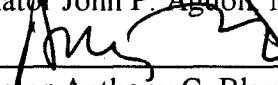
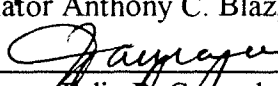
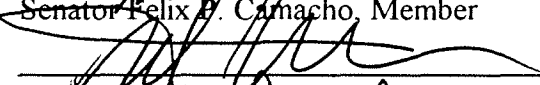
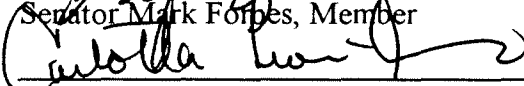
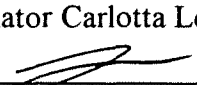
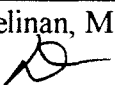
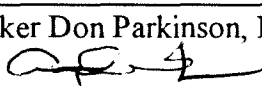
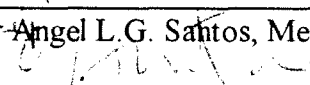

JOE T. SAN AGUSTIN
Chairman

**Committee on Economic-Agricultural
Development and Insurance**
Twenty-Third Guam Legislature
Senator Joe T. San Agustin, Chairman

VOTE SHEET

Substitute BILL NO: 299 As Amended

**“AN ACT TO AMEND SUBSECTION SUBITEM 9, 2405.6, 2427,
2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE
ANNOTATED, TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4,
AND TO REPEAL AND REENACT SUBSECTION 43713, CHAPTER VII,
TITLE XXXIV, GOVERNMENT CODE TO AUTHORIZE THE ISSUANCE
OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO
CLARIFY THE TAXATION OF CAPTIVE INSURERS.”**

Committee Members	To Do Pass	Not To Pass	Abstain	Inactive File
1.  Senator Joe T. San Agustin, Chairman	✓			
2.  Senator Sonny Lujan Orsini, Vice-Chairman	✓			
3.  Senator John P. Aguon, Member	✓			
4.  Senator Anthony C. Blaz, Member	✓			
5.  Senator Felix E. Camacho, Member	✓			
6.  Senator Mark Forbes, Member	✓			
7.  Senator Carlotta Leon Guerrero, Member	✓			
8.  Senator Vicente C. Pangelinan, Member	✓			
9.  Speaker Don Parkinson, Member	✓			
10.  Senator Angel L.G. Santos, Member	✓			
11.  Senator Francis E. Santos, Member	✓			

COMMITTEE ON ECONOMIC-AGRICULTURAL
DEVELOPMENT & INSURANCE
TWENTY-THIRD GUAM LEGISLATURE

COMMITTEE REPORT ON

SUBSTITUTE BILL NO. 299 AS AMENDED

AN ACT TO AMEND SUBSECTION SUBITEM 9,
2405.6, 2427, 2442 AND 2443 OF ARTICLE 4,
CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED,
TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4,
AND TO REPEAL AND REENACT SUBSECTION 23713,
CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE TO
AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES
TO GUAM INSURERS AND TO CLARIFY THE TAXATION
OF CAPTIVE INSURERS.

COMMITTEE MEMBERS

Senator Joe T. San Agustin - Chairman
Senator Sonny L. Orsini - Vice Chairman

Senator John P. Aguon, Member
Senator Anthony C. Blaz, Member
Senator Mark Forbes, Member
Senator Angel L.G. Santos, Member
Senator Carlotta Leon Guerrero, Member
Senator Vicente C. Pangelinan, Member
Senator Lou Leon Guerrero, Member
Senator Francis E. Santos, Member
Speaker Don Parkinson

OVERVIEW

Bill No. 299 introduced on June 30, 1995, introduced by J.T. San Agustin, E. Barrett-Anderson, and S.L. Orsini, is an act to amend Government Code Subsection 43385, 43386 and 43387 relating to insurance rates under the insurance law. Said Bill No. 299 as introduced had a public hearing on September 18, 1995 (summary of testimony, refer to Appendix II of this report).

After a Committee mark-Up on April 12, 1996, attended by representatives of the Department of Revenue & Taxation, GEDA, Insurance Association of Guam, Senator Ben Pangelinan and Senator Joe T. San Agustin, it was agreed that a substitute Bill No. 299 be prepared with the view towards the issuance of qualifying tax certificates for insurance companies. Substitute Bill No. 299 was the subject of public hearing on May 16, 1996, reported here as Appendix I.

Committee members present at that hearing were: Senators Joe T. San Agustin and Ben Pangelinan.

The original Bill No. 299 was first held on September 18, 1995. The result of this public hearing produced an amended version which was considerably amended during a mark-up meeting on April 12, 1996. The amended version resulted in a substitute version towards the issuance of qualifying tax certificates. Since the substitute version of Bill No. 299 differed in scope, a second public hearing was held on May 16, 1996. It is this substitute Bill No. 299 that is now being reported by the Committee. It should be pointed out that an identical bill to substitute bill No. 299 was introduced as Bill No. 638 which essentially had a public hearing. Therefore, substitute Bill No. 299 is now being reported to the Legislature for approval. Bill No. 638 could likewise be reported simultaneously, and if Bill No. 299 as substituted which is identical and the same as Bill No. 638 is accepted as non-germaine - then Bill No. 638 is then,

therefore, offered for consideration, hearing the same bill under public consideration by the Committee on three separate occasions; namely, September 18, 1995, April 12, 1996, and May 16, 1996.

COMMITTEE RECOMMENDATION

Based on public testimonies received on three separate occasions; namely, September 18, 1995, April 12, 1996, and May 16, 1996, and upon insuring that local insurance companies are adequately protected, giving a statutory time frame for the issuance of adequate insurance regulation by the Department of Revenue & Taxation, as well as GEDA's issuance of regulation regarding qualifying tax certificates, before the effective date of the substitute Bill No. 299, the Committee; therefore, recommends the passage of Substitute Bill No. 299 as amended.

Executive Summary

Substituted Bill 299 as Amended

Present at the Public Hearing on May 16, 1996 were Chairman Joe T. San Agustin, along with Senator Ben Pangelinan. Also present were members of GEDA, as well as the Director of Revenue and Taxation and members of the Insurance Association of Guam.

The Public Hearing was opened by Chairman Joe T. San Agustin, whereby the intent and relevance was established for the members and public attending.

Immediately following the start of the public hearing, the members of the Guam Economic Development Authority's management team began a presentation on the positive ramifications of Captive Insurers, the captive financial prosperity in Bermuda with possible capital induction to Guam, and lastly, the added incentives of GEDA jurisdiction to regulate the Qualifying Certificates (QC's) in order to corner the untouched Asian Pacific Captive market. In retrospect, GEDA consistently expressed its views on Guam ultimately becoming the Insurance Capital in the Pacific, hence prompting for Guam to enter the Global insurance market.

Following after the GEDA presentation/testimony, discussion on various aspects of the bill were examined. Senator Pangelinan, a previous chairman for the Committee on Economic Agriculture and Insurance Development, expressed various views regarding the similarity and differences between Guam's bill 299

and Bermuda's current state of prosperity. Senator Pangelinan voiced his overwhelming favor for the bill, however he commented on the possible negative implications that such companies as captives insurers would have on the local insurance market, while further conveying and inquiring more on Guam and Bermuda's dissimilarities; geopolitically and economically. (Trends/Stats)

The Committee further discussed the proposed changes to Bill 299 as substituted. Throughout the public hearing, GEDA reiterated that the bill would address two parts as publicly heard. The bill, would allow for the Guam Economic Development Authority to first establish specific criteria for Companies trying to access Qualifying Certificates, whereby establishing their headquarters here on Guam. Following next, GEDA again clarified that the substituted bill 299 would also work with the Department of Revenue and Taxation, in order to enhance the insurance laws, consequently protecting the current local insurance brokers here on Guam. Moreover, various avenues of the bill were discussed in comparison to Bermuda, and it's captive markets. The financial aspects, long-term effects, economic growth, regulations on QC's and foresight on the pro's and con's, was shared by both the Guam Economic Development Authority panel and later by the Insurance Association of Guam.

According to Al Pickens, of Deloitte and Touche, "The captives are insurance companies, they are legitimate insurance companies, but they are owned by the insured...Captives have not gained popularity yet in Asia. In the last 20 years, they have gained significant popularity in North America and in Europe."

Throughout the hearing, GEDA's main focus hovered over the sense of urgency, because of the changing global economy within the pacific region. Furthermore, it was emphasized that the Asian pacific region represented a tremendous challenge for Guam to exert itself, whereas specifically referring that once we've lost this opportunity, we would have lost it forever.

It was agreed by the Director of Revenue and Taxation (Joseph T. Duenas), that the substituted bill with its capital infusion aspects should include several aspects in securing the local livelihood and interest of Guam's longtime local insurance companies. Within the hearing, it was discussed intensely that the insurance laws of Guam, should be revised to include an enhanced security segment within the soon to be updated insurance laws, in order to protect the local insurance brokers.

Others present to testify, were the Insurance Association of Guam (IAG). Initially, the IAG began with reading a position paper regarding bill 299. Originally, the position was apparently negative towards the introduction of captive insurance companies, however further on within the IAG's testimony calmed. Specifically within the position paper, the IAG's focus fluctuated around the issue of the open invitation to bring captives to Guam, with its lower rates. Following on further, the next focus of dismay for the IAG, was the invitation to other insurers to come to Guam and enjoy the tax free environment, produced by the GEDA's regulated Qualifying Certificates. Specifically, the IAG were displeased with the fact that outside insurers would not be subject to the insurance laws of Guam.

Other members of the IAG were content with the Captives, however they were not happy with the open door policy for commercial insurers to come in as well. The IAG members went further to express the impacts of fly by night insurance companies and the possible catastrophic ramifications from the loss of disaster aide programs for Guam. In general, there was little objections regarding captives, however they did feel that before there was to be an introduction of wholesale company operations, there should be regulations in place first to protect the local insurers. In conclusion of the IAG's testimony, a member of the IAG tried to emphasize that Bermuda and Guam's conditions should be looked at from a realistic insurance stand point, mentioning that the initial market in Bermuda start off hard, consequently cluttering their insurance market with scams and fraud.

During this discussion, it was agreed that the bill be amended to that effective date upon the issuance of the updated insurance regulations as well as GEDA's criteria for issuing Qualifying Tax Certificates.

Basically, it was agreed by the IAG and the Committee, that captives were, primarily needed in targeting two practical industries on Guam, the Hotel industry and the Medical Liability profession. In conclusion, the Committee recognized the importance for Guam to strive within the Asian Pacific Global Business economy. The reality of Guam expanding into more than just one industry (Tourism) was a realistic goal to achieve, hence this would be an achievable aspiration for the people of Guam.

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299

As further substituted by the Committee on
Economic Agricultural Development & Insurance - June 5, 1996

Introduced by:

J.T. San Agustin
E.B. Anderson
S.L. Orsini

AN ACT TO AMEND SS 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SS 2428.4, AND TO AMEND SS 23713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurer, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's finest communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further

finds that the action taken in the past to encourage so-called "export trading companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. See Ramsey v. Chaco, 549 F.2d (1977).

Section 2. *Amendments to GEDA Law.* (a) SS 2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

"9. ~~Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code;~~ Insurance issuance, either by commercial insurers, reinsurers, or captive insurers which meet the requirements of Chapter III (Domestic Insurers), Title XXXIX, Government Code;"

(b) SS 2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2405.6. ~~Reinsurance. Increasing the availability of insurance including reinsurance.~~ Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam."

(c) SS 2427.5 of Article 4, Chapter 2, title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2427.5. *Insurance premiums.* All taxes now levied by virtue of ~~SS 43714, chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes,~~ shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificates therefor, for those gross receipts derived from underwriting insurance risks either in or out of Guam, including gross receipts derived from investing funds generated from insurance underwriting in Guam by an captive insurance company licensed under said Chapter VII that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods for twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) SS 2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"SS 2442. Investment of abated or rebated tax in Guam. Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of SS 2427 and 2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxers rebated or abated under SS 2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) SS 2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitle "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers \$750.00 \$1,000.00."

Section 3. *Addition to GEDA Law.* New SS 2428.4 is hereby added to Article 4, Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"SS 2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor; provided, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rule and regulations of the Authority."

Section 4. *Amendment to Captive Insurance Law.* SS 23713, Chapter VII, Title XXXIV, Government Code, is hereby Amended to read:

"SS 2371.3. No taxes on qualified captive insurers. Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax liability thereon before the same is rebated in full, pursuant to its Qualifying Certificates."
Severability

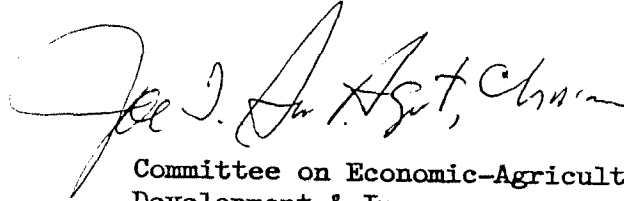
Section 5. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 6. *Effective date.* This act shall take effect on January 1, 1997; provided, however, that before the act may take effect, the Governor of Guam shall certify to the Legislative Secretary that (i) the Guam Economic Development Authority, pursuant to SS 2408, Chapter 2, Title 12, Guam Code Annotated, has adopted rules and regulations to govern the

application for, and issuance of qualifying certificates for insurers, as authorized by this act; and (ii) the Insurance Commissioner, pursuant to SS 43036, Chapter I, Title XXXIX, Government Code, has formulated rules and regulations to administer the insurance laws to appropriately govern the greatly increased number of insurers doing business in Guam as a result of this act.

TWENTY-THIRD GUAM LEGISLATURE
 1996 (SECOND) REGULAR SESSION

Bill No. 634



Committee on Economic-Agricultural
 Development & Insurance

Introduced by:

AN ACT TO AMEND §§2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW §2428.4, AND TO REPEAL AND REENACT §43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurers, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of

and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's best communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further finds that the action taken in the past to encourage so-called "exporting companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam Code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. See *Ramsey v. Chaco*, 549 F.2d 1335 (1977).

Section 2. *Amendments to GEDA Law.* (a) §2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

~~"9. Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code;~~ Insurance issuance, either by commercial insurers, reinsurers, or captive insurers which meet the requirements of Chapter III (Domestic Insurers), Title XXXIX, Government Code;"

(b) §2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

~~"§2405.6. Reinsurance.—Increasing the availability of insurance including reinsurance. Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam."~~

(c) §2427.5 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2427.5. *Insurance premiums.* All taxes now levied by virtue of ~~§43714, Chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated, known as~~ gross receipts taxes, shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from underwriting insurance risks either in or out of Guam, including gross receipts derived from investing funds generated from insurance underwriting in Guam by an captive insurance company licensed under said Chapter VII that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) §2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2442. *Investment of abated or rebated tax in Guam.*

Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of §§2427 and 2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxes rebated or abated under §§2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) §2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitled "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers \$750.00 \$1,000.00."

Section 3. *Addition to GEDA Law.* New §2428.4 is hereby added to Article Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"§2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20)

consecutive years from the effective date of a Qualifying Certificate therefor; *provided*, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

Section 4. *Amendment to Captive Insurance Law.* §23713, Chapter VII, Title XXXIV, Government Code, is hereby repealed and reenacted to read:

"§2371.3. *No taxes on qualified captive insurers.* Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to the government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax liability thereon before the same is rebated in full, pursuant to its Qualifying Certificate."

Section 5. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect *without* the invalid provision or application, and to this end the provisions of this act are *severable*.

Section 6. *Effective date.* This act shall take effect on January 1, 1997; provided, however, that before the act may take effect, the Governor of Guam shall certify to the Legislative Secretary that (i) the Guam Economic Development Authority, pursuant to §2408, Chapter 2, Title 12, Guam Code Annotated, has adopted rules and regulations to govern the application for, and issuance of qualifying certificates for insurers, as authorized by this act; and (ii) the Insurance Commissioner, pursuant to §3036, Chapter I, Title XXXIX, Government Code, has formulated rules and regulations to administer the insurance laws to appropriately govern the greatly increased number of insurers doing business in Guam as a result of this act.

REV. 1/12/93 0635-55

Committee Report on Bill 299 as Substituted
Public Hearing: May 16, 1996

Testimonies were offered and submitted by the following interested parties:

Alan Pickens, Deloitte & Touche
Andy Gayle, GEDA Legal Council
Ovidio Calvo (J.R.) Board of Director
Glenn Leon Guerrero, Dir. of GEDA
Joseph T. Duenas, Dir. of Rev. & Tax

Joe Zulka, Pres Insurance Assoc. of Guam
Dave Cassidy, Insurance Assoc. of Guam
Mike Catcherin, Insurance Assoc. of Guam
Ray Martinez, Insurance Assoc. of Guam

BACKGROUND OF BILL 299 as Substituted

Bill 299 as substituted proposes to direct the Guam Economic Development Authority to authorize the issuance of Qualifying Certificates to Guam Insurers and to clarify the taxation of Captive Insurers, by repealing and amending Chapter 2, Title 12, of Guam Code Annotate

TESTIMONY (verbatim)

Senator Joe T. San Agustin, Chairman of the Committee on Economic-Agriculture Development and Insurance opened the hearing with the members of the Guam Economic Development Authority (GEDA), presenting their proposed regulations. Following the Guam Economic Development Authority's presentation, Joey Duenas, the Director of Revenue and Taxation and the Insurance Association of Guam, testified subsequently following at the panel.

START

Senator Joe T. San Agustin:
Good Afternoon ladies and gentlemen.
I think we better start, because I think that there will be a lively debate on this issue and rightfully so, it is very important. The Committee on Economic Agriculture and Insurance will now have a second public hearing on bill 299. Before I start I would like to introduce a member of this committee and a former chairman of this committee, is Senator Ben Pangelinan to my left. I think if there is anybody else who is more knowledgeable in this industry, it's Ben. That's why I'm glad that he's able to join us throughout the deliberation of the bill 299 through the beginning. And I just want to read for the record so that we can get an audit trail of this particular bill. This public hearing will constitute the second public hearing on

bill 299, which was originally heard in September 18, 1995. Bill 299, during the public hearing at that time, received testimonies relating to deregulating insurance rates on Guam. It was my intent as the author to "shock" the insurance industry into realizing that Guam's consumers are very frustrated by the high cost of insurance; particularly, typhoon coverage. The public hearing heard on September 18, 1995, stimulated a lively discussions regarding the insurance industry on Guam. After the public hearing and based on testimony received, it was obvious that Bill No. 299 as submitted needed to be revised, keeping in mind the main focus, to address the needs of the Guam consumers as they pertain to the insurance industry. The creation of the Advisory Insurance Board was suggested. The revised Bill 299 contain two essential features; namely, (1) creation of an Insurance Advisory Board; and (2) to authorize the issuance of Qualifying Certificates to Guam Insurance and to clarify the taxation of Captive Insurance. A mark-up meeting of the revised bill was held on April 12, 1996, attended by representatives of the Insurance Industry, Department of Revenue & Taxation, Guam Economic Development Authority, along with the Chairman of this Committee and Senator Ben Pangelinan, a former Chairman and a member of the committee. During this mark-up, it was generally agreed that there is no need for an Insurance Advisory Board; but, the subject of Qualifying Certificates for Guam insurance and clarification of the taxation of Captive Insurance were debated at length. It was generally agreed that an inquiry be made by GEDA to ascertain if there is indeed a market to attract General Insurance as well as the role of Captive Insurance. What is the role of Captive insurance on Guam? Bill 299 as now substituted which pertains to the Qualifying Certificates (QC's) of General Insurance and clarifying the taxation feature of Captive insurance. It must have a public hearing and that's what why we're having a public hearing, because it has differed in scope, but the intent and objectives remains the same. The jurisdictional issue, as far as this committee is concerned, it applies on any insurance and any QC's, under GEDA, and therefore, it is proper that it be heard by the same committee and on the same time is also clarifies any issue before the floor as to germanies or substitution of this bill. So, that's why we have this second public hearing, to make sure that its not challenged on the floor, that the original bill when it was introduced, has differed. Otherwise we would have gone ahead and submitted it, but then we would be faced with the challenge of defending its germanies issue maybe be at the floor, and therefore, this is why we are having this public hearing wich the two items in questions, which is the Qualifying Tax Certificate for general insurers, as well as to define the role of captive insurance. We are now here to hear the pro's and con's of the Bill 299 as now substituted; it's now constituted. We have this afternoon, members of the GEDA, as well as Al Pickens, who is chairing the Vision 2001, on Financial Market. We would like to hear their presentation first and then after

that we'll have some questions and then we'll invite the members of the insurance industry to please come forward and as well as others who would like to testify on this bill. WE allowed ourselves the whole afternoon basically until 5 o'clock. We have the 5 o'clock for the Chamorro village, we also postponed the bill 606 which is hotel incentives, as well as low cost housing incentives, until Monday at 4 p.m., so that we can have more time to discuss this bill. I think that both bill have a substantial importance to Guam and its development and we need to give it its proper time to be discussed as well as to be debated at great lengths. Would you please start off Mr. Al Pickens. Maybe you would like to introduce... I understand you want to make a presentation of the actual role of the bill, as of what it will accomplish, and what it will do.

Al Pickens:

Yes, thank Mr. Chairman and Sen. Pangelinan. Thank for giving us the time to discuss Bill 299 with you today. At the table with me at the moment is Mr. JR. Calvo, a member of the Board of Directors of the Guam Economic Development Authority, Mr. Andy Gail, an attorney for the Guam Economic Development Authority, and a Co-presenter with me, Mr. Glen Leon Guerrero Chief Officer of the Guam Economic Development Authority. We would like to discuss first of all perhaps an overview of the insurance industry as we understand it and the impact that bill 299 will have on that industry. If you will allow me, I would like to stand for this presentation.

Al Pickens:

Thank you, that's just fine.

Bill 299 is a GEDA bill, it affects the GEDA Law, it does not affect the Guam insurance law. So, we are talking about a GEDA law today, we are not changing the insurance law on Guam by 299. The insurance industry might be divided into two parts. The underwriters or the risk takers. By definition in the Guam laws, these are called the insurers. These are the ones that indemnifies someone else. These are the ones that ultimately receives the premiums. The premium only goes to the first group here, the underwriters. In addition to this group of companies, there are also service entities. These are primarily the distribution arm of the insurance agencies. This include the general agents, brokers, agents, there are also other service entities that also service this industry. There are money market managers, that get involved with these people, attorneys, accountants and others.

Bill 299 address the underwriting entities, it does not address the service entities. Bill 299 address this group of companies that we have on the map right now. There are perhaps three levels of underwriting entities, or risk takers, or insurers. At the top we might have the re-insurance companies, and these are

truly the wholesalers of the insurance industry. These are the people, that you cede risk too. They have risk normally from around the world; a wide area of risk coverage. In addition there is a middle group here; casualty companies, health, life and others. These might be called the retailers or the commercial entities. In some literature, they're called commercial insurance companies. In addition is one that perhaps your not familiar with, somewhat new here in the Asian area; the captives. The captives are insurance companies, they are legitimate insurance companies, but they are owned by the insured. The insured individual or company will set up its own subsidiary, an insurance company, and it will pay premiums to that insurance company, its own subsidiary. That Captive may keep that risk entirely, or it may cede that risk, that is buy insurance from this level or this level. Or as I say, it can keep that risk itself. As I say, Captives have not gained popularity yet in Asia. In the last 20 years, they have gained significant popularity in North America and in Europe. and most of the multi-national companies from those two regions have their own subsidiary captive insurance companies as a part of their total risk management package. The captives today, number about 6,000 around the world. I know that this is a hard screen to read. The bulk of the captives are in the Caribbean and in the Atlantic ocean. And again, their servicing north America and in Europe. Of the 6,000 captives in the world today, 5,900 and some of them are in north American and in Europe. less than 100 are in the Pacific. Forty six of them are in Hawaii, forty eight are in Singapore, one in Labuan, and four in Australia. That's the extent of the captives today in the pacific. However, there is strong indication of key interest in establishing captives by Japanese multi-nationals and other multi-nationals throughout the regions, including Korea. They've not yet established, and thus are looking for a place to do this type of business. The service entities that I mentioned ago, these are not covered by bill 299. They're tax in relationship to Guam remains exactly the same after bill 299. They include general agents, brokers, agents, managers, adjusters, professionals, including actuaries, lawyers, money managers, and accountants. In here is a category called managers. This category would come to Guam, if in fact we had a captive industry here on Guam. These managers go around the world to manage captives, and they establish a presences in each of the jurisdictions were captives have any significant presence. Why the insurance industry on Guam. Well, I'm preaching to the choir here on this one of course, but right now of course, we have one private sector industry to speak of; tourism, and we need to expand our economic base. WE need to make the island much less vulnerable to the fluctuations and the economies of some of the jurisdictions that surround us. Certainly we all are aware that the Government of Guam can use some additional revenue, its in dire need of additional revenue. Right now, no other Asian jurisdiction specializes in this particular industry. No one has taken up the mantel in the

Pacific. In the Atlantic, Bermuda is recognized as the insurance hub of the Atlantic. No one has done that yet in the Pacific. Second screen on the same subject. Guam is the only U.S. territory out here course that is perhaps in the position to do this thing, and a U.S. status provides stability. I think some of you may have read in today's new paper that in Hong Kong or China today an announcement today, that the Chinese government would nationalize all Chinese citizens, no matter what passport they carry in Hong Kong. That kind of thing, scares the living daylight out of Business people. Guam provides stability in this region, for this purpose. The industry will also provide significant white collar employment opportunities, upscale jobs, air conditioned jobs will be available when this industry is established here. The demands on our islands infrastructure will be minimal, from this particular industry. Why is now a good time? There's a world wide interest in insurance. Certainly, that's what gave rise to this particular bill in its initial form. The results of some natural disasters. The difficulty perhaps in getting insurance, the caps that are on insurance today, the deductibles. Things of that nature are of concern to all of us. There's a vacuum created in for financial services in Asia, by the change of status in Hong Kong. I just mentioned one of the impacts of it, but there are many many others. I can assure you that no multi national is going to establish its captive in Hong Kong in the immediate future. The Caribbean and the Atlantic islands have had great success. And their successes are going to be duplicated in the Pacific, whether its Guam or the CNMI (Commonwealth of the Northern Marianas), or some other jurisdiction somebody is going to copy what is happening in the Atlantic ocean. There's a vast virtually untapped Asian market for captives. It is estimated that the captive market in Asia is as big as it is in North America and in Europe. Supporting Asset are available to our community now. We have state of the art communications and there is an immediate prospects of some reductions in the cost in that particular category of Service. WE have an educated work force and approximately seven percent unemployment today. The jobs in this particular industry, are above minimum wage and they're ego satisfying jobs. This will provide an option, an alternative to our work force. WE have available office space at reasonable rates. All you have to do is look around, and you'll be aware of the impact of the move to Tiyan by government offices on the commercial markets here on Guam. Significant available space here today, that could be utilized by this industry. WE have a very good financial structure here on Guam today. We have 16 banks right now on Guam. We have a major stock brokerage firms. We have an expansive legal and accounting services currently available here on Guam. There's a single impediment to the establishment of this particular industry here on Guam. One impediment is the tax structure. Now I'm going to ask Glenn Leon Guerrero if he would to carry on from here, and explain how this particular impediment will be dealt with.

Glen Leon Guerrero:

Thank you Al, Senator San Agustin, Senator Pangelinan. Bill 299, the purpose for us Changing the GEDA law, is to create the incentive to attract the insurance underwriting entities to Guam. As Al has pointed out, were not looking at affecting the service entities, were looking at attracting the underwriting entities. WE want Guam to become the insurance capital of the Pacific, drawing from the Asia markets and drawing from the pacific markets. WE think that there is a large demand that we can fulfill. Guam's insurance industry today, currently there are a hundred and nine insurance companies who are licensed to do business on Guam. Eleven of which are actually doing underwriting. Estimated gross receipts taxes from these eleven underwriters are approximately seven million dollars and income taxes of approximately 1.2 million dollars.

The benefits from bill 299.

Looking into any kind of crystal ball, what we did was we looked at Bermuda's case. Back in 1980, Bermuda was faced with a similar situation that we are confronted with now. Bermuda had one industry, the tourism industry and they were faced with the downsizing of the military. The United States Air Force was pulling out and the British Air Force was pulling out. So what they did was in 1980, was they formulated a group that designed, and wanted to capture the insurance business. In 1995, which is about from the time they decided to aggressively attract the insurance industry, they have gross premiums of about 18.8 billion dollars. Real soon, 25% of their total premiums that will be taxable, that equates to about 4.7 billion dollars in taxable income. Using a 35% tax rate, which is a typical corporate tax rate, Guam can receive 1.6 billion dollars in taxes paid and eventually refund it. Because the Government of Guam can hold the income taxes for a hundred and eighty days, the Government of Guam can invest it to T bills that are currently running at 6% and we can see Guam earning a 145 million dollars annually. What other benefits will Bill 299 do. We saw that in Bermuda, we saw a one for one job creation for tourism as well as for insurance, so there's potentially 12 thousand jobs within 12 years, averaging the salary of about 25 thousand dollars, we're looking at about 300 million dollars in salaries, that people will gain, that the people of Guam will have, and that equates to a hundred million dollars in personal income tax to the General fund. They'll be capital infusion, 2.9 billion in permanent capital, which will stay on Guam. They'll be fees that will be generated, close to a million dollars in annual filing fees and 1.3 million dollars in surveyance fees, and it will also create as Al said, a new service sector of managers. We're talking about managers such as Johnson and Huygens, who have 1.75 billion dollars in premiums and have a 193 captives in 1995 and have a staff size of about 153 people. If you add the total volume here, we're talking about 5.498 billion in premiums. Our recommendation is

that we want you to enact bill 299; and that's all we have.

Senator Ben Pangelinan:

I can see the presentation made, but there's a portion of the bill that allows autre of these companies that will set up business on Guam access into the local insurance market without any kind of mention as to how they'll be regulated, what their requirements will be for chartering a business and staying on Guam, and so forth, and so can you explain the dynamics of bringing these off-shore companies to Guam for the purpose of writing off-shore business, but allowing them to be able to write local premiums to Guam to an excluding their local income from taxes and what that will do to the local insurance market.

Senator Joe T. San Agustin:

Maybe you should invite Joey Duenas to the panel. Go ahead Al.

Al Pickens:

Senator I will try and answer your question. First of all the people who are underwriting business in Guam today, certainly will have an opportunity to come and comply with this particular law and obtain a GEDA QC law, but they must also comply with the insurance law of Guam, which has not changed or affected by this. This particular law does have significant rules, regulations and does have an administrator here sitting with us. Also this law has an effective date of January 1, 1997. Between the passage of this law and that particular date, we would anticipate a thorough review of the existing law, and where necessary, changes may be preferred.

Senator Ben Pangelinan:

Do you know when the last amendment of the insurance law which addressed the development of captive insurance companies as they are regulated by other jurisdiction? There's nothing at all in our insurance laws in that, and what we are doing is we're opening up the market, and I don't mind that at all, but I think that we should do it in tandem with certain structural changes that we may need to make in our insurance laws.

Joe Duenas:

I think that if this proposal is to go forward, I think it presupposes that there is a rewrite of the insurance code on Guam. I think that we're all cognizant of the fact that our requirements are quite liberal in terms of the insurance companies and I would say that there are a number of things to be done. Also, I think you have to understand that if we were to invite all these companies in, we would have to upgrade the quality of staff that we have in terms of the regulatory, the examiners that we would send out. We would really have to regulate a big industry now. So what we....

Senator Ben Pangelinan:

So what would it take us to do something like that Joey?

Joe Duenas:

To get up to speed?

I would imagine that the rewrite of the laws, the rules and regulations could be done by 6 months. The training and the other stuff would take a little bit longer than that. At the same time, I think that the Bermuda example they used acknowledges that it was a 10 - 15 year period where they got to this point. It didn't happen overnight. So I would imagine that this could be accomplished. The key though is first off, you have to decide if we're going to go down this road. Because, if we're not going to go down this road, then we may not need as many regulatory,I'd like to see more regulatory examiners, but we may not need as many as we would need if we did go down this road.

Senator Ben Pangelinan:

Glen, you were supposed to do a survey of the insurance companies, send out letter to the insurance companies. Has that been done?

Glen Leon Guerrero

I was supposed to get names from IAG (Insurance Association of Guam), and I did not get names, however Allen has talked to some insurance companies I think in Hawaii.

Al Pickens:

Yes, although we did not receive the names of the promised. We did personally make a trip to Los Angeles to meet with the people in the insurance industry, sent letter also to Hawaii, met with people in Hawaii in the insurance industry and found keen interest in what we're trying to do here.

Senator Ben Pangelinan:

Can we get copies of those letters?

Andy Gayle:

My name is Andy Gayle and I'm the Legal Counsel for the Guam Economic Development Authority, and I've worked on this bill and I've been cooperating with Mr. Duenas and the Department of Revenue and Taxation in connection with it, and we have some technical amendments that I will submit in written form; none of them have anything to do with the policy of the bill, but with something that makes the people over at Revenue and Taxation a little more comfortable. And one of the technical amendments, and it gets back to what Mr. Duenas was talking about, would extend the effective date until the first of January 1997 and that would give us the six months that is need for the insurance

office under the commissioner to get up to speed as it were. And it also gives us time to take a close look at how the two laws work together or don't work together, and if in that time its found that there's some crucial mismatch between the new law and between the business itself and there is something unworkable about what's being proposed that gives us time to have it amended before the law goes into affect.

Senator Ben Pangelinan:

Page 4 of the Bill. It says, that a rebate of section 2428.4, a rebate of 100% of all income tax paid to the Government of Guam by a beneficiary on all income derived in the underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam may be issued for a period up to 20 years. Provided that Guam risk and policy holder that does not gives you policy directly from the policy holder, but only issues the same through a licensed insurance broker. I guess the question I have there, is if is that kind of limitation legal. The question of restraint of trade, or the question of...I know that we had the debate Andy of the wholesaler being the retailer and those issue, and are we getting into something like that here, and is this something that can be challenged at some point.

Andy Gayle:

As you know senator the insurance business is in a considerable extent or in many ways outside of the usual anti-trust provision, and it seems to me that a state like Guam could take into consideration the existing businesses when it changes its laws and say we're going to protect existing businesses and we're going to insist that you deal with them and I don't think that's unconstitutional or inorganic. I'm not sure, and that's one of the things that I was thinking about just now, that we have time to make amendments. I'm not sure we should just say a licensed Guam insurance broker, Maybe there are other licensed insurance entities that issue policies on our brokers. I'm not sure on that, so that might be a word we might want to change. Broker/Agent or something like that.

Senator Ben Pangelinan:

On the economic side of this, I guess we're looking at, these are projections, and I don't know if these are first year projections or tenth year projections on the 145 million dollars. As you mentioned, the Bermuda offshore insurance company basically took off after 1985, and my latest reading on that was that it was about 15 billion dollars in annual with a capital and surplus base just short of 30 billion dollars, but..and in doing this we're giving up,....Joey I wrote your office, I guess about 2 weeks ago a letter, trying to get an idea of what the current tax base is for the insurance industry on Guam.

Joe Duenas:

It's about 8.2 million. That number came from me Senator.

Senator Ben Pangelinan:

So, I mean, would that 8.2 million dollars which is now in so called cold hard cash that is being paid to the Government of Guam. The bill as written would allow these companies to take advantage of that.

Joe Duenas:

The companies would first have to be locally chartered companies. And if they did that there would be employment, right now these companies you have a hundred and nine. I think only about eleven of them really actually write any business on Guam, in other words it's cheap enough just to get a license even if you don't write any business on Guam. But if you have the hundred and nine that want to participate and want to take advantage, then actually they have to develop a fiscal presence here on Guam. They'd actually have to develop a fiscal presence be home office here. That's the whole thing about this. Your talking about them running their business out of Guam. And so therefore what you get....

Senator Ben Pangelinan:

Or being managed out of Guam.

Joe Duenas:

Or being managed out of Guam, but what you give up in the 8.2 million dollars could easily be made up in terms of employment opportunities; we'll be collecting income tax withholding from all these other employees will be coming in.

Senator Ben Pangelinan:

But I'm trying to get the projections because your projecting based on the growth that has happened in Bermuda over the last several years, and the numbers your feeding me right now, would lead me to believe that we are going to reap at least 50% if I'm conservative. Say 50% of this, which I don't think if realistic. It's going to take us a while like everybody, like the panel says to build it up.

Joe Duenas:

What I'm trying to say Senator is that those companies said the hundred and nine that we have currently operating in Guam There's about I believe four...I'm going to defer to the Insurance Association, (Asking the IAG) I think there's about our or five...If you consider all of them, there's FHP, Zurich, Pacific Indemnity, QBC. Yeah, there's about four. My point is the other hundred and five companies basically would continue to pay taxes, until they became domestic companies. So it wouldn't happen over night. In other words, as this law gets passed those hundred and five companies aren't automatically going to be out. The benefit will accrue directly to the currently brokered

companies that still have to qualify with GEDA for this Qualifying Certificates. It's not an automatic thing. Even the four companies here would have to apply and there would be a transition period. In other words, you know your not going to establish an insurance company on Guam overnight. Nobodies going to do that, so I don't think we're going to be loosing revenues for the next 2-3 years, as this kind of evolves, but the potential is that every new company that comes in is going to be setting up shop, is going to be having some office presence, is going to building a building, is going to be doing something, and it's economic activity.

Senator Ben Pangelinan:

And if that should happen, I will..I endorse the concept, I'm just trying to make sure we're realistic in our projections, because Joey we said the same thing, you know when we spent 1.2 million dollars to market the FISC program. That these companies will come and set up offices, they'll hire attorney's, they'll hire accountants and so forth. And to a degree we got, we have reaped from the benefits of the FISC laws, but the degree of growth or the degree of employment was expected, did not materialize, but in that case we were not giving anything up, with regards to local revenue based at that time.

Joe Duenas:

And my point is unless those one hundred and five come in, we'll still get that revenue base. In other words, your saying to me, what if you have a dance and nobody comes. Well if we invite these guys in and the hundred and five decide not to come in, they'll still be taxable.

Senator Ben Pangelinan:

So what is the incentive then for an off-shore company who may not need to have a fiscal presence elsewhere to come to Guam which would require them to have a fiscal presence, and this is new in terms of requiring them to open an office, to hire staff, to lease a building. I don't see that anywhere that it says that.

Senator Joe T. San Agustin:

What about the premiums that these people collect Joey; there being sent off island now?

Joe Duenas:

Yeah, right now all the premiums they collect basically go off island. If this is a local company...I envision making changes to the insurance laws to keep the money here. The whole idea of this is to goal capital, and I think it will happen. Al, why don't you clarify that?

Al Pickens:

Let me speak to the premium issue just for a moment. If you were

to assume that the hundred and nine companies do not come, exactly what Joey says would be the case. We would continue to get the Gross receipts tax which is the 8 million dollars really, from those sales of those particular policies. However if the hundred and nine did come, then the premiums would be paid to Guam companies. The hundred and ninety million in premiums that today we ship off island. Let me use this as an analogy. The automobile that you and I came down here in, the close that we're wearing, the lunch that we had; all came from off island, manufactured off island. Our insurance is manufactured off island today. We pay for it, we send the hundred and ninety million off island. If we brought the underwriters here to Guam, the hundred and ninety million would stay here. Now, we know that this would be new money, because we don't have that money here today. We know that money turns in an economy. Here is been measured at 2.3 to 2.9 times. It only has to turn one time, one hundred and ninety million only has to turn one time to generate eight million dollars in gross receipts tax. Only one time. So, if they all came and we forgave their income tax, that hundred and ninety million stays here. If it turns only one time in our economy, we would get the 8 million back. This is a win win situation.

Senator Ben Pangelinan:

I'm just trying to understand, how would that hundred and ninety million dollars turn?

Al Pickens:

A hundred and ninety million can turn through the salaries, through the rent, through the other expenses that they pay. They also have to establish reserves. Insurance companies establish reserves; they put those in the banks. The banks loan the monies out at margin. They loan at one rate and they receive it at another. The banks pay Gross Receipts tax on net. They also pay income tax on their earnings. That money does turn in our economy. It may not turn 2.3 or 2.9; but it only has to turn once, only once for us to recover what Maybe foregone in this thing. As I say, there's no way that I can see to loose economically in this situation.

Senator Ben Pangelinan:

I just want to make sure that, you know, understand I guess the processes we're going to, because the numbers that are being given to this committee basically, are numbers basically from a mature industry, and I want to make sure that those numbers, that we don't oversell this program, and get the disappointment latter on, or make changes in our insurance laws based on an oversell of the program and then we loose something in the transition phase. Even if it's a two or three year transition phase. Al, we just had to play this game of appropriating revenues form 1994 to spend for 1996 expenditures, so that we don't go over this 95% appropriation level.

Al Pickens:

Senator, let me address that. There's nobody at the table that can tell you that we're going to do 2 billion next year. But if we do one billion in the first year. They did 18.8 billion in 1995 in premiums. In Bermuda, the figure you have in 1994 figure. All we have to do is 1 billion dollars over the next year to double the revenue to the Government of Guam, that we're getting now. The numbers wrong.

Ovidio Calvo:

Senator, I think another consideration is...your evaluation absolutely right, that we're giving mature industry numbers as it relates to benefit, and I think what your concern is the negative impact of what we have to give up initially, to in the long term garner that benefit. And one of the beauties of this strategy is the fact that we're not really giving up anything until they qualify for the GEDA process. The insurance laws aren't being changed, the GEDA QC's laws are being changed. So, each of the interested parties still have to get through the evaluation process, and the GEDA QC program, and it gives us some indication up front, from a monitoring and compliance stand point to understand what the implications are and the benefit we're giving and the benefit we're getting. So it's not automatically, we have to give 8 million before we get a hundred and forty five (million). It's going to be an interactive process where we may lose and gain at the same time and grow this at a rate that is acceptable and palatable to this community.

Senator Ben Pangelinan:

Let me just quote from an article that I was reading. It says, the off-shore domicile such as Bermuda provides a well defined structure of law, rule and regulation which has been specifically designed to accommodate the vast and intricate demands of the international risk management business these days. Can you tell me if those elements are in Guam or are being developed with the passage of this law?

Al Pickens:

I think we all know the answer, that they are not developed to this point, to the extent that they are developed to Bermuda. They were not developed in Bermuda in 1980 to the extent that they are developed today. Again, it is a process that is going to take some time, to get us to that particular level. Glenn and I sat down to try and think this through as to the time frame. The numbers that we're looking at, we feel are quite reasonable over a ten year time frame.

Senator Ben Pangelinan:

And We'd like to see I guess the plan of action for this thing, to restructure the insurance laws and so forth, so that we just don't pass this bill and we forget the intricacies of the international risk management and so forth, and then we don't get

the people to come, and we say what happened. You know; and that's what I'm trying to push at, that not only do we develop or in act the general concept of the program, but I think we need to establish the specific regulation of law that is required for us to attract business. And I'm not saying that this should be done today at this time also, but I want to be assured that we at least know these things that need to be done in order to insure that the program is successful. We see the same thing, and I cannot go back to what we did and what we didn't do, what was in our control and what was not within our control, with the off-shore banking law programs. That was another supposedly off-shore banking where we booked all these loans through a shell bank on Guam basically or a shell subsidiary basically and we had all this money here, and if it would have stayed here we would have generated all this income and to this day I know that we had some success at that and again I don't know what elements were within our control or outside our control, but the industry disappear. Basically it wasn't as fruitful or as economically beneficial to the island as we thought it was going to be on a long term basis. We had the same with the FISC and we still have FISC, we are still paying license fees, they're still doing business on Guam, but again, what happened there and why weren't the projections or what we thought was going to happen, didn't happen and where were the shortfalls, and what can we do from those experiences, in terms of identifying timeliness and changes in laws and marketing strategies and such that we need to do in order to insure that the program is successful, and that's all that I'm trying to get at, and in this case because we have an existing industry locally, I want to make sure that what we're doing does not destroy that not only in regards to revenues that come to the Government of Guam, but the ability of the existing businesses on Guam to be able to survive in the market that we create for off-shore companies within Guam and that's what I want to get a kind of good feeling of comfort with regards to the changes we're making, the impact and the economic rewards that will occur.

Joe Duenas:

I guess, senator in trying to understand and relate to where your coming from, it's important to note that basically what is being changed is the GEDA law and it's not an automatic thing unlike FISC for example, where you came in, you paid your five hundred dollars, your a foreign sales corporation. There is no qualification needed. You know, you came in, you X X and go! There is going to be rules and regulations on GEDA, there's going to be the changes in the insurance codes, and rules and regulations there, and so therefore I think it's going to be a much more rigorous thing that was Maybe missing in the FISC and the off-shore lending and also the fact that it's not an automatic thing. See, off-shore lending, fine! You want to do off-shore lending, you just fill out the application. You pay your fee. You get your off-shore lending license and your on

your way. It's a little bit more than that, but my point is that this is simply an invitation. It basically will tell us if there is a demand out there, because if people don't come in right away to start signing up to form the domestic; OK. Then they know that they are not going to get any takers on their part of the table. You understand what I'm saying, it's a little different.

Senator Ben Pangelinan:

Where does it actually say that they have to be locally chartered?

Ovidio Calvo:

You can't qualify for a QC unless your a Guam corporation.

Andy Gayle:

The changes are in the QC law...(end of tape - continuation)
...You made a very specific about the adopting regulations, which it hasn't done, and so as part of the whole procedure of getting GEDA to the point where it complies with the statute, which it doesn't at this point. Really, they'll be a very lengthy rules and regulations procedure, which then goes to the Governor and then to the legislature. So, we're aware, and that's one reason we want to post-pone the effectiveness of this legislation.

Senator Joe T. San Agustin:

So those two come at hand; regarding the regulations of the QC's, what about the insurance law to be revised?

Andy Gayle:

They'll be parallel.

Senator Joe T. San Agustin:

So, those will be parallel. So it should come in within 6 months, you think?

Andy Gayle:

That's correct, yes.

Senator Joe T. San Agustin:

But which comes first in other words. That's what I think we are leading into. I think that what we are probably meaning is that the risk that we are taking, is that the 8.6 million may be lost in the shuffle, while you folks are worried of figuring which regulations you should do.

Joe Duenas:

That's what I'm saying. I don't think the 8.6 can be lost, until everything is down on black and white.

Ovidio Calvo:

But still, we have regulations that stipulate how you qualify for

the insurance QC's.

Senator Joe T. San Agustin:

So, that's where the law is right there.

Andy Gayle:

I think the point that director Calvo made is that as part of the application process, these insurance companies are going to have to tell us what their plans are and we'll get some idea right away, before they get a QC, as to what kind of income they're going to be bringing in and how much we're going to be benefiting from their presence. So we will know as the QC's are issued as to where the money is coming from to replace this money that is being lost.

Ovidio Calvo:

And senator, I think that in what you were reading with the description of the mature Bermuda market and the controls of the audit points that are in place to insure integrity in the industry. One thing is probably certain. They didn't have those controls and they didn't have that level of maturity and sophistication in the beginning. One thing they did have in the beginning was an announcement to the industry that all taxes would be eliminated. That's what started the fire. Fifteen years later we see the benefits they've been able to derive. All we're saying here today is that you need to start the fire.

Senator Ben Pangelinan:

I guess, can you tell me then, why the captive market hasn't taken hold in the Asian region. Given, let's say in Hong Kong, where there is a tax free environment. Any kind of...What are we doing here today, different from being a U.S. flag territory, where in Hong Kong, you have a much more; you have basically a tax free society, tax free government. What are we doing today that's going to be different, that will convince these people to charter their companies locally?

Al Pickens:

Captives is a new idea around the world, it's about 22 years old in total, and it has not been marketed in Asia. It has not been marketed at all. Two companies that do the marketing aspect of captives in Singapore, have flown into Guam, and I met with them. They indicate that they are just now, and these are the majors that were just on the screen a while ago. They indicate that they just have not gotten around to marketing. They have got more than they can handle at other parts of the world and they're just getting started at this region and they felt strongly that a U.S. territory, if there were some way that we could become competitive from a tax standpoint, that we would have ample opportunity. By the way, Hong Kong, has never had a single captive and the reason why they haven't is because they have 16% tax.

Senator Joe T. San Agustin:

Yes, flat rate.

Just on the captives, we had the law since 1985 and the regulations that have been issued; what was the main stumbling block?

Andy Gayle:

It was the opinion of the Attorney General that despite the language of the statute, the Guam income tax law did apply to captive insurance and that ruling meant that the captives were never going to come to Guam. So, the laws have been on the books and we've never had an applicant, because of that Attorney General's opinion.

Senator Joe T. San Agustin:

So, based on that, that's why we're approaching to have this rebate approach on QC's.

Andy Gayle:

That's why we're amending that part of that law.

Senator Joe T. San Agustin:

Yes, by the way Senator Pangelinan is the one that got that under QC's. (laughing...) You're the one right? Senator Pangelinan is very close to the captive insurance loss since 1985, right? It started, but unfortunately it never took off.

Andy Gayle:

There are companies on Guam that are looking at captives. Alan can tell you more about that, but he tells us....Why don't you tell them Alan about these plans.

Al Pickens:

One company which is a subsidiary of a multi-national here on Guam, has already established a corporation, a captive insurance company under the local law here, hoping that two years ago when we started this process, that we would get this done. It has taken a while but they have not paid premium into that captive at this point and time. And they have told me bluntly that if I don't get it done this year that they are going to establish that captive within the Caiman's Islands where they've already made inquiry.

Senator Joe T. San Agustin:

Do you have a copy of that Hawaii business group paper, about hearing of our bills, making a lot of correspondence between Guam and Hawaii. I think there are some serious concerns about the state of Hawaii. The same concerns that the Virgin Islands did with the FISC. I remember there was an article? Ben, have you seen that Ben.

So, there is a concern that if this bill comes through, we always will have this competitive edge. I remember in FISC, when we were talking about FISC, all of a sudden the Virgin Islands had a special session and they passed a law to off-set our bill and I don't know what Hawaii is going to do now if they heard; I know they heard about it already.

Andy Gayle:

They can't do anything about the income tax; it's beyond their power.

Senator Joe T. San Agustin:

OK, so we have that advantage in a sense.

Andy Gayle:

Everything else that Hawaii has, we have. That is we have U.S. Courts. We have a U.S. Health System. We have U.S. Schools. We have an environment that is American, except we can get them out of this tax situation, which you can't in Hawaii.

Senator Joe. T. San Agustin:

This insurance, the general insurers that are now that of our general agents are buying and basically they are from off island. They're bringing it in. There's nothing to prevent that insurers to come to Guam and become locally chartered, right? There's nothing to prevent them now, if they want to.

Al Pickens:

That's correct.

Senator Ben Pangelinan:

Now Joey, when you restructure then, based on what your capitalization is, are you going to own what they're able to write world wide, based upon the local capitalization of the company.I don't know?

Joe Duenas:

You know, to be honest with you, I'm looking at not just re-writing the code from the perspective of any IC model, but also looking at what you've pointed out. The Bermuda example, came and matured over a period of years. I don't want to re-invent the wheel, I'm going to see what they're doing in Bermuda and seeing how you meshed the two together, and that's exactly where we are going to go, but I don't have it ready. But that's where I would go, and that's why I think six months is a reasonable amount of time if we knew we were going to start the fire, then we would start down this road. If we were not going to start the fire, why would we go to Bermuda, I'd just concentrate on the overhaul of the insurance law which I do need to do. But you know, I would look at the Bermuda example and take from that and not have to start a re-invent of the wheel.

Senator Joe T. San Agustin:

Joey, I think that what we're looking is for comfort. A lot of members, I'm sure the legislature will ask, well which comes? You said we need to start a fire, what is to preclude or to say that the administration will not follow through on its regulations, by implementing it. What is to prevent you Joey, from not having a revised insurance law, setting regulations up. There's nothing in this bill that will mandate it. All it says is that you do have this revision.

Joe Duenas:

That's right senator,

Senator Joe T. San Agustin:

Here, it says that it wont be effective until January of 1997, but what will happen in between, if nothing happens. We've seen that in previous administrations.

Andy Gayle:

The Legislature under it's oversight provisions could keep a marker of what's happening and I'm sure if regulations are not being written, it can seem to me, that they could hold this bill, or pass a law.

Joe Duenas:

It can change...the effective date can....

Senator Joe T. San Agustin:

I'm just throwing this out to give some comfort. Would there be any objection if we put something here that this law would be in effect to only, provided that the insurance laws are revised and implemented, or regulations are in place. Some wording like that provided that the regulations or readings regarding the insurance industry and the issuing of QC's and GEDA law, be in place before even it gets implemented.

Joe Duenas:

Yes, I think that's a reasonable part of the law.

Senator Joe T. San Agustin:

I think we should put that in there. What do you think? In the last paragraph, so, that gives him comfort, because I think one does not loose, until the other one comes into being....He wants to start a fire, so we have to start putting the wood in.

Joe Duenas:

That's perfectly reasonable. I think you are right. You need to say that if you don't do the regulations, you know, don't put everything in place then you can't start, but you need to give the signal and I think that's what this does.

Senator Joe T. San Agustin:

Well, the signal would have to be in the bill, and say "Hey this is fine, but provided that delivery is got to be made in two instances; the regulations of QC's and the regulations of insurance laws.

Senator Ben Pangelinan:

You know again, if we could focus a little bit on I guess from the panel at the table, and we'll probably hear from the insurance industry. How do you see this affecting the local insurance companies. I mean, you know, you get a multi-national like AIG to write everything out of Guam, including its local businesses out of Guam, and gets to spread its overhead over a world wide premium base, while you would have a local company that can only spread its overhead over the local base and you get a huge disadvantage in terms of administrative costs and allocations of those costs. Could this, I mean Joey in your opinion, could this bill adversely affect the local insurance companies?

Joe Duenas:

To be honest with you, I don't have the answer to that question. That's one of the parts in the Bermuda example, that I have yet to see, and that I would like to see, is to see what effect this had on the local market in Bermuda, or whether there was a local market in existence, or whether it enhanced the local market in Bermuda, or how did it play out. That's the side, I think what we're talking about is really for all practical purposes is the bigger picture and the local market is...I would put it to you this way Senator. These companies are major companies that make business decisions. They looked at the bottom line and if they looked at a Guam and saw a market that was a rather small market, they would want to devote resources to try and get in to this market or am I more concerned about the tax advantage for my world wide income and that's why I want to be here, rather than just saying, can I pick up a few more dollars. I mean, these companies like I said are usually companies who are oriented towards major business decisions and the bottom line. I think the incentive for them to come here is not because they want to get involved in the local market. I think the incentive is to be the fact that they are going to get a tax break that they wont get anywhere else.

Senator Ben Pangelinan:

In the mean time, why ignore a market that's right under you... When you don't have to pay income tax off of that?

Joe Duenas:

Because the market is so small and your going to have to devote resources to try and break in. Let me give you a good example: There's a certain soft-drink beverage on Guam that controls 95% of the market. And a certain gentleman is involved in that

business, once said to me God help me, we're losing money and we control 95% of this beverage market here on Guam, and we're losing money. God help us if we ever control a hundred percent of the market, we'll probably lose more; I'm serious. In other words, the amount of resources you have developed to capture that market share and to keep it. You know what I'm saying Ben?

Senator Ben Pangelinan:

That's your perspective Joey. What about the perspective of the guy, that, you know, this is my only job, or this is my company and it's going to affect me, looking at the bigger picture. But what I'm trying to say from my perspective here is that, is that in looking at the bigger picture, I want to make sure I don't forget the small guy.

Joe Duenas:

I understand that and that's why I said, I'm thinking along the lines of saying, "If somebody was coming, a major company was coming in, they'll look and they'll say, do I want to take resources out of what I'm doing, which I'm expanding over the world. Do I want to take resources all over the world, just to get into this little market here. That doesn't mean, in terms of the bottom line, doesn't appreciably change that bottom line for me. It's a decimal change for me and....I'm saying as a business man where would you look at.

Senator Ben Pangelinan:

Then Joey, why is Toyota here? When you look at the Guam market based on the world wide market of Toyota, why are they here? Because there is a market. So, don't tell me that somebody that's coming in here, looking at the world wide market, sees a local market that he's not going to pay taxes on, that somebody else locally has, that he's not going to want some of it. If I wanted to use your analogy then and with the hundreds of thousands or the millions cars that Toyota and G.M. and Ford sell over the whole world. Why are they in Guam, if they sell thirty cars a month? Because they make money doing it and if they're in Guam and they're looking at their world wide market, they see a Guam market that they can make money at, they're here anyway, I just want to make sure Joey, that in looking at the big picture. And let me tell you that I endorse this concept, I'm not against it, but I want to make sure that the ramifications of our actions here, does not do damage to those people that have developed the market, have put their sweat and paid out the claims in disaster after disaster, and are making their lives working for either themselves as their own companies, because that's the route we wanted and we don't take that kind of opportunity away.

Al Pickens:

Can I try to respond to that Senator. First of all, I don't believe Toyota or General Motors is here. I think Atkin's Kroll

is here. I believe they handle both of those vehicles and they're like the general agents or brokers who are here. This is the one piece of legislation and the only piece of legislation that I'm aware of that actually provides protection for the local licensed brokers and general agents. There's no significant protection for Atkin's Kroll for instance, that General Motor's will not sell direct to this market. They could if they wished, but they choose not to, because of the size of the market. They choose to sell through Atkin's Kroll. Here, we have actually provided some protection for the local brokers and agents. Here the manufacturer, that is the insurance underwriters cannot sell directly into the market.

Senator Joe T. San Agustin:

I might add that the Cognac industry as you might remember; the whisky business. There was a movement for Cognac to set up their own warehouse and deal directly and sell it, which would basically bypassing or just establish people that in the business. And I think ABC regulations came in to protect them. I'm sure you were aware of that. I remember there was a lot of intensive lobbying by the Martyl, the Cognac and all those people, that even to the point of selling liquor aboard the plane. Remember? Selling them off island. Saying this couldn't be consumed in the air, so that if we bypassed Topsy Turvy, then everybody else would be bypassed. And ABC regulations came in and protected this industry and that's why you don't have this major liquor business come in and set up his own distributorship. They got to go through a local distributor. I think we did that as you said, what we're doing now. And that's when we passed that wholesaler and retailer business. We make sure that the wholesaler does not get involved with the retailer business. And that's the set up way back. We stimulated the wholesale industry at the time. We claimed that the wholesale industry was dying, it could not get off unless we were able to separate the two from the wholesale, because we had those vertical; companies that were having both wholesaler and retailer outfits.

Senator Ben Pangelinan:

I agree, but you see, in this bill it doesn't have the prohibition of a underwriter from chartering a brokerage firm. And in your case, your saying that a manufacturer cannot be a distributor. In this case, a manufacturer can be a distributor, can charter his own company and charter his own brokerage firm.

Senator Joe T. San Agustin:

Well, that's something that we can work into that.

Joe Duenas:

That's a good point. Might I just suggest that this bill really is focusing on GEDA law, and because of that you know it's focused on that.

Senator Ben Pangelinan:

Is there anything in the Insurance law that says that an underwriter cannot own a brokerage house.

Joe Duenas:

No, I don't think so, but I'll look into it. That's why I think that one thought of adding in a section that says, unless the rules and regulations are in place, that kicks it up.

Senator Joe T. San Agustin:

This bill can be amended that provided that they don't get involved in the same industry. We're following the same principle, we established. The ABC regulations, the wholesalers for general goods, and what we have.

Ovidio Calvo:

If I could just comment senator. The whole issue of protecting investments that have already been made in the market is a very common complex one and has a lot of factors one way or the other. I mean we got the KMART example, and the lack of protection for the retail industry on Guam versus the banking industry and protection that can be invoked via law, and we're jumping back in the mainstream of when do you protect and when don't you protect and it's a very complex one and I agree with you, that we should look at the local industry and evaluate what it is we can do to be equitable to insure there isn't overt damage made to us. That's an important consideration. But I think the real overriding consideration is that we have to compete regionally. We can't just look within our shores and at the extent of the market we have on Guam. We have too many children at stake, and jobs to create for the future, to worry just about the local market. We have to be more dynamic in our approach, to be competitive on a regional basis, so that we can create jobs.

Senator Ben Pangelinan:

I don't dispute that Mr. Calvo, but I also want to say that what kind of future do we want all of the opportunities we create for our children to be employees only. And if that's the objective then hell, there's no need to do anything. There's no need to create opportunities for individuals to be able to be their own master's of their own destinies, sort to speak, or become their own economical titans and controlling their own economical future. If that's all we want then I agree with you, but in my perspective here, you know, not only the quantity of life, but the quality of life issue that comes from ownership, that comes from having control over your destiny, economically as well as socially. And if the only opportunity is we want to create our own jobs so that people can be employed, then maybe that's not all that I want to do. That I want to create opportunities where people can own their own businesses, also.

Ovidio Calvo:

But at the same time, if you look at the brain drain, or the entrepreneur drain or whatever else we look at, I will also assert to you that a lot of you who want to own their own business are probably leaving the island to find more opportunity elsewhere to do that.

Senator Ben Pangelinan:

And if we don't look at, while we try to compete globally, and we don't look at that opportunity that while in our haste to compete locally for our own survival that the only opportunities that we're creating are employee opportunities and not employer opportunities.

Ovidio Calvo:

And I think we're basically saying the same thing, but I think we're saying it from two different vantage points. That is your right, we don't want to be just employees, but at the same time, I don't just want to own a business off-shore. I want to be able to compete fairly here.

Senator Joe. T. San Agustin:

Is there anything in the law now that prevents any local person from getting into the general insurance business. We do have local insurance underwriters.

Andy Gayle:

Yeah, that's what I was going to comment about. As I understood Senator Pangelinan's inquiry, he was concerned not only about the local agency brokerages, but also about the local insurers also and that their revenue base is so much smaller than the world wide companies and therefore could they compete? And it seems to me, and I don't know this for a fact, but I would guess at the same insurer in Guam is also, has licenses as a general agent and so on and so forth. So, if you try and separate those two, so you have to be one or the other, your going to be hurting those guys. So, I'm saying that this section of legislation to protect...I think this is appropriate legislation which is included in the bill, to protect the local in it is tricky, because you can protect them to the point that they can't do any business.

Senator Ben Pangelinan:

And I just want to know that we're not doing that.

Andy Gayle:

I will have to here from them of course. But I think it's an admirable bill.No I mean the goal of protecting the local entrepreneur.

Senator Ben Pangelinan:

Well, you know, I'm not going to be shy about saying my position on those issues. I understand the global market, but I also

understand the place I live in.

Senator Joe T. San Agustin:

But a local insurance underwriter can compete globally too. Nothing to bring them down. ...If you have the assets. I don't know why we want to keep, just because we want to keep peak assets from coming in. The bottom line is that the whole island would benefit from it, why are we going to be restrict to be a container, because of our limited resources, when we have an opportunity to expand ourselves.

Senator Ben Pangelinan:

Yeah I know, but just take a look at what we just did recently?

Andy Gayle:

Well if a local company that issuing insurance now is all of a sudden free from taxes, it might very well expand over seas. It might find a real opportunity to do something it couldn't do before.

Senator Joe T. San Agustin:

I mean if the Qualifying Certificates will work, it will work in apparently getting a outside investor to build up a hotel; a lot of hotels. Why won't it work for the underwriters?

Senator Ben Pangelinan:

It will create purchasing opportunities.

Senator Joe T. San Agustin:

Is there anything else? Maybe we can hear from the rest of the gentlemen here. Gentlemen, thank you very much. Maybe you can, if you have time, to stick around and we'll hear from the people in the industry. Gentlemen, anybody want to come up from the insurance industry? I don't have no...just occupy the panel. Thank you gentlemen. Come on in.

I just want to, just for the record before we start. We have a testimony submitted by Guam Chamber of Commerce, and if no body is here, I think Elaine or Eloise was supposed to be here. Before we start, let me read this. Can we get the...anybody up there? Let me read this. This is a letter to the committee. To the Guam Chamber of Commerce appreciate the opportunity to provide testimony on substitute bill number 299, that would authorize the issuance of GEDA Qualifying Certificates, to Guam insurers and provide clarification on the tax treatment on captive insurers. The Chamber is a long time proponent of the location of Captive insurance here on Guam. It is a new industry that has the potential to bring in a sizeable amount of capital to our shores and creating a tremendous number of jobs for the community. The Insurance Association of Guam has raised questions and concerns regarding the non-captive insurers provisions of bill 299. That we will also be addressing as a

chamber board next week. Their issues will be raised during today's public hearing for your consideration. As the chamber board has not met to deliberate on Bill 299, I would like to advise that we will be submitting our final comments and positions on this bill, after May 22, 1996. Thank you for your time and attention to our comments herein. Signed Edward J. Calvo, Chairman of the Board.

Sir will you go ahead and identify yourself and go ahead and start off, and then we're going to start left to right.

Joe Zulka:

OK, I'm Joe Zulka, I'm chairman of the Insurance Association of Guam. Dave Cassidy, another member of the Association, and Mike Catcherin, and Ray Martinez who are also members of the Insurance Association of Guam. Senators, I believe you've both seen the position papers which was put together prior to this committee, and obviously prior to the testimony you just heard. I can read the position paper if you want, or you can direct comments on the position paper since I believe, many of the points we've touched on you would like to discuss.

Senator Joe T. San Agustin:

Why don't you go ahead and summarize it sir, and then let me permit.

Joe Zulka:

Well, I'll read it then OK. Bill 299 was originally created to encourage captives to do off-shore business. Captive insurers generally defined in insurance periodicals as a legally recognized insurance company, organized and owned by a corporation or firm, who's purpose is to use captive to write it's own insurance at rates lower than those of other insurers. Usually its a non admitted insurer that has a right under certain circumstances to reinsure with an admitted insurer. However, bill 299 substituted is not limited to captives and has extended an open invitation to other insurers to come to Guam and enjoy the benefits of not only a tax free climate, but to operate at their own convenience, without limitation or regulations. The Insurance Association of Guam is currently an organization of 13 insurance companies, some of whom have been operating on the island of Guam for close to 50 years. These companies have provided insurance protection to the residents of Guam, through super typhoon Karen in 1952, Pamela in 1976, and Omar in 1992 and the recent 8.2 Earthquake in 1993. The membered companies have pioneered the insurance industry on Guam and have settled all their claims and have religiously paid all their taxes. The Insurance Association of Guam believes that bill 299 is a positive one, as it relates to captive insurers and would undoubtedly benefit the island if the sufficient number of companies would find a bill sufficiently attractive and the incentives adequate to form their captives on Guam. The Insurance Association of Guam has no quarrel or disagreement

with this aspect of this bill. We do take hombridge when the bill is broadened and amplified, to include any insurer who would not be subject to the insurance laws of Guam, we are subjected to and derive a benefit of a tax free environment. We believe that this would be and adverse selection against the insurance companies who have stood behind this island through numerous catastrophes. The proponents of bill 299 believe that sufficient income would be generated from the interest on the taxes to be paid by the captives and other insurers to justify passage of this legislation. Undoubtedly, most if not all companies currently writing insurance on Guam, would as a matter of clear survival seek qualifications under the tax incentive program of the bill, thus possibly eliminating a current source of income according to the Government of Guam in this critical time of austerity. In the event of few companies, or possibly none seek to take advantage of our captive law, we would have eliminated a true source of income for very speculative and undetermined one. We therefore, question whether any financial studies have been made concerning the statute in the event it does not produce the anticipated volume of business is seeks. Another concern regarding the formation of the new generation of insurers, is the minimum capitalization requirements to set up an insurance shop on Guam. The current Guam insurance laws stipulates that a capitalization of a hundred thousand dollars would be sufficient to write all lines of insurance business, except life insurance. If the capitalization requirement is not properly addressed to provide protection to the residents of Guam. The door would be open to unscrupulous individuals to form scam insurance operations, collect premiums, pay no taxes and run in the event of a major catastrophe. The insurance department of the Department of Revenue and Taxation, does not have the man power, to administer the law, and require a substantial number of qualified and experienced personnel to oversee the captives and other insurers. An uncontrolled insurance environment can only mean trouble to the policy holders of these insurers, whether located on Guam or elsewhere. Further, they face substantial risk if no one is looking out for them. The memory of the recent NPI Bankruptcy should be a clear signal that things can and do go wrong. In conclusion, the Insurance Association of Guam does not oppose the passage of a purely Captive Bill provided serious financial and detailed studies have been made for the administration of a sound and captive market. We do oppose the amplification of this Bill to include basically any Insurance "Tom, Dick and Harry" who may find Guam the paradise for easy money. We thank you for allowing our members to voice their concerns on what is a very fragile industry on Guam whose survival is dependent from one major disaster after another.

Senator Joe T. San Agustin:
Anybody else? Go ahead. Mr. Martinez and then Mr. Cassidy.

Ray Martinez:

Well, maybe I may add to what you were saying on this. basically over on the law submission. The way the bill is worded, it leaves an opening on the Bill and identifies as not only captives but commercial insurance or any insurers. The idea of captive arrangement is well and fine, but when you leave an opening like that, it leaves it open for anybody or any Tom, Dick and Harry to come to Guam, and be domicile on Guam. Within the limits required at a hundred thousand, we understand it will be elevated. But within the limits of a hundred thousand dollars, get a tax incentive and start writing the business, in competition with the local insurers that are currently here on Guam. Now the situation at hand is this. The market is such a fragile market. We have a problem with availability. The situation with Japan and other areas. The capacity for Guam for catastrophe insurance has been reduced. We barely made it through the catastrophes. Our last situation, is we had to go for a rate increase in order to stabilize the rate. But one thing on Guam we always have is stability and availability. In other areas where we have catastrophe situations, insurance is not available. So the system in Guam works. For other carriers to come in here and be domicile and deregulate and rate on their own and have the incentive of this GEDA certificate of having a tax incentive will certainly put us on an unlevelled playing field. If we are going to go on ahead and have this type of an arrangement with captives. Then leave it for true captives; risks written out of Guam. Any risk written locally within our areas should be subjected to what we're subjected to and put us on a level playing field. Captives are not going to be interested in the first place to come over here and try and write some of the local risks. These are large companies. It's not attractive at all. We're in the middle of the rail road tracks. We're a disaster prone area, but the way the law is written, or the bill is written, it leaves an opening for insurers to come into Guam and open up a domestic company and enjoy these incentives and as you can see in a lot of areas, there are fly by night insurance companies. They can come in over here and deregulate the insurance and erode the premium base. One must have to understand also, that in Guam, if anything goes wrong, and there's a catastrophe, and these companies leave the island and there's no longer anymore availability of insurance, disaster aide programs for Guam, have been cut. The Federal Assistance program that Guam enjoys have been cut. We will be at an economic strain if this situation would happen. So, we are really not concerned about the industry, we are concerned about the consumers. I mean, we have a situation with the insurance commissioners office where rates are regulated and there is stability in rates. The rates did go up, because it did not support the losses. The situation on hand, everybodys looking at the bill, and initially the bill too, in the foregoing of the bill and the pre-ambule, it sort of states that, to cut and reduce cost in insurance on Guam. Insurance establishment of Guam, Financial insurance center of the pacific, and lowering the cost

of insurance on Guam. May I add that once again with this catastrophe situation with availability of this certain markets that insurance companies access. I mean there's no guess work OK. In 1992 and 1993, when we had these bad catastrophes, we had to go in for a rate increase. For every dollar of premium that was taken in, the insurers paid out four dollars in losses. Rates were submitted, and rates were reviewed and that determined the pricing for the adequacy of the coverage. Now, we've maintained stability. The markets now, have been accessed in certain areas, but however we are seeing now that there's problems coming out of southeast Asia and also from the Japan markets. There's a shrinking of the earthweight capacity lines of these areas. So these have to be brought to our attentions and we're looking, but we still maintain stability. Any disruption in this market at this stage of the game would cause a serious problem to the island. Thank you.

Senator San Agustin:

Thank you very much Mr. Martinez. Mr. Caseate, since your one of the insurers on Guam. Let me hear your side.

Dave Cassidy:

I just would like to reiterate. I have no objection to the idea of a captive. I think it's a tremendous idea, but I really do believe that before we allow wholesale company operations here, companies to become domicile here, we must have the regulations in place. We got to have things like a guarantee fund here, to make sure that if any of these companies go broke, the other one's will be able to bail him out. I think that's extremely important. And capitalization requirements have to be really modernized and increased from a hundred thousand dollars just isn't sufficient. So those are my concerns.

Senator Joe T. San Agustin:

Yes, you heard earlier this is only the QC on GEDA, but Joey Duenas will be tasked with developing that regulation, and the suggestions that this may have to be subjected to these regulations being passed before this program even takes place.

Dave Cassidy:

Right, I think you brought that up earlier, that you might want to amend the law, so that it wouldn't take place until the regulations are actually in place.

Senator Joe T. San Agustin:

Yes, and I think that's something that, but at least that's what J.R. Calvo said will start the fire on both ends.

Mike Catcherine:

I think the people that presented this bill did a good job, but they're only presenting a lot of the positive sides. While they're saying that it only affects the Guam Qualifying

Certificates. I think that if they don't look at the rules and regulations first as well, we're only asking for problems. I think, when you look at the market in Bermuda started back in 1980, there were some examples of insurance fraud and scams. I think that would also happen here. Not everything is going to be a bed of roses as the pictures that are being painted right now. I think in the mid 80's, when the Bermuda market started to mature, I think that what a lot of people forget is that the insurance industry as a whole was going through a hard market situation. Bermuda became a dumping ground, you know, for a lot of capacity, and stuff like that. The way that people perceive Loyd's of London right now, as being sub-standard insurance, rather than standard market to go to. Bermuda was considered a substandard market. After having a few years of having all this premiums, dumped into the market, but then the market is able to mature, provided that nothing happens and the thing does not collapse. OK, but without any type of Quality Guarantee Fund, to protect Guam from happening. There's no way that Guam will be able to sustain something like that. I think that everything is being looked at the wrong way. Only the positive points are being brought out, rather than looking at things from the way that it should be which is from the insurance stand point.

Senator Joe T. San Agustin:

I think your point is well taken. That's the reason why we're having a second public hearing, and we've discussed it through great lengths since September of last year. We're still going through that, and I'm sure that there's going to be a lot of ramification changes, trying to modify it to suit the local insurance industry and protect the people in the business. I feel that maybe in my own layman's angle, I cannot close the door that there's no hope for rate reduction. I like to see my insurance....but I'm finding myself, that I'm being priced out of my typhoon coverage, because I can't afford it anymore. But the whole idea of the consumers on Guam, is we're finding ourselves in a corner, where their spending roughly maybe 20% or 30% of their disposable income on insurance, and then on top of that, when they do call the insurance company for claims, they find themselves having to spend some \$5,000. The deductible becomes so big that you might as well take that deductible and premium and put it in an ESGRO and pay it yourself; and I think that's the problem we're facing. Because your having a hard time trying to sell insurance.

Senator Ben Pangelinan:

We got a solution for that with the Co-insurance law, right Ray.

Senator Joe T. San Agustin:

I remember, I amended the law way back in 1977 and 1978. I was the one who got that in there. At least the people have full knowledge of knowing that their homes are being insured for a certain amount, and that when the claims come in they only get

less than 25% and that's not even enough to put a tin roof. So those are the kinds of things that we are going through in the insurance industry. I know that a catastrophe always hits here, and you also know we are catastrophe prone. However, there is always a risk pull and as you've said; a shrink in the market. I know the insurance agents from the underwriters, and you can only write so much. That's all Guam is available to do, and I heard that information from another company. It is such, that you can't write so much. I know the hotel industry has the same problem. A lot of hotel people in Guam say we cannot afford the hotel insurance. So what are they doing? Either they ESGRO or they're doing without insurance. I think the danger here is that our people are now being priced out of an insurance coverage that they really may need, because they can't afford one! Moreover, when something does happen, what's going to happen? The Government of Guam will come in and help them, and I don't think we can be expected to do this at our current financial position.

Mike Catcherine:

I don't think that was due to a lack of availability.

Senator Joe T. San Agustin:

Well, insurance is available everywhere, but businesses just can't afford it. That's the problem. When a thing hits your roof or your building, and you find out that you have to do without insurance, due to the fact that you can't afford it. Even the bank industry now are under pressure to waive the typhoon insurance coverage for many home owners. Even the (Fred-Mac) and all those people in the insurance industry are now debating whether we should include the typhoon or the earthquake insurance, while that thing is being just...I don't know whether it's being out of hand or what? It's just unaffordable!

Mike Catcherine:

Initially for Bermuda, when it first got started a lot of these major insurance organizations set up captives or re-insurers in Bermuda, because the capital insurance were quite low. To be able to set up an organization like that and provide all kinds of capacity, and if something were to happen, and the market would have folded, they wouldn't have had enough money to pay out the claims, then they really had nothing to loose, and so I think that their perception is going to be the same way for Guam, as well. They're not just going to look at it as a tax advantage.

Senator Joe T. San Agustin:

Well, I agree with you to a certain extent, but it didn't stop the NPI from going into bankruptcy; despite that fact.

Mike Catcherine:

I understand that, but that problem in and of itself was due to the regulations or lack of.

Senator Joe T. San Agustin:

Well, I think we're trying to hit it on two prongs at the same time. The suggestion earlier was made that maybe we should condition it, and things have to be done, before things click. As I said earlier, look at NPI. We had the Global Insurance Company way back, and that too went belly up. I think Mr. Cassidy's Insurance Company is one of the insurance companies that are becoming more successful now. But Global insurance and NPI, I think I can name a few of them within the last six years. They were all local insurers, and we didn't have this law with QC's or any type of incentive at all. So, that type of activity regardless of what we do, will come, and it's just a matter of how you regulate the industry. (End of Tape I)

Tape II

Senator Joe T. San Agustin (Continuation)

You also have to really consider how the market has matured. I think that without the hard market cycle that the industry went through in the late 80's, Bermuda would not have developed in the manner that it did.

Senator Ben Pangelinan:

Yes, most of the Captives are formed in the hard market cycles and not in the soft markets.

Joe Zulka:

Also to cover all types of Malpractice and architects difficult types of insurance. Sometimes product liability gets them like asbestos; that's what captives are formed for.

Senator Joe T. San Agustin:

Sometimes they can't even afford it.

Zulka:

Sometimes they can't even buy it, because it's not even available in the market.

Senator Joe T. San Agustin:

Like the Medical Malpractice Insurance, it's going way up and a lot of Health organizations are considering this captive approach.

Zulka:

The Association is all in favor of that. That would really help the island if they could really have a captive for medical malpractice or the hotel associations. That's where it belongs.

Senator Ben Pangelinan:

I had a question for GEDA. Can you give us a breakdown on the

Premiums written in Bermuda between insurance, reinsurance and captives? Is that available? I'd like to see that market segmentation.

Senator Joe T. San Agustin:

I think a lot of questions in the first part of the discussion, was to clarify a lot of misconceptions of the whole thing. This is the reason why we are not rushing this bill. This bill was started since September and its almost September once again. We wanted to make sure that we're doing something right. We don't want to go through it and kill anyone along the way, and then have everything go down. As you say in this business, "it's a calculated risk." We're not rushing this, but there is a sense of urgency, because of the changing global economy in the pacific region. The Asian pacific region represents a tremendous challenge for Guam to exert itself. Once we loose this opportunity, we've lost it forever. We don't have the monopoly of being the only one to get into the field. I've been through several conferences in the Asia pacific region. As you know, the global economy will be developed in the Asia Pacific region. With China trying to be one China, and Korea trying to be one Korea, and the United States down sizing left to right. Where are we, we're going to be expendable if we don't do our share to exist. AS a matter of fact, we are now, in a certain extent expendable in the eyes of the National defense. Their going out to defend Korea and China, but not around here. Let's face it, our military economy is practically gone. It will be gone in the next five years for sure unless something happens. Guam has to develop its own industry. Tourism industry is overnight. Insurance industry, we have to look to you folks in order to survive. It's one area, and we would like to work hard with you people, because your heart is on Guam is here too.

Would anyone else like to testify, then Thank you gentlemen. We will be getting a hold of you Mr. Zulka, as soon as we develop this thing. Don't worry gentlemen, we'll get a hold of you.

The Cayman Islands . . .

A World Leader in International Services

Banking's Prestigious Names

Although we are a small country, we host 554 banks with approximately US\$415 billion on deposit. Forty-six of the largest 50 banks in the world are represented here, as well as all of the "Big Six" accounting firms, and sophisticated legal support.

Trusts You Can Trust

The Cayman Islands is a global leader in the establishment of offshore trusts. The enabling legislation - The Trusts Law, the Trusts (Foreign Element) Law, and the Fraudulent Dispositions Law - provides flexibility in establishing and administering of trusts and is considered a model for other banking jurisdictions.

Insurance—A World Leader

The Cayman Islands is considered by the international financial community to be a leader in the global insurance industry. The Cayman Islands currently hosts 370 captive insurance companies.

Company Incorporation—Meeting a World of Requirements

Approximately 30,000 companies are currently regulated by the Companies Law of the Cayman Islands. The Law provides for various types of corporations to accommodate nearly every local and international need.

Company Management—The Know How to Succeed

Sophisticated local expertise is available in the Cayman Islands to provide complete company management services to meet the needs of a wide variety of offshore corporations. Some 25 firms are licensed to provide these services.

Mutual Funds—High Standards Promote Growth

Mutual Funds are playing an increasingly important role in the Cayman Islands international financial industry and, with a new Mutual Funds Law to ensure that the highest standards are maintained this growth is expected to continue. Most funds are in the form of open-ended investment companies, although unit trusts are also used. Local banks, trust companies, audit firms, and attorneys offer considerable expertise in the formation and administration of these funds.

Shipping

The strategic location of the Cayman Islands in the Caribbean Sea makes them an ideal site for ship and yacht registration. The Islands boast a Category 1 British Registry equipped and qualified to register vessels of all sizes and classes.

Answers and Solutions from Sophisticated Services

A corps of knowledgeable professionals are here to assist and guide you. Ask the questions; we have the answers. Tell us your requirements; we have the services. Show us your plans; we have the facilities. In the Cayman Islands, government works hard to make your business easier for you.

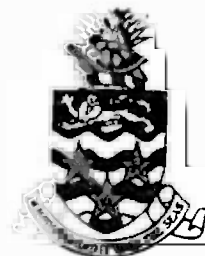
High-Tech Communications

Everything you need to do business quickly and efficiently is at your fingertips in the Cayman Islands - telecommunication and computer links, data services and fax machines. Our communications services can keep up with your fast-paced world - any day, any time.

Record-Breaking Growth

As the foremost jurisdiction for company formation and management, the Cayman Islands introduced new, more attractive fees 1 April, 1994. These more competitive fees follow a year of record-breaking growth, tipping the register over the 30,000 mark. This continues an upward spiral with a 200 p.c. increase in the last seven years.

New Registration and Annual Fees			
Share Capital	Categories of Companies		
	Exempted R/A	Non-resident R/A	Ordinary (Resident) R/A
US\$0 to US\$50,000	\$500/\$500	\$427/\$427	\$250/\$250
US\$50,000 and higher i) to US\$2,000,000 ii) US\$2,000,000 and higher	\$700/\$700 \$1,750/\$1,750	\$600/\$600	\$305/\$305
Foreign Companies: Registration fee is set at US\$1,087; annual fee is US\$610.			
Key: R=Registration Fees A=Annual Fees			



For further details of any of our services, please write to:

Cayman Islands Government
Portfolio of Finance & Development
George Town Grand Cayman, B.W.I.
Tel: (809) 949-7900
Fax: (809) 949-9538

BERMUDA AS AN OFFSHORE FINANCIAL CENTRE: LEGAL FRAMEWORK AND RECENT DEVELOPMENTS

by Jeffrey P. Roy

It is routine for large commercial transactions to involve participants from multiple jurisdictions. This often gives rise to difficult legal issues, including the potential that a number of fiscal and/or legal regimes will apply to the transaction. Often the most efficient accommodation of the varying requirements of the participants can be achieved through the use of an entity established in an offshore financial centre (such as Bermuda) as the investment vehicle.

The term "entity" is used advisedly. While the use of companies, partnerships and trusts for these purposes is well established, the rapid pace of innovation in the financial markets has led to the creation of a number of new entities, such as purpose trusts, as well as the evolution of existing ones.

In response to these commercially driven developments, and to maintain its position as one of the premier offshore financial centres, Bermuda has made important reforms to the legal and regulatory framework within which international business operates. This article highlights some of the recent changes in Bermuda corporate and trust law most relevant to the international legal and business communities and, for the benefit of those unfamiliar with Bermuda, an overview of Bermuda's legal and regulatory environment.

Jeffrey P. Roy is a Barrister and Solicitor, Alberta and Ontario, Solicitor of the Supreme Court of England and Wales, and Barrister and Attorney. Mr. Roy may be contacted at Appleby, Spurling & Kemp, Cedar House, 41 Cedar Avenue, Hamilton HM 12, Bermuda 809 295-2244 or facsimile 809 282-8866.

LEGAL ENVIRONMENT

Bermuda is a dependent, self-governing colony of the United Kingdom located approximately 600 miles east of Cape Hatteras, North Carolina. As a colony, Bermuda's legislation and jurisprudence have been strongly influenced by that of the United Kingdom. For the most part, statutes enacted by the Bermuda Legislature in the areas of corporate, commercial and trust law have been based on similar legislation enacted in the United Kingdom.

In recognition of this source, the courts of Bermuda are required to apply, to the extent practicable, the rules for interpretation and construction binding on the Supreme Court of England when construing legislation. In all other matters, the courts of Bermuda treat precedents of English courts as persuasive. Additionally, the final court of appeal for Bermuda is the Judicial Committee of the Privy Council, which is comprised of members of the House of Lords of England and other members of the Privy Council who have held high judicial office.

The existence in Bermuda of a

clearly elaborated and judicially tested body of commercial and corporate law substantially reduces the "legal risk" that might otherwise arise in using an offshore jurisdiction. Moreover, as English law has been a frequently selected contractual choice of law in the international arena for some time, it is familiar to many participants in the international markets.

These considerations are becoming more important as international transactions are increasingly written under the law of an offshore jurisdiction or important aspects of them rely on a particular principle of that law (e.g., choice of law, forum selection, enforcement of foreign judgments).

REGULATORY ENVIRONMENT

Tax "neutrality" is an important element in most international transactions and thus an important criterion in the selection of an offshore financial centre.

The absence of taxation in the jurisdiction where the investment vehicle is established allows the parties to focus on developing a structure in which each participant can receive its returns in the manner that best suits its operational and domestic tax requirements. In addition, the ability of participants to receive their returns free of taxation at source is often essential to ensure that they receive the rate of return on invested capital for which they bargained.

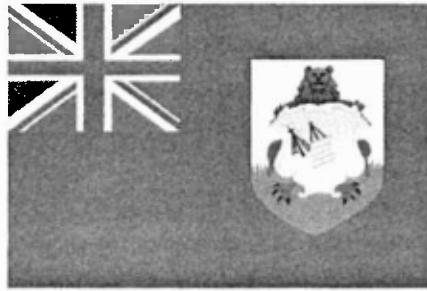
No income, profits, withholding, capital gains, capital transfer or other

taxes are currently imposed by the Government of Bermuda. Moreover, "exempted undertakings" may apply, under the Exempted Undertakings Tax Protection Act 1966, for an assurance issued by the Minister of Finance that, in the event any statute imposing any tax computed on profits or income, or computed on any capital asset, gain or appreciation or any tax in the nature of estate duty or inheritance tax is enacted, such tax will not be applicable to the undertaking or any of its operations or obligations until March 2016. "Exempted undertakings" are defined as exempted companies, exempted partnerships and exempted unit trusts.

The Bermuda Legislature has also refrained from elaborate and intrusive regulation of other aspects of international business. The Government of Bermuda's approach has been based upon two principles: self-regulation and quality control.

Self-regulation is accomplished through the use of business community resources, principally through the requirement that a quorum of the directors of an exempted (i.e., international) company be residents of Bermuda.

Quality control is achieved through review by the Bermuda Monetary Authority (the "BMA") of the ownership (direct or indirect) of exempted companies and the transfer of beneficial ownership of their shares. The BMA generally requests a banker's reference for each owner or transferee and undertakes further investigations as necessary to verify each owner's financial standing, business integrity and credibility. All in-



The absence of taxation in the jurisdiction where the investment vehicle is established allows the parties to focus on developing a structure in which each participant can receive its returns in the manner that best suits its operational and domestic tax requirements.

formation provided to the BMA is held confidential.

EXEMPTED COMPANIES

While Bermuda offers a number of alternatives, for many transactional clients the exempted company (whether owned directly by the participants or through a trust) is the investment vehicle of choice. Exempted companies are incorporated under and governed by the Companies Act of 1981 (the "Act"), but are exempt from the provisions of the Act requiring minimum levels of ownership by Bermudians.¹ While the Bermuda-based activities of exempted companies are sharply restricted, they are generally free to

conduct international business through Bermuda.

An exempted company must be incorporated with capital of at least US\$12,000 (or the equivalent in another currency). A fee, based on the aggregate of the company's authorized capital and its share premium account (i.e., the amount paid in excess of the par value of shares on their allotment), is payable annually to the Government of Bermuda. The fee ranges from a minimum of US\$1,680 for companies with an authorized capital/share premium of US\$12,000 to US\$25,000 for a capital/share premium in excess of US\$500,000,000.

Other important organizational aspects of exempted companies are:

- a quorum of the Board of Directors must be residents of Bermuda;
- exempted companies may only issue shares in registered form; bearer shares are prohibited;
- unless waived by all directors and shareholders, audited financial statements must be approved by the shareholders at the company's annual general meeting; and
- the company must maintain a register of shareholders that is open to public inspection. Where confidentiality is desired, shares may be held in the name of a nominee.

In most other respects, the principles that govern the administration of an exempted company are similar to those governing companies incorporated in the United Kingdom.

Continued on page 4

Continued from page 3

EXEMPTED COMPANIES—RECENT CHANGES

Recently, certain amendments have been made to the Act to address the need for flexibility in the structure of exempted companies. As a result of these amendments, it is now possible to:

- create an unlimited liability exempted company, that is, a company where the liability of its shareholders is not limited to the amount paid or agreed to be paid on their shares;
- convert an existing limited liability exempted company to an exempted company with unlimited liability;
- create an exempted company whose existence will terminate on a certain date or upon the occurrence of a specified event; or
- amalgamate (i.e., merge) a foreign company with an existing Bermuda company, the resulting company to be a Bermuda company.

Taken with the existing provisions of the Act, which permit foreign companies to migrate ("continue") to Bermuda and Bermuda companies to continue into a foreign jurisdiction, the Act creates a uniquely flexible framework within which a variety of transactions may be accommodated.

THE PURPOSE TRUST

Increasingly, the use of exempted companies in transactions has been supplemented by the use of trusts and, in particular, by so-called "purpose trusts." Prior to 1989, a trust

established for a purpose (other than a charitable purpose), rather than for the benefit of ascertainable beneficiaries, was void. With the passage of The Trusts (Special Provisions) Act 1989 (the "1989 Act"), it became possible to create a valid and enforceable trust for commercial and other purposes under Bermuda law.² However, as the purpose trust is a creature of statute, the requirements of the 1989 Act must be closely observed in the

. . . for many transactional clients the exempted company . . . is the investment vehicle of choice.

trust's formation and administration.

The purpose trust must be established by a deed or a will that sets forth the event that terminates the trust. This may be an actual event or the expiry of a specified term. As the 1989 Act provides that a purpose trust may not last for more than 100 years, it is usual to provide that the trust will terminate upon the first to occur of a specified event or the expiry of a specified term.

The purposes for which the trust is created must be specific, reasonable and possible. They may not be immoral, contrary to public policy or unlawful under Bermuda law.

No consents are required to be obtained from any governmental department or organization in connection with the formation of a purpose

trust. No filings are required to be made and the instrument establishing the trust is not open for public inspection.

At least one of the trustees of the purpose trust must be a "designated person," meaning an attorney or accountant licensed to practice in Bermuda, a licensed trust company in Bermuda or such other persons as may be designated by the Minister of Finance. In addition, an "Enforcer" must be appointed, whose responsibility is to ensure that the trustees comply with the terms of the trust. Finally, the trust document must provide for the disposition of the surplus assets of the trust upon its termination.

It should be noted that, unlike a conventional trust, interim distributions of capital or income may not be made from a purpose trust. All assets held or accumulated in the trust must be retained until the termination of the trust, at which time they are paid out to the person designated as the recipient of the surplus assets. This somewhat limits the flexibility of the purpose trust in commercial applications.

In the brief time since the passage of the 1989 Act, the purpose trust has proved to be an extremely useful instrument, providing the transaction participants with a measure of asset and bankruptcy protection arising by virtue of the legal characterization of the financing vehicle.

¹Companies Act, 1981, Rev. Laws of Bermuda, Title 17, Item 5, Section 127 ("an exempted company means a company which does not comply with the requirements of the Act in respect of a local company").

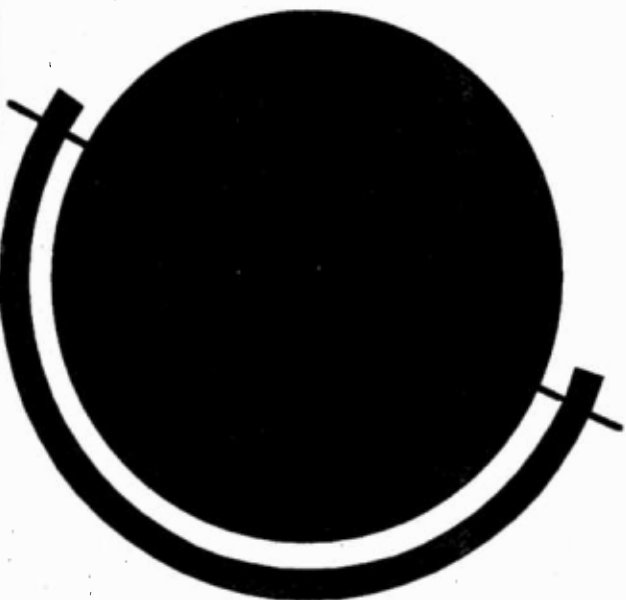
²Rev. Laws of Bermuda, Title 26, Item 50.

300 209

● **Guam's Insurance Industry**

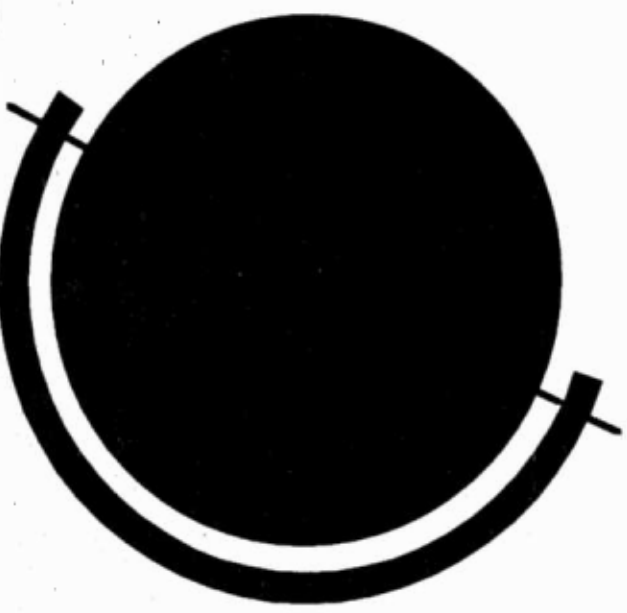
An Overview

May 12, 1996



Two types of Insurance groups

- ▶ Underwriting Entities
 - ◆ *The Risk Takers*
- ▶ Service Entities



Underwriting Entities

Re-insure



Wholesalers

Co-subs



Mo



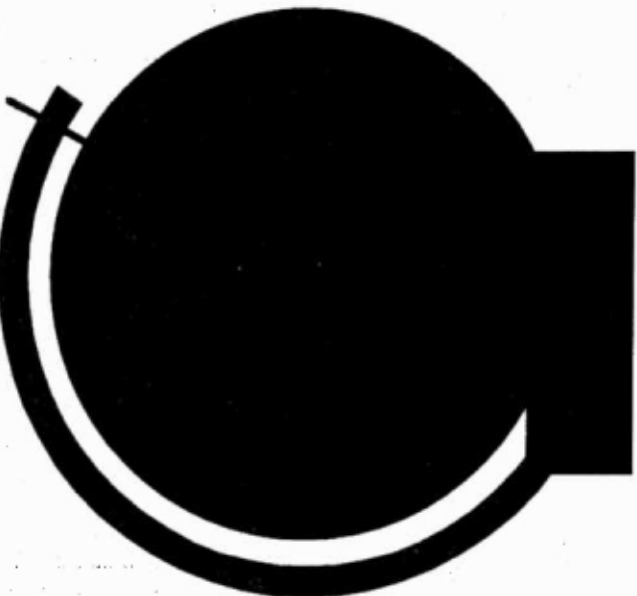
Holder



Other

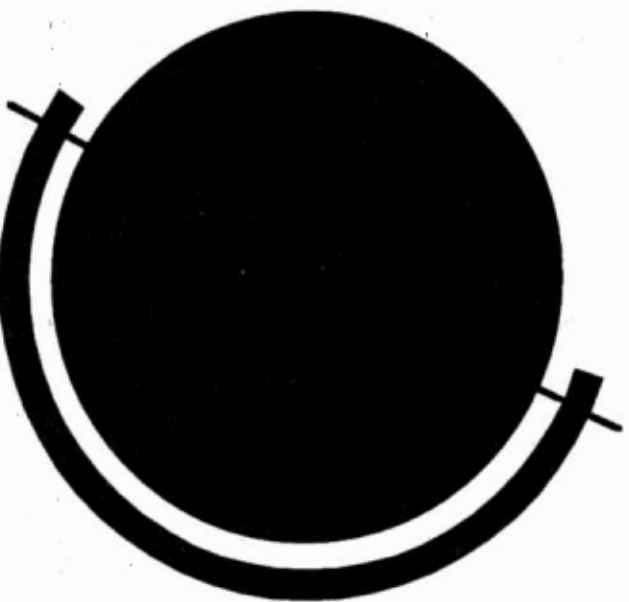


Capital



Service Entities

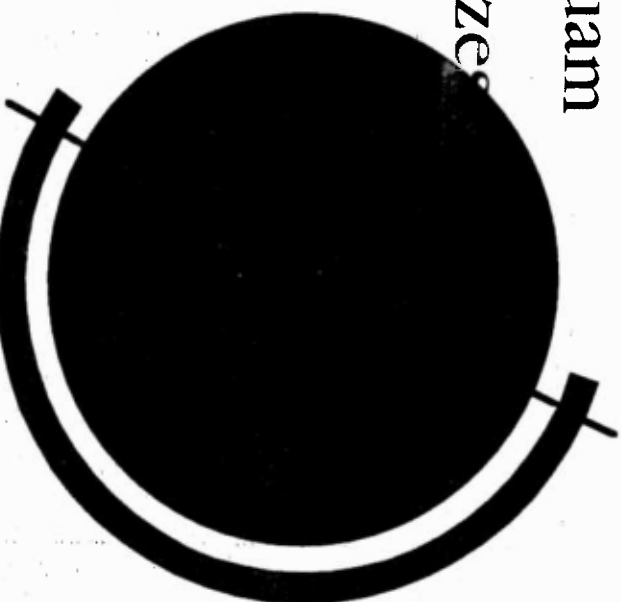
- ▶ Brokers
 - ▶ Agents
 - ▶ Managers
 - ▶ Professionals
- Boa*
- ◆ Actuaries
 - ◆ Lawyers
 - ◆ Money Managers
 - ◆ Accountants



Why Insurance?

1/1/14

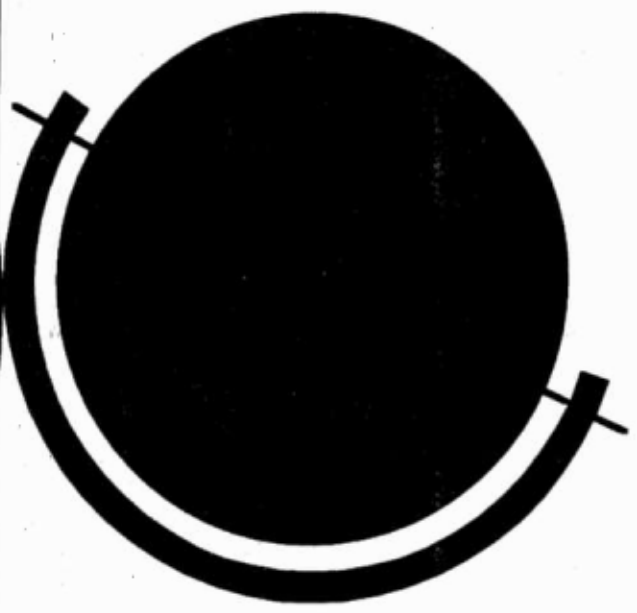
- ▶ Need to expand Guam's economic base to make the island less affected by outside economic fluctuations
- ▶ The industry provide additional source of revenues for the Government of Guam
- ▶ No other Asian jurisdiction specializes industry



Why Insurance?

CGA

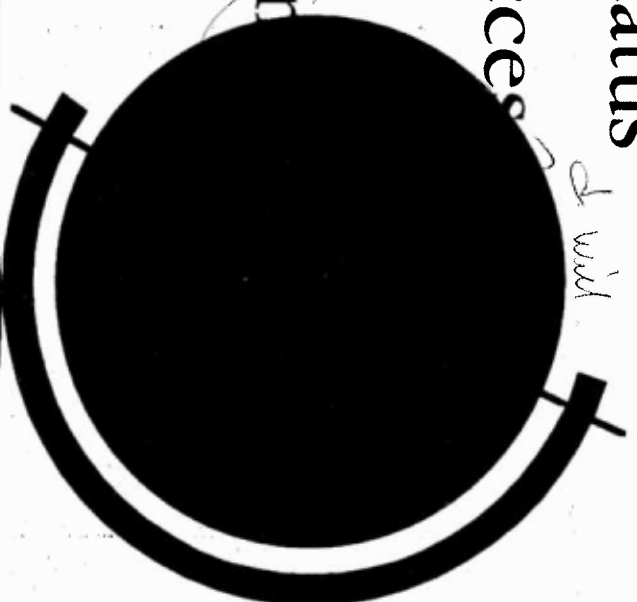
- ▶ Guam's U.S. Territory status provides stability
- ▶ Industry will provide significant white collar employment opportunities
- ▶ Demands on island's infrastructure would be minimal



Why Now?

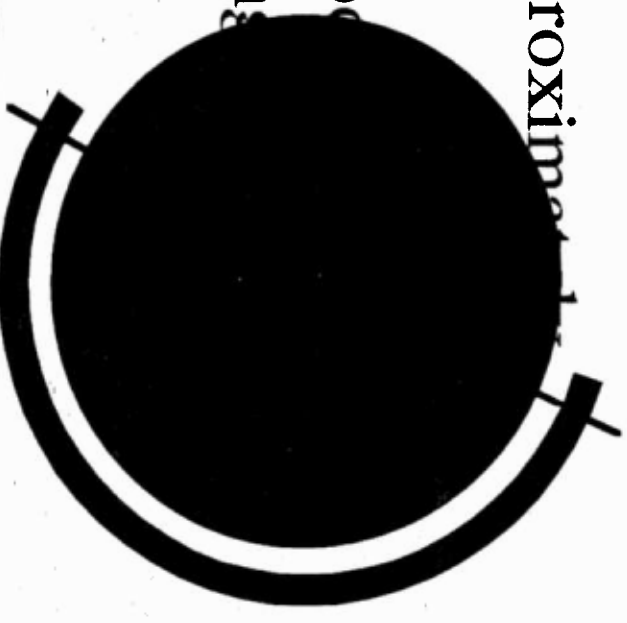
- ▶ World-wide interest in insurance, a result of significant natural disasters
- ▶ Vacuum created for financial services in Asia by change in Hongkong status
- ▶ Caribbean and Atlantic Isle success to be duplicated in the Pacific
- ▶ Vast, virtually untapped Asian market for Captives

to win



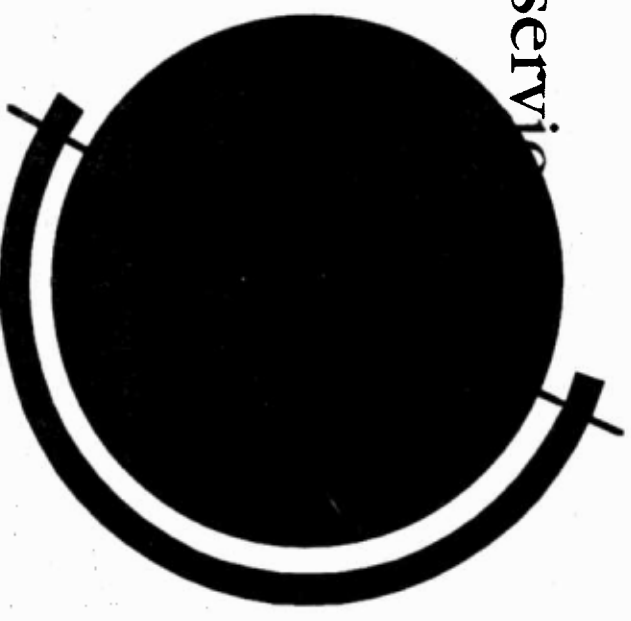
Supporting assets

- ▶ State of the Art communications facilities
 - ◆ Prospective reduction in communications costs
- ▶ Educated workforce
 - ◆ Current unemployment rate approximately 7%
 - ◆ Jobs in insurance industry are above minimum wage and ego satisfying



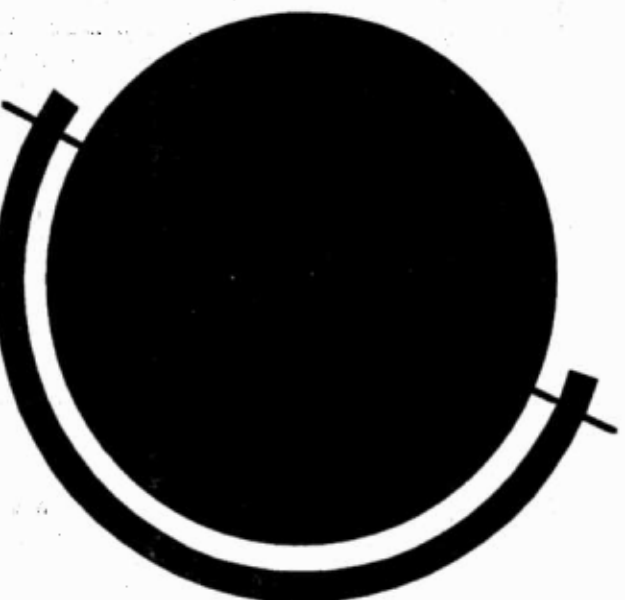
Supporting assets

- ▶ Available office space at reasonable cost
- ▶ Existing financial structure
 - ◆ Sixteen banks
 - ◆ Major stock brokerage firms
 - ◆ Expansive legal and accounting services



Impediments

- ▶ United States Internal Revenue Code ?



Member Companies:

- American Home Assurance Company
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Isla Insurance Company
- Dongbu Insurance Company
- Mitsui Marine & Fire Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- New Zealand Insurance Company, Ltd.
- Pacific Indemnity Insurance Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

1996 Officers:

Joseph J. Zulka
Chairman
477-1663/4

Geoff Cutting
Vice Chairman
635-2823

Joe Barcinas
Secretary/Treasurer
472-3133/4

***Position Paper
Bill 299 (Substituted)***

Bill 299 was originally created to encourage "Captives" to do offshore business. Captive Insurer is generally defined in insurance periodicals as a legally recognized insurance company organized and owned by a Corporation or firm whose purpose is to use the Captive to write its own insurance at rates lower than those of other Insurers. Usually it is a non admitted Insurer that has the right under special circumstances to reinsure with an admitted Insurer. However, Bill 299 substituted is not limited merely to "Captives", and has extended an open invitation to other Insurers to come to Guam and enjoy the benefits of not only a tax free climate but to operate at their convenience without limitations or regulations.

The Insurance Association of Guam is currently an organization of 13 insurance companies some of whom has been operating on the Island of Guam close to 50 years. These companies have provided insurance protection to the residents of Guam thru Super typhoon "Karen" in 1952, "Pamela" in 1976 and "Omar" in 1992 and the recent 8.2 Earthquake of 1993. The member companies have pioneered the insurance industry on Guam and settled all their claims and have religiously paid their taxes.

The Insurance Association of Guam believes that Bill 299 is a positive one as it relates to "Captive Insurers" and would undoubtedly benefit the Island if a sufficient number of companies would find the Bill sufficiently attractive and the incentives adequate to form their Captives on Guam. The Insurance Association of Guam has no quarrel or disagreement with this aspect of the Bill. We do take umbrage however, when the Bill is broadened and amplified to include any Insurer who would not be subject to the Insurance Laws of Guam we are subjected to and derive the benefit of a tax free environment. We believe this would be adverse selection against the Insurance companies who have stood behind this island thru numerous catastrophes.

The proponent of Bill 299 believe that sufficient income would be generated from the interest on the taxes to be paid by the Captives and other Insurers to justify passage of this Legislation. Undoubtedly most if not all companies currently writing insurance on Guam would, as a matter of clear survival seek qualification under the Tax Incentive Program of the Bill thus possibly eliminating entirely a current source of income accruing to the Government of Guam in this critical time of austerity. In the event a few companies or possibly none seek to take advantage of our Captive Law we would have eliminated a true source of income for a very speculative and undetermined one. We therefore question whether any financial studies have been made concerning the statute in the event it does not produce the anticipated volume of business it seeks.

Another concern regarding the formation of this new generation of Insurers is the minimum capitalization requirement to set up an insurance shop on Guam. The current Guam Insurance Law stipulates that a capitalization of \$100,000 would be sufficient to write all lines of insurance business except Life Insurance. If the capitalization requirement is not properly addressed to provide protection to the residents of Guam, the door would be open to unscrupulous individuals to form scam insurance operations, collect the premiums, pay no taxes and run in the event of a major catastrophe.

The Insurance Department of the Department of Revenue and Taxation does not have the manpower to administer the law and would require a substantial number of qualified and experienced personnel to oversee the Captives and other Insurers. An uncontrolled insurance environment can only mean trouble to the policy holders of these insurers whether located on Guam or elsewhere. Clearly they face substantial risk if no one is looking out for them . The memory of the recent NPI Bankruptcy should be a clear signal that things can and do go wrong.

In conclusion, the Insurance Association of Guam does not oppose the passage of a purely Captive Bill provided serious financial and detailed studies have been made for the administration of a sound and Captive Market. We do oppose the amplification of this Bill to include basically any Insurance " Tom, Dick and Harry" who may find Guam the paradise for easy money.

We thank you for allowing our Members to voice their concerns on what is a very fragile industry on Guam whose survival is dependent from one major disaster after another.



1996 Member Companies

- American Home Assurance Company
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Isla Insurance Company
- Korea Automobile Fire & Marine Insurance Company
- Mitsui Marine & Fire Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- New Zealand Insurance Company, Ltd.
- Pacific Indemnity Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

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477-1663/4

Geoff Cutting
Vice-Chairman
635-2823

Joe Barcinas
Secretary/Treasurer
472-3133/4

April 19, 1996

Via Hand Delivery

RECEIVED
COMMITTEE ON ECONOMIC-AGRICULTURAL
DEVELOPMENT INSURANCE
DATE: 4/23/96
TIME: 2:10 PM
REC'D BY: [Signature]

The Honorable Joe T. San Agustin
Chairman, Committee on Economic-
Agricultural Development and Insurance
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Shopping Center, Suite 218
Agana, Guam 96910

Jne
Bid 299

Dear Senator San Agustin:

Thank you for the opportunity to review the revised Bill 299. Members of the Insurance Association of Guam have kindly made available their views on the revised Bill, and we hereby attach a position paper regarding same which is representative of the views of our members.

We trust the attached paper is self-explanatory, however, please advise if clarification is required on any point. Further, should you wish to meet with representatives of his association to discuss the Bill or any aspects of our comments, we would certainly oblige.

Yours Faithfully,


G.R. Cutting
Acting Chairman

INSURANCE ASSOCIATION OF GUAM

POSITION PAPER ON BILL 299 (Amended)

- A. The Bill seems to lump together incentives for attracting "Captive" Insurance Companies to do offshore business and other Commercial Insurers to write business on Guam. This is patently unfair to the Insurance Companies who pioneered the insurance business on Guam and have religiously paid their taxes and settled all claims. Guam does not need a flood of non-tax paying insurers to provide cheap insurance, but rather a solid degree of stability to provide continuity of coverage to consumers.
- B. Merely waiving the 4% premium tax is not sufficiently attractive for Insurers to come to Guam. We suspect that some business is now being written offshore without paying premium taxes.
- C. Section 5 is unclear. It refers to a rebate on "...income received from the issuance of insurance policies..." It is unclear as to exactly what proceeds from insurance the Bill refers.
- D. The Government of Guam Insurance Department is currently understaffed and inexperienced in the handling and administration of captive insurers. This would require the need to hire sufficient qualified and experienced personnel to administer the Captive Insurance Companies.
- E. Captives are not formed for tax incentives alone. The captive center requires the need to be close to a reinsurance center and an adequate and accessible pool of experienced personnel. There are many well established and less expensive locations to domicile a captive, which have conducive finance and communications infrastructures already in place.
- F. The requirement to reinvest 50% of the related taxes within Guam would not be attractive to would-be captives as they generally require the ability to freely remit of income / premiums and investments offshore.



16 Member Companies:

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635-2823

Joe Barcinas
Secretary/Treasurer
472-3133/4

May 14, 1996

Via Hand Delivery

Senator Joe T. San Agustin
Majority Leader Chairperson, Committee
on Economic-Agriculture Development
Twenty-Third Guam Legislature

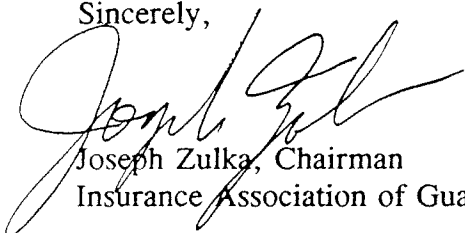
Re: Position Paper from Insurance Association of Guam
on Bill 299 (substituted)

Dear Senator San Agusting:

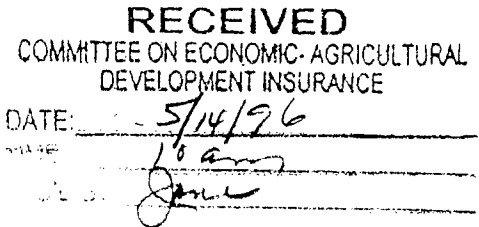
Enclosed please find the above captioned. Please review at your earliest convenience.

If you have any further questions do not hesitate to give me a call. Thank you for your consideration of IAG's position.

Sincerely,



Joseph Zulka, Chairman
Insurance Association of Guam



16 Member Companies:

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Bill 299 (Substituted)*

Bill 299 was originally created to encourage "Captives" to do offshore business. Captive Insurer is generally defined in insurance periodicals as a legally recognized insurance company organized and owned by a Corporation or firm whose purpose is to use the Captive to write its own insurance at rates lower than those of other Insurers. Usually it is a non admitted Insurer that has the right under special circumstances to reinsure with an admitted Insurer. However, Bill 299 substituted is not limited merely to "Captives", and has extended an open invitation to other Insurers to come to Guam and enjoy the benefits of not only a tax free climate but to operate at their convenience without limitations or regulations.

The Insurance Association of Guam is currently an organization of 13 insurance companies some of whom has been operating on the Island of Guam close to 50 years. These companies have provided insurance protection to the residents of Guam thru Super typhoon "Karen" in 1952, "Pamela" in 1976 and "Omar" in 1992 and the recent 8.2 Earthquake of 1993. The member companies have pioneered the insurance industry on Guam and settled all their claims and have religiously paid their taxes.

The Insurance Association of Guam believes that Bill 299 is a positive one as it relates to "Captive Insurers" and would undoubtedly benefit the Island if a sufficient number of companies would find the Bill sufficiently attractive and the incentives adequate to form their Captives on Guam. The Insurance Association of Guam has no quarrel or disagreement with this aspect of the Bill. We do take umbrage however, when the Bill is broadened and amplified to include any Insurer who would not be subject to the Insurance Laws of Guam we are subjected to and derive the benefit of a tax free environment. We believe this would be adverse selection against the Insurance companies who have stood behind this island thru numerous catastrophes.

The proponent of Bill 299 believe that sufficient income would be generated from the interest on the taxes to be paid by the Captives and other Insurers to justify passage of this Legislation. Undoubtedly most if not all companies currently writing insurance on Guam would, as a matter of clear survival seek qualification under the Tax Incentive Program of the Bill thus possibly eliminating entirely a current source of income accruing to the Government of Guam in this critical time of austerity. In the event a few companies or possibly none seek to take advantage of our Captive Law we would have eliminated a true source of income for a very speculative and undetermined one. We therefore question whether any financial studies have been made concerning the statute in the event it does not produce the anticipated volume of business it seeks.

Another concern regarding the formation of this new generation of Insurers is the minimum capitalization requirement to set up an insurance shop on Guam. The current Guam Insurance Law stipulates that a capitalization of \$100,000 would be sufficient to write all lines of insurance business except Life Insurance. If the capitalization requirement is not properly addressed to provide protection to the residents of Guam, the door would be open to unscrupulous individuals to form scam insurance operations, collect the premiums, pay no taxes and run in the event of a major catastrophe.

The Insurance Department of the Department of Revenue and Taxation does not have the manpower to administer the law and would require a substantial number of qualified and experienced personnel to oversee the Captives and other Insurers. An uncontrolled insurance environment can only mean trouble to the policy holders of these insurers whether located on Guam or elsewhere. Clearly they face substantial risk if no one is looking out for them . The memory of the recent NPI Bankruptcy should be a clear signal that things can and do go wrong.

In conclusion, the Insurance Association of Guam does not oppose the passage of a purely Captive Bill provided serious financial and detailed studies have been made for the administration of a sound and Captive Market. We do oppose the amplification of this Bill to include basically any Insurance " Tom, Dick and Harry" who may find Guam the paradise for easy money.

We thank you for allowing our Members to voice their concerns on what is a very fragile industry on Guam whose survival is dependent from one major disaster after another.

GUAM

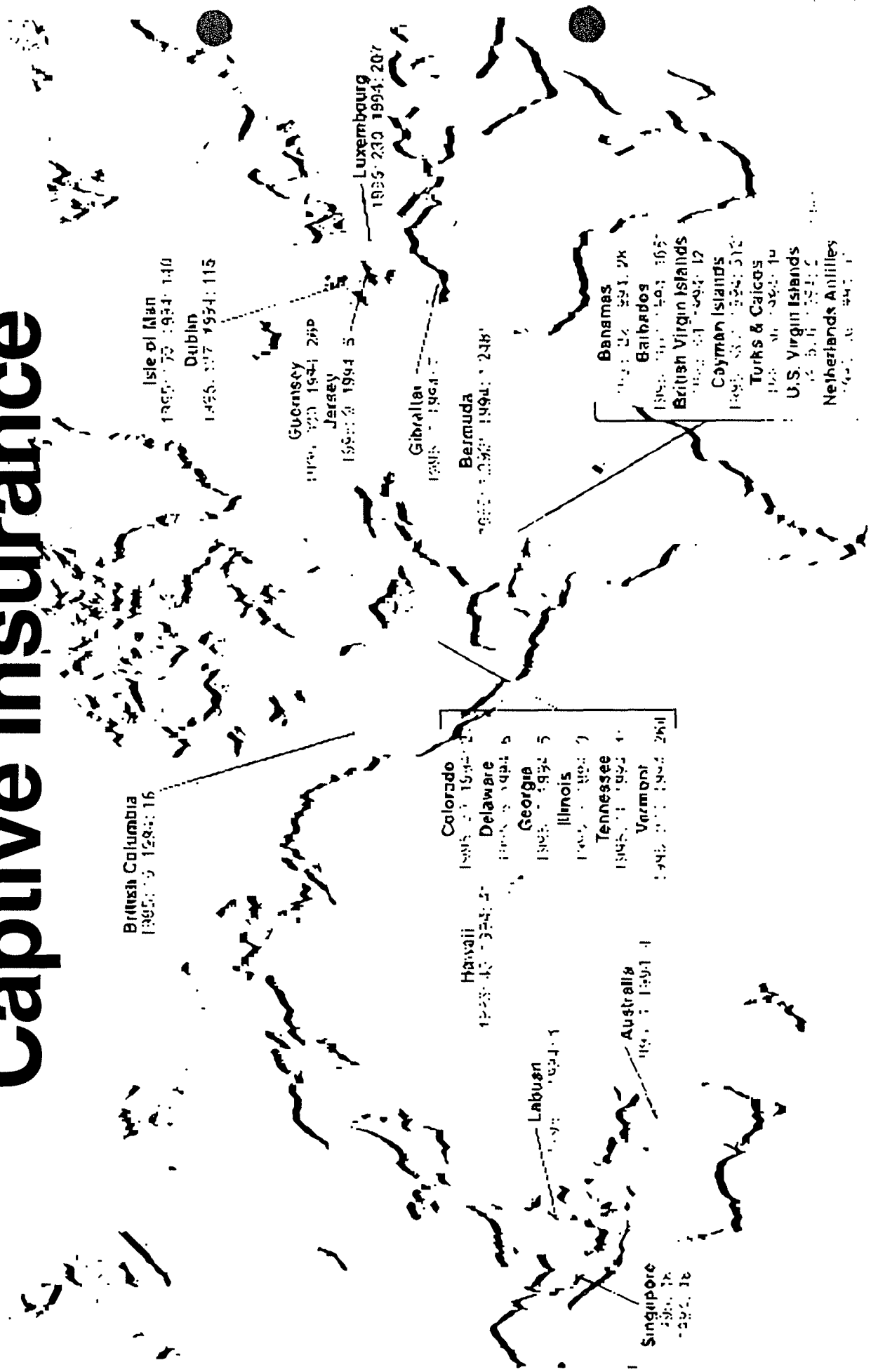
Financial Center of the Pacific

Impact of Bill 299



May 16, 1996

Captive Insurance



British Columbia
1969, 70, 72, 73, 76

Colorado
1965, 67, 69, 71
Delaware
1968, 70, 71, 74, 75
Georgia
1968, 70, 71, 72, 75
Illinois
1968, 70, 71, 72, 73
Tennessee
1968, 70, 71, 72, 73
Vermont
1968, 70, 71, 72, 74, 76

Hawaii
1968, 70, 75, 77

Labuan
1964, 71

Australia
1968, 70, 71, 74

Singapore
1969, 74, 80, 81, 86

Isle of Man
1969, 70, 75, 1984, 1990
Dublin
1968, 70, 71, 1984, 115

Guernsey
1968, 70, 1984, 288
Jersey
1968, 70, 1994, 5

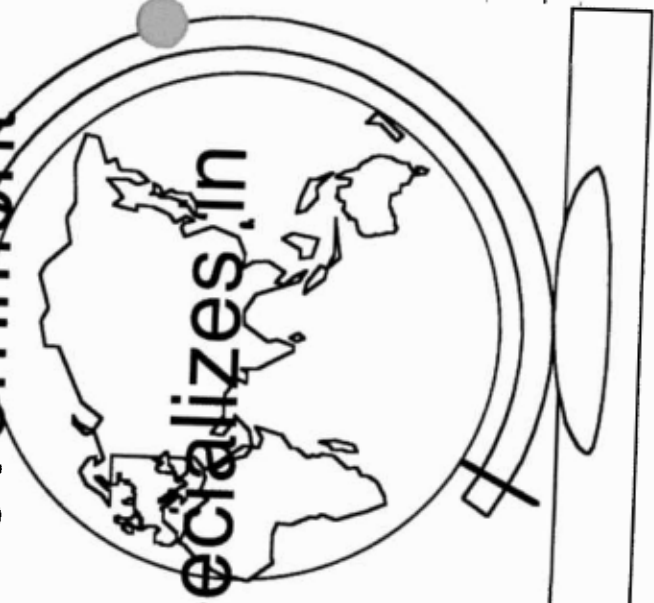
Gibraltar
1968, 70, 1984, 5
Bermuda
1968, 70, 1994, 238

Bahamas
1968, 70, 1994, 278
Barbados
1968, 70, 1994, 195
British Virgin Islands
1968, 70, 1994, 12
Cayman Islands
1968, 70, 1994, 312
Turks & Caicos
1968, 70, 1994, 14
U.S. Virgin Islands
1968, 70, 1994, 12
Netherlands Antilles
1968, 70, 1994, 14

Luxembourg
1968, 70, 1994, 207

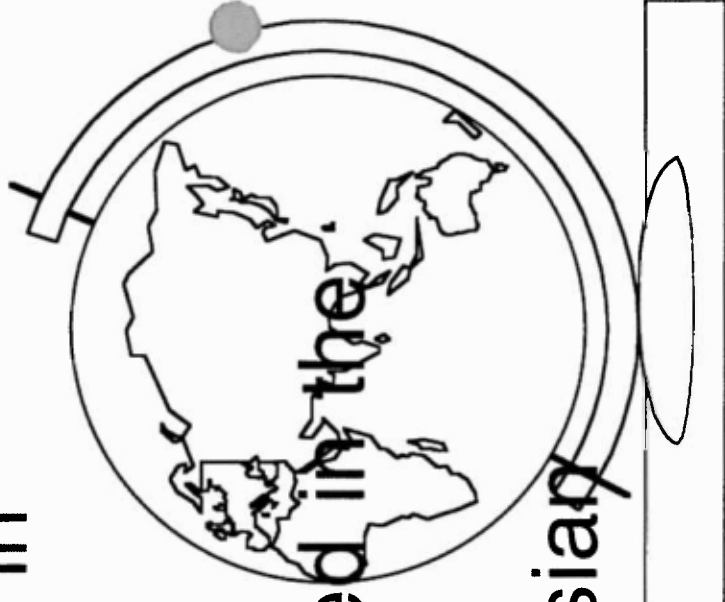
Why The Insurance Industry On Guam?

- ▶ Need to expand economic base to make the island less vulnerable to outside economic fluctuations
- ▶ Additional revenues for the Government of Guam
- ▶ No other Asian jurisdiction specializes in this industry



Why Now?

- ▶ World-wide interest in insurance, a result of significant natural disasters
- ▶ Vacuum created for financial services in Asia by change in Hongkong status
- ▶ Caribbean and Atlantic Isle successes will be duplicated in the Pacific
- ▶ Vast, virtually untapped Asia market for Captives



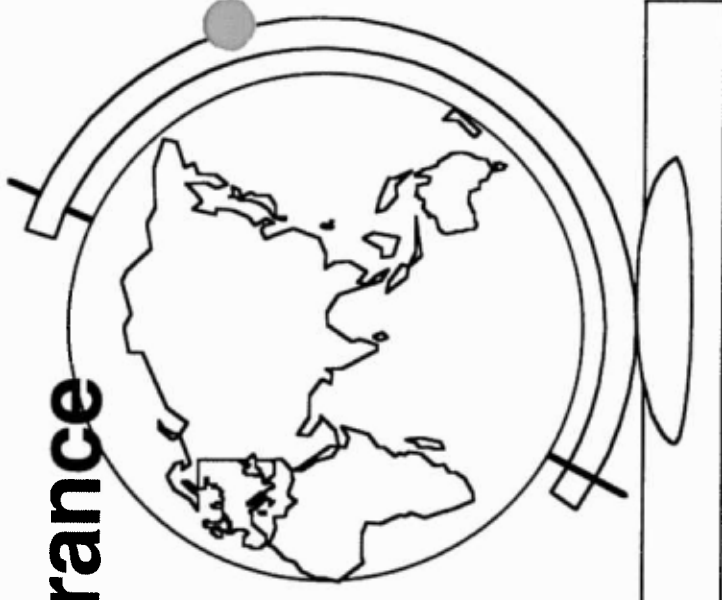
Supporting Assets

- ▶ Available office space at reasonable cost
- ▶ Existing financial structure
 - ◆ 16 banks
 - ◆ Major stock brokerage firms
 - ◆ Expansive legal and accounting services



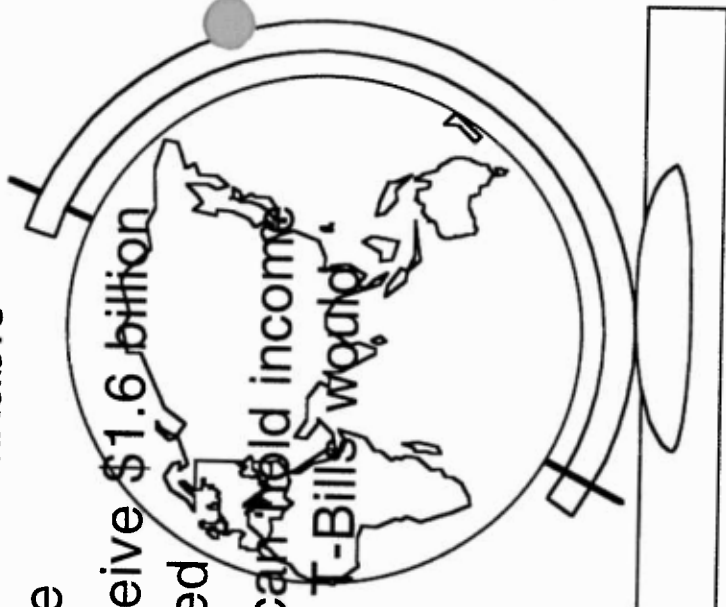
Bill No. 299

- ▶ Purpose
 - ◆ To create an incentive to attract insurance underwriting entities to Guam
 - ◆ **Guam becomes the insurance capital of the Pacific**



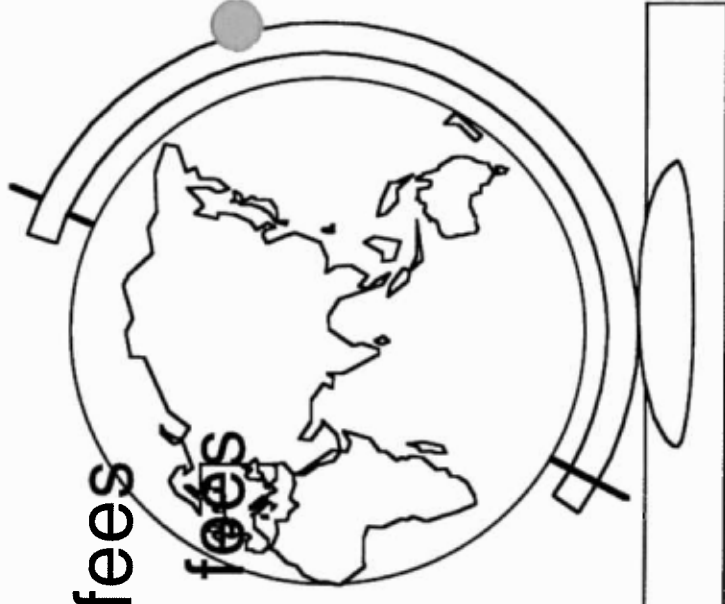
Benefits of Bill No. 299

- ▶ Revenues to the General Fund
 - ◆ \$145 million annually
 - ◆ In Bermuda, 1995 Gross Premiums were \$18.8 billion
 - ◆ Assume 25% of total premium become taxable equals \$4.7 billion in taxable income
 - ◆ Using 35% tax rate - Guam can receive \$1.6 billion in taxes paid and eventually refunded
 - ◆ Because the Government of Guam can ~~can~~ ~~double~~ ~~income~~ ~~taxes~~ ~~for~~ ~~180~~ ~~days~~, investing in 6% T-Bills would earn Guam \$145 million



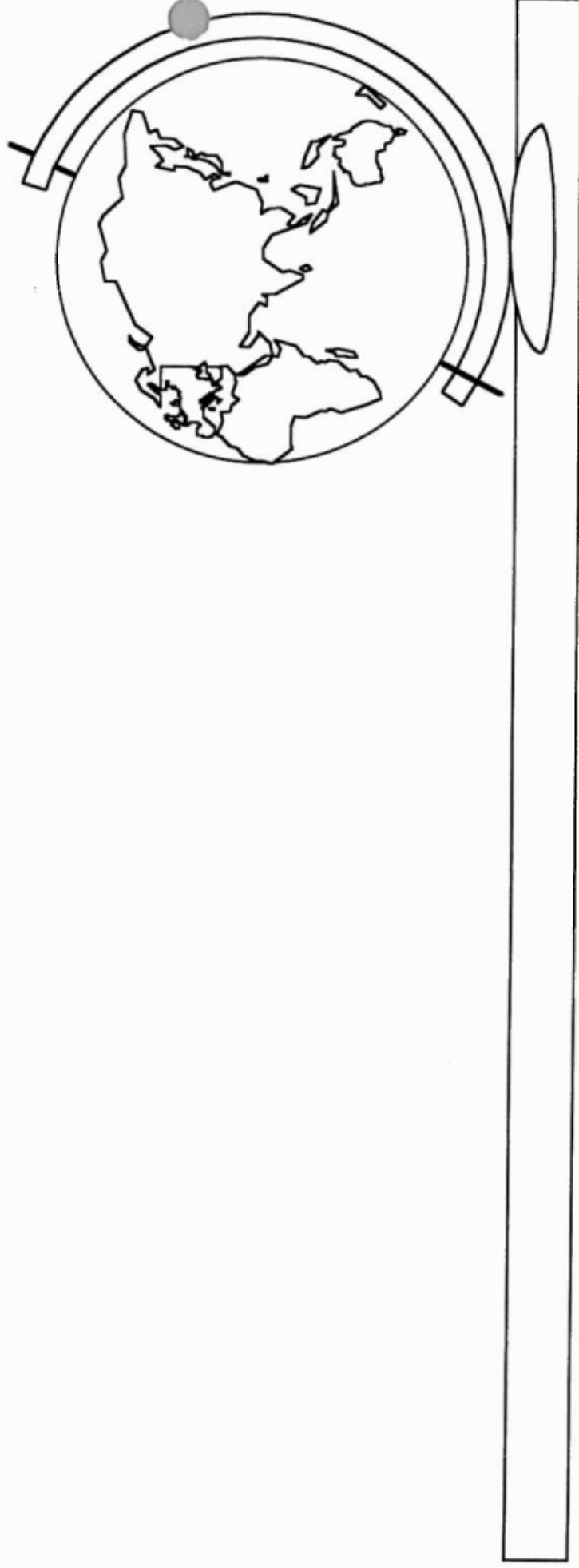
Benefits of Bill 299

- ▶ Capital infusion
 - ◆ \$2.98 billion in permanent capital
 - which will stay on Guam
- ▶ Fees
 - ◆ \$969,000 annually in filing fees
 - ◆ \$1.29 million in surveillance fees
- ▶ New Service Sector



Recommendations

- ▶ Enactment of Bill 299





Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

PUBLIC HEARING
THURSDAY, MAY 16, 1996
GUAM LEGISLATURE PUBLIC HEARING ROOM
155 HESLER STREET, AGANA, GUAM

A G E N D A

1 P.M.

- I. Call to Order
- II. Introductions of Committee Members
- III. Testimony of Interested Individuals Relative to Bill No. 299 (Substituted).
- IV. Discussion of Bill No. 299 (Substituted).
- V. Testimony of Interested Individuals Relative to the Appointment of Mr. Jesus F. Aguon to the Position of Member, Agricultural Board of Commissioners, Expiring August 26, 2000.
- VI. Testimony of Mr. Jesus F. Aguon Relative to His Appointment as Member, Agricultural Board of Commissioners.

5 P.M.

- IX. Testimony of Interested Individuals Relative to Bill No. 576.
- X. Discussion of Bill No. 576.
- XI. Adjournment

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299

As further substituted by the Committee on
Economic Agricultural Development & Insurance - May 16, 1996

Introduced by:

J.T. San Agustin
E.B. Anderson
S.L. Orsini

AN ACT TO AMEND SS 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SS 2428.4, AND TO REPEAL AND REENACT SS 43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurer, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299

As further substituted by the Committee on
Economic Agricultural Development & Insurance - May 16, 1996

Introduced by:

J.T. San Agustin

~~J.P. Aguon~~ E. B. *Ed.*
S. *San*

AN ACT TO AMEND §§2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW §2428.4, AND TO REPEAL AND REENACT §43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

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finest communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further finds that the action taken in the past to encourage so-called "export trading companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam Code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. *See Ramsey v. Chaco*, 549 F.2d 1335 (1977).

Section 2. *Amendments to GEDA Law.* (a) §2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

~~"9. Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code; Insurance issuance, either by commercial insurers, reinsurers, or captive insurers;"~~

(b) §2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

~~"§2405.6. Reinsurance.—Increasing the availability of insurance including reinsurance. Insurance. Establishment of Guam as a financial/insurance center for the Pacific, and~~

increasing the availability and lowering the cost of insurance in Guam."

(c) §2427.5 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2427.5. *Insurance premiums.* All taxes now levied by virtue of ~~§43714, Chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipts taxes,~~ shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from the issuance of insurance policies, including bonds as long as said premiums such receipts are collected by an eaptive insurance company licensed ~~under said Chapter VII~~ that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) §2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2442. *Investment of abated or rebated tax in Guam.* Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of §§2427 and

2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxes rebated or abated under §§2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) §2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitled "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers " \$750.00 \$1,000.00."

Section 3. *Addition to GEDA Law.* New §2428A is hereby added to Article 4, Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"§2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on all income received from underwriting either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam, may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor; *provided*, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the

conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

Section 4. *Amendment to Captive Insurance Law.* §23713, Chapter VII, Title XXXIV, Government Code, is hereby repealed and reenacted to read:

"§2371.3. *No taxes on qualified captive insurers.* Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to the government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax thereon before the same is rebated in full, pursuant to its Qualifying Certificate."

Section 5. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect *without* the invalid provision or application, and to this end the provisions of this act are *severable*.

Section 6. *Effective date.* This act shall take effect sixty (60) days after its approval.



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

May 1, 1996

MEMORANDUM

TO: Members, Committee on Economic-Agricultural
Development & Insurance

FROM: Chairman

SUBJECT: Public Hearing - May 16, 1996 (1 p.m.)

The Committee on Economic-Agricultural Development and Insurance is conducting a public hearing on **Thursday, May 16, 1996**, in the Guam Legislature Public Hearing Room for the following:

1 P.M.

- Bill No. 299** AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF
(Substituted) TITLE XXXIX OF THE GOVERNMENT CODE TO REGULATE INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND SUBSECTION 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SECTION 2428.4, AND TO REPEAL AND REENACT SECTION 43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS. (Introduced by J. T. San Agustin, J. P. Aguon)
- Bill No. 606** AN ACT TO AMEND SUBSECTION 2801, 2802, 2803, 2804, 2805, 2806, 2807, AND 2808 OF ARTICLE 8, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, AND TO REPEAL SECTION 2809 OF SAID ARTICLE TO ENCOURAGE THE DEVELOPMENT OF ADDITIONAL HOTELS AND TOURIST FACILITIES; AND TO AMEND SUBSECTION 2404 SUBITEM 8, 2405.4, 2427.5 AND 2443 OF SAID ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, AND TO ADD TO SAID ARTICLE NEW SUBSECTION 2427.6 AND 2428.5 TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO DEVELOPERS OF AFFORDABLE HOUSING. (Introduced by J. T. San Agustin, J. P. Aguon, F. E. Santos)

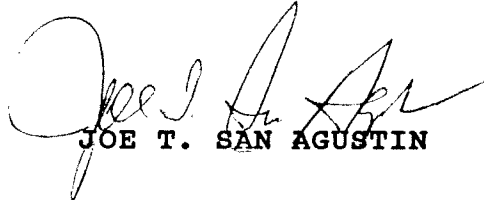
Public Hearing/May 16, 1996
May 1, 1996
Page 2

APPOINTMENT OF MR. JESUS F. AGUON TO THE POSITION OF MEMBER,
AGRICULTURAL BOARD OF COMMISSIONERS, EXPIRING AUGUST 26, 2000.

5 P.M.

Bill No. 576 AN ACT TO ESTABLISH RULES AND REGULATIONS FOR I
SENGSONG CHAMORRO (THE CHAMORRO VILLAGE) OF THE
DEPARTMENT OF COMMERCE. (Introduced by T. S.
Nelson, by request of the Governor in accordance
with the Organic Act of Guam)

Your presence at this hearing is appreciated. Thank you for your
attention to this matter.


JOE T. SAN AGUSTIN

Attachments

cc: Executive Director
Protocol Office
Maintenance
Security
Legal
Archives

Audio
All Senators
All Media



Committee on Economic-Agricultural
Development and Insurance

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Tel: (671) 477-8527/9120 - Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

T R A N S M I T T A L S H E E T

Date: May 7th, 1996

PLEASE DELIVER THE FOLLOWING TO:

NAME: Dolores

FIRM: CONTINENTAL MICRONESIA

FACSIMILE NO: _____

FROM:

NAME: Karl C. Quitano

FIRM: OFFICE OF SENATOR JOE T. SAN AGUSTIN

FACSIMILE NO: (671) 477-5570

ATTACHMENTS/COMMENTS: As per your request, here is a copy of the
announcement of Bill No. 606 for Mr. Breeding.

We are transmitting ****3**** pages including this cover sheet.
If you do not receive all the pages, please call as soon as
possible at 477-8527 or 477-9120.

TRANSMISSION REPORT

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**Committee on Economic-Agricultural
Development and Insurance**

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Agaña, Guam 96910
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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

T R A N S M I T T A L S H E E T

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PLEASE DELIVER THE FOLLOWING TO:

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FACSIMILE NO: _____

FROM:

NAME: _____

FIRM: OFFICE OF SENATOR JOE T. SAN AGUSTIN

FACSIMILE NO: (671) 477-5570

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**Committee on Economic-Agricultural
Development and Insurance**

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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

May 1, 1996

Mr. Joe Zulka
Chairman
Insurance Association of Guam
c/o Cassidy's Insurance
P. O. Box 3586
Agana, Guam 96910

Dear Mr. Zulka:

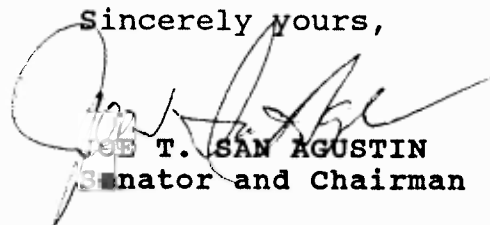
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Bill No. 299 (Substituted) AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF TITLE XXXIX OF THE GOVERNMENT CODE TO REGULATE INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND SUBSECTION 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4, AND TO REPEAL AND REENACT SUBSECTION 43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS. (Introduced by J. T. San Agustin, J. P. Aguon)

As this Bill directly affects the development of the territory, you are cordially invited to testify and present your opinion and comments. A copy of the Bill is enclosed for your disposition. The Committee would appreciate receiving twenty (20) copies of your testimony prior to the hearing.

Thank you and we look forward to seeing you at the hearing.

Sincerely yours,



JOE T. SAN AGUSTIN
Senator and Chairman

Enclosure



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

May 1, 1996

Mr. Joseph T. Duenas
Director
Department of Revenue & Taxation
P. O. Box 23607
GMF, Guam 96921

Dear Mr. Duenas:

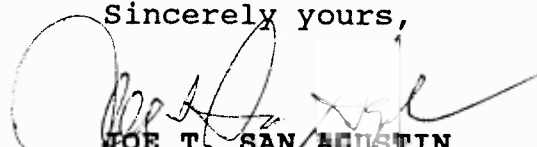
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JOE T. SAN AGUSTIN
Senator and Chairman

Enclosure



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE

424 W. O'Brien Dr., Julale Shopping Center, Suite #218

Agaña, Guam 96910

Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

May 1, 1996

Mr. Glenn Leon Guerrero
Administrator
Guam Economic Development Authority
Suite 911, GITC Bldg.
590 S. Marine Drive
Tamuning, Guam 96911

Dear Mr. Leon Guerrero:

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Bill No. 299 AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF
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 INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND
 SUBSECTION 2404 SUBITEM 9, 2405.6, 2427.5, 2442
 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM
 CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW
 SUBSECTION 2428.4, AND TO REPEAL AND REENACT
 SUBSECTION 43713, CHAPTER VII, TITLE XXXIV,
 GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF
 QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO
 CLARIFY THE TAXATION OF CAPTIVE
 INSURERS. (Introduced by J. T. San Agustin, J. P.
 Aguon)

As this Bill directly affects the development of the territory, you are cordially invited to testify and present your opinion and comments. A copy of the Bill is enclosed for your disposition. The Committee would appreciate receiving twenty (20) copies of your testimony prior to the hearing.

Thank you and we look forward to seeing you at the hearing.

Sincerely yours,


JOE T. SAN AGUSTIN
Senator and Chairman

Enclosure



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

May 1, 1996

Mr. Eduardo J. Calvo
Chairman
Guam Chamber of Commerce
P. O. Box 283
Agana, Guam 96910

Dear Mr. Calvo:

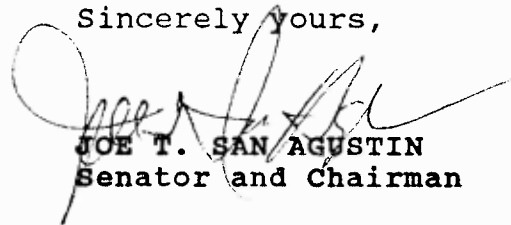
The Committee on Economic-Agricultural Development and Insurance is conducting a public hearing on **Thursday, May 16, 1996, at 1 p.m., in the Guam Legislature Public Hearing Room** on the following Bill:

Bill No. 299 (Substituted) AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF TITLE XXXIX OF THE GOVERNMENT CODE TO REGULATE INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND SUBSECTION 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SUBSECTION 2428.4, AND TO REPEAL AND REENACT SUBSECTION 43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS. (Introduced by J. T. San Agustin, J. P. Aguon)

As this Bill directly affects the development of the territory, you are cordially invited to testify and present your opinion and comments. A copy of the Bill is enclosed for your disposition. The Committee would appreciate receiving twenty (20) copies of your testimony prior to the hearing.


Thank you and we look forward to seeing you at the hearing.

Sincerely yours,



JOE T. SAN AGUSTIN
Senator and Chairman

Enclosure



STATEMENT ON BILL NO. 299
SENATOR JOE T. SAN AGUSTIN
Committee on Economic-Agricultural Development & Insurance
May 16, 1996

This public hearing will constitute the second public hearing on Bill No. 299, which was originally heard on September 18, 1995. Bill No. 299, during this public hearing received testimonies relating to deregulating insurance rates on Guam. It was my intent as the author to "shock" the insurance industry into realizing that Guam's consumers are very frustrated by the high cost of insurance; particularly, typhoon coverage. The public hearing heard on September 18, 1995, stimulated a lively discussions regarding the insurance industry on Guam. After the public hearing and based on testimony received, it was obvious that Bill No. 299 as submitted needed to be revised, keeping in mind the main focus, to address the needs of the Guam consumers as they pertain to the insurance industry. The creation of the Advisory Insurance Board was suggested. The revised Bill 299 contain two essential features; namely, (1) creation of an Insurance Advisory Board; and (2) to authorize the issuance of Qualifying Certificates to Guam Insurance and to clarify the taxation of Captive Insurance. A mark-up meeting of the revised bill was held on April 12, 1996, attended by representatives of the Insurance Industry, Department of

Revenue & Taxation, Guam Economic Development Authority, along with the Chairman of this Committee and Senator Ben Pangelinan, a former Chairman and a member of the Committee. During this mark-up, it was generally agreed that there is no need for an Insurance Advisory Board; but, the subject of Qualifying Certificates for Guam Insurance and clarification of the taxation of Captive Insurance were debated at length. It was generally agreed that an inquiry be made by GEDA to ascertain if there is indeed a market to attract General Insurance as well as the role of Captive Insurance.

Bill No. 299 as now substituted needs to have a public hearing inasmuch as it has differed in scope with the original scope, but the intent and objectives remain the same. We are now here to hear pros and cons of Bill 299 as Substituted.



GUAM CHAMBER OF COMMERCE
PARTNERS IN PROGRESS

May 16, 1996

Senator Joe T. San Agustin
Chairman
Committee on Economic-Agricultural
Development & Insurance
Twenty-Third Guam Legislature
155 Hesler Street
Agana, Guam 96910

**RE: GEDA QC'S FOR GUAM INSURERS AND TAX TREATMENT OF
CAPTIVE INSURERES**

Dear Mr. Chairman & Committee Members:

The Guam Chamber of Commerce appreciates the invitation to provide testimony on Substitute Bill No. 299 that would authorize the issuance of GEDA qualifying certificates to Guam Insurers and provide clarification on the tax treatment of captive insurers.

The Chamber is a long time proponent of the location of captive insurers here on Guam. It is a new industry that has the potential of bringing a sizeable amount of capital to our shores and creating a tremendous number of jobs for the community.

The Insurance Association of Guam (IAG) has raised questions and concerns regarding the non-captive insurers provisions of Bill No. 299 that we will also be addressing as a Chamber Board next week. Their issues will be raised during today's public hearing for your consideration.

As the Chamber Board has not met to deliberate on Bill No. 299, we would like to advise that we will be submitting our final comments and position on this bill after May 22, 1996. Thank you for your time and attention to our comments herein.

Sincerely yours,

EDUARDO J. CALVO
Chairman of the Board

REVENUE AND TAXATION

RECOMMENDED CHANGES TO BILL 299

Pg 2 **Section 2. Amendments to GEDA law.** (a) §2404 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

Locally Child

"9. ~~Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code; Insurance issuance, either by commercial insurers, reinsurers, or captive insurers;~~"
[who meet the requirements of Title XXXIX, Chapter III (Domestic Insurers) of the Government Code of Guam.]

Pg 3 (c) §2427.5 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2427.5. **Insurance premiums.** All taxes now levied by virtue of ~~§43714, Chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated, known as gross receipt taxes,~~ shall be abated for a period of up to ten (10) ~~twenty~~ (20) years from the effective date of the Qualifying Certificate therefore, for those gross receipts derived [from underwriting from either inside or outside of Guam, including all income derived from investing funds derived from operating an insurance underwriting business on Guam.] by an ~~captive~~ insurance company licensed under said Chapter VII that has qualified and continues to qualify for a Qualifying Certificate....

Pg 4 **Section 3. Addition to GEDA law.** New §2428.4 is hereby added to Article 4, Chapter 2, Title 12, Guam Code Annotated, to read as follows:

"§2428.4. Line 3 "...income tax [liability] to the..."

Pg 5 **Section 4. Amendment to Captive Insurance Law.**

"§2371.3. Line 7 "territorial income tax [liability] thereon..."

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299
As further substituted by the Committee on
Economic Agricultural Development & Insurance - April 12, 1996

Introduced by:

J.T. San Agustin

AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF TITLE XXXIX OF THE GOVERNMENT CODE TO REGULATE INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND SS 2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW SS 2428.4, AND TO REPEAL AND REENACT SS 43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. *Legislative intent.* It is the intent of the Legislature by enactment of this new Article IX of Chapter III of the Insurance Law to promote competition in the territorial insurance business and provide a means whereby insurance consumers can more easily "comparison shop" for insurance coverage by allowing insurance advisory organizations to develop for use by all insurers in Guam common forms, coverages, endorsements, and manuals for insurance policies and bonds.

2

TWENTY-THIRD GUAM LEGISLATURE

1996 (SECOND) REGULAR SESSION

Bill No. 299

As further substituted by the Committee on
Economic Agricultural Development & Insurance *Apr 12, 1996*

Introduced by:

J.T. San Agustin
~~J.P. Agnon~~

AN ACT TO ADD A NEW ARTICLE IX TO CHAPTER III OF TITLE XXXIX OF THE GOVERNMENT CODE TO REGULATE INSURANCE ADVISORY ORGANIZATIONS; AND TO AMEND §§2404 SUBITEM 9, 2405.6, 2427.5, 2442 AND 2443 OF ARTICLE 4, CHAPTER 2, TITLE 12, GUAM CODE ANNOTATED, TO ADD TO SAID ARTICLE NEW §2428.4, AND TO REPEAL AND REENACT §43713, CHAPTER VII, TITLE XXXIV, GOVERNMENT CODE, TO AUTHORIZE THE ISSUANCE OF QUALIFYING CERTIFICATES TO GUAM INSURERS AND TO CLARIFY THE TAXATION OF CAPTIVE INSURERS.

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Section 2 *New article.* A new Article IX is hereby added to Chapter VIII Title XXXIX, Government Code, to read:

"ARTICLE IX

Insurance Advisory Organizations

§43270. *Definition.* For purposes of this Article, "*Insurance Advisory Organization*" is every group, association, or other organization of insurers, located on Guam, that develops and prepares insurance policy or bond forms or manuals, for use by admitted insurers, carries on research relative to the development and preparation of such policy and bond forms, and acts strictly in an advisory as distinguished from a ratemaking capacity.

§43271. *Conditions prerequisite to conduct operations.* No insurance advisory organization shall conduct its operations or other activities in Guam until it has filed with the Commissioner copies (duly certified by the custodian of the originals thereof) of: (a) its constitution, its articles of agreement or association, or its article of incorporation and its certificate of incorporation, and its by-laws, and other rules and regulations governing its activities; (b) a list of its members; and, (c) the name and address of a resident of Guam upon whom notices or orders of the Commissioner or process issued at the Commissioner's direction may be served. Every insurance advisory organization shall thereafter promptly notify the Commissioner of every change in the documents required to be filed with the Commissioner pursuant to this section.

§43272. *Insurers cooperating and acting in concert.*

Two (2) or more insurers may cooperate with and act in concert with others as members of an insurance advisory organization with respect to any matter pertaining to the preparation or making of insurance policy or bond forms or manuals, or carrying on of research relative to the preparation and development of policy or bond forms or manuals.

§43273. *Use of policy or bond forms.* Members of and subscribers to insurance advisory organizations may use the policy or bond forms or manuals of such advisory organizations, either consistently or intermittently, but, *except* for insurers having common ownership or management, shall *not* agree with each other or others to adhere thereto. The fact that two (2) or more admitted insurers, whether or not members of or subscribers to an insurance advisory organization, use, either consistently or intermittently, the policy or bond forms or manuals, prepared by an insurance advisory organization, shall not be sufficient in itself to support a finding that an agreement to adhere to those forms or manuals exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of an agreement to adhere to those forms or manuals.

§43274. *Submission of policy or bond forms to Commissioner; review; establishment of rates.* (a) All insurance policy or bond forms or manuals, including policy writing rules, rating plans, classification codes and descriptions, territory codes and descriptions, and rules that include factors or relativities

such as increased limit factors, classification relativities, or similar factors, of an insurance advisory organization shall prior to being used by insurers be submitted in writing to the Commissioner for the Commissioner's consideration and approval, together with any information the Commissioner may reasonably require. All such documents so submitted shall be available for public inspection at the office of the Commissioner. The Commissioner shall approve only those insurance policy or bond forms or manuals that are found by him or her to contemplate activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the Insurance Law.

(b) Upon submission of any insurance policy or bond forms or manuals, the Commissioner may review them, and if after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than ten (10) days' notice to an insurance advisory organization, the Commissioner finds that the insurance policy or bond forms or manuals are unfair or unreasonable, or otherwise inconsistent with the provisions of the Insurance Law, the Commissioner may issue a written order to the insurance advisory organization specifying in what respect such policy or bond forms or manuals are unfair or unreasonable or otherwise inconsistent with the provisions of the Insurance Law, and disapprove the use of the forms or manuals or both. Notwithstanding the provisions of this section, if the Commissioner fails to act within ninety (90) calendar days of the submission of a proposed insurance policy or bond form or

manual by an insurance advisory organization, the policy or bond form or manual so submitted shall be deemed approved. For good cause, and after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than ten (10) days' notice to the insurance advisory organization, the Commissioner may revoke approval of any insurance policy or bond form or manual.

§43275. *Insurance Advisory Board.* (a) There is hereby established an Insurance Advisory Board (the "Board") which shall consist of seven (7) members, who shall be appointed by the Governor with the consent of the Legislature. The first appointments shall be for the following terms as designated by the Governor: Two (2) members for a term of two (2) years; two (2) members for a term of four (4) years; and two members for a term of six (6) years. Thereafter the term of office of each member shall be six (6) years. The Governor may after notice and hearing remove a member for cause. The Governor shall appoint at least three (3) persons who hold executive positions in an insurance company conducting business on Guam, and at least four (4) persons who are *not* employees or stockholders of, or in any way earn compensation from, an insurance company, and only one (1) of which four (4) may be an employee of the government of Guam.

(b) Each member of the Board shall receive Fifty Dollars (\$50) a day for each Board meeting attended as an honorarium for such services, and in lieu of reimbursement for

expenses incident to each day or portion thereof spent in so attending meetings of the Board.

(c) The Board shall meet at least once in each calendar quarter. The Chairperson of the Board, who shall be designated by the Governor, may call additional meetings of the Board upon at least twenty-four (24) hours' notice, and shall do so upon the request of two (2) Board members. A majority of the members of the Board shall constitute a quorum, and action taken by a majority of those present at any meeting at which a quorum is present shall be the action of the Board. No member shall participate in a proceeding before the Board to which any corporation, partnership or unincorporated association of which he or she is or was at any time in the preceding twelve (12) months a director, officer, partner, employee, member, or stockholder is a party. A member may disqualify himself or herself from participating in a proceeding for any cause deemed by him or her to be sufficient.

(d) At any meeting at which a quorum is not present, whether by reason or the inability of a member to participate or his or her voluntary disqualification, or otherwise, the Governor may designate the Chief of the Division of Insurance, Securities and Banking of the Department of Revenue and Taxation (the "Division"), the Attorney General, or the head of any department of the government of Guam, in that order, as acting members of the Board for the purpose of constituting a quorum, but he shall not designate more acting members than shall be necessary to constitute a quorum.

(e) Such clerical, technical, and legal assistance as the Board may require shall be provided by the Division.

§43276. *Prohibited activities.* None of the provisions of the Insurance Law shall be interpreted so as to allow an insurance advisory organization to set or establish rates or to issue any manual that contains final rates for any insurance coverage, policy endorsement, or bond. No insurance advisory organization shall engage in any unfair or unreasonable practice with respect to its operations or its other activities."

Section 3. *Legislative findings and intent.* The Legislature finds that it is desirable to broaden the base of the Guam economy to include more than tourism and military base employment, and that one of the most attractive economic opportunities available to the island is to utilize its unique geographic location to become a financial/insurance capital of the Pacific, much like Bermuda in the Atlantic. Persuading insurance issuers, whether reinsurers, commercial insurers, or so-called "captive insurers," to locate their Pacific headquarters in Guam requires the establishment of an environment that permits them to operate their companies aggressively both outside of and within Guam without paying taxes on anything locally, thereby having the advantage of being located in a modern American community with some of the world's finest communication tools, with access to American courts and to the American school and health systems and yet free of local taxes on their worldwide income. The Legislature further finds that the action taken in the past to encourage so-called "export trading companies" to headquarter themselves in Guam in return for freedom from local taxes has worked out quite beneficially for the territory, there being hundreds of such companies now operating in Guam, employing local people and paying substantial

local licensing and surveillance fees. The Legislature therefore, in view of the foregoing findings, declares that the intention of the following amendments and additions to the GEDA Law is to encourage insurers to establish headquarters in Guam by agreeing that their premium income will not be locally taxed. Because of current income tax relations between the United States and Guam, such tax exemption requires using both the rebate and abatement procedures set out in the GEDA Law (Chapter 2, Title 12, Guam Code Annotated), which procedures have been upheld by the U.S. Court of Appeals for the Ninth Circuit. *See Ramsey v. Chaco*, 549 F.2d 1335 (1977).

Section 4. *Amendments to GEDA Law.* (a) §2404 of Article 4, Chapter 2 Title 12, Guam Code Annotated, is hereby amended by amending subitem 9 thereof to read as follows:

~~"9. Captive insurance business as permitted by Chapter VII, Title XXXIX, Government Code; Insurance issuance, either by commercial insurers, reinsurers, or captive insurers."~~

(b) §2405.6 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

~~"§2405.6. Reinsurance. Increasing the availability of insurance including reinsurance. Insurance. Establishment of Guam as a financial insurance center for the Pacific, and increasing the availability and lowering the cost of insurance in Guam."~~

(c) §2427.5 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2427.5. Insurance premiums. All taxes now levied by virtue of ~~§43714, Chapter VII, Title XXXIX, Government Code Article 2, Chapter 26, Title 11, Guam Code Annotated,~~ known as gross receipts taxes, shall be abated for a period of up to ~~ten (10)~~ twenty (20) years from the effective date of the Qualifying Certificate therefor, for those gross receipts derived from the issuance of insurance policies, including bonds as long as said premiums such receipts are collected by an captive insurance company ~~licensed under said Chapter VII~~ that has qualified and continues to qualify for a Qualifying Certificate. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

(d) §2442 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended to read as follows:

"§2442. Investment of abated or rebated tax in Guam. Each Qualifying Certificate, except for a Qualifying Certificate issued to an insurer pursuant to the provisions of §§2427 and 2428 of this Article, shall require a Beneficiary to invest within Guam no less than fifty percent (50%) of any taxes rebated or abated under §§2427 and 2428 of this Article for a period of five (5) years following the rebate or abatement. A Beneficiary shall report all such investments to the Authority."

(e) §2443 of Article 4, Chapter 2, Title 12, Guam Code Annotated, is hereby amended by amending that line entitled "Captive insurance companies" to read as follows:

~~"Captive insurance companies~~ Insurers \$750.00 \$1,000.00."

Section 5. *Addition to GEDA Law.* New §2428.4 is hereby added to Article 4, Chapter 2, Title 12, Guam Code Annotated, to read as follows:

§2428.4. *One hundred percent rebate on certain insurance income.* A rebate of one hundred percent (100%) of all income tax paid to the government of Guam by a Beneficiary on income received from the issuance of insurance policies on risks and to policy holders either inside or outside of Guam may be issued for a period not to exceed twenty (20) consecutive years from the effective date of a Qualifying Certificate therefor; *provided*, that as to Guam risks and policy holders the Beneficiary does not issue a policy directly to the policy holder but only issues the same through a licensed Guam insurance broker. Such insurance Qualifying Certificates may be renewed for additional periods of twenty (20) years at the conclusion of the first or later periods so long as the Beneficiary remains in good standing under the laws of Guam and under the rules and regulations of the Authority."

Section 6. *Amendment to Captive Insurance Law.* §23713, Chapter VII, Title XXXIV, Government Code, is hereby repealed and reenacted to read:

“§2371.3. *No taxes on qualified captive insurers.* Each captive insurance company to which is issued a Qualifying Certificate pursuant to the provisions of Article 4, Chapter 2, Title 12, Guam Code Annotated, shall pay no taxes to the government of Guam on its premium or other insurance income except to the extent that it is first required to pay its territorial income tax thereon before the same is rebated in full, pursuant to its Qualifying Certificate.”

Section 7. *Severability.* If any of the provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall *not* affect any other provision or application of this act which can be given effect *without* the invalid provision or application, and to this end the provisions of this act are *severable*.

Section 8. *Effective date.* This act shall take effect sixty (60) days after its approval.

GLO230655-53

COMMITTEE REPORT

Bill 299

Committee Members Present:

Senator San Agustin, Chairman
Senator C. Leon Guerrero
Senator Pangelinan
Senator F. Santos

I. OVERVIEW

It is the intent of the Committee on Economic-Agricultural Development and Insurance to address the needs of the consumers as they pertain to the Insurance Industry.

An initial phase in that task is the creation of the Insurance Advisory Board. This Board, separate from the Insurance Association of Guam, will provide consumers one entity to which they may turn for information on the insurance companies conducting business on Guam. Having this access will enable consumers to more effectively comparison shop and stimulate competition amongst insurers. Traditionally, a more competitive market results in lower prices for the consumer.

The Committee on Economic-Agricultural Development and Insurance conducted a Public Hearing at 6:30 p.m., on Monday, September 18, 1995, in the Public Hearing Room of the Guam Legislature Building.

II. SUMMARY OF TESTIMONY

Testifying: **Mr. Joseph Duenas, Insurance Commissioner**
 Mr. Kurt Moylan, President
 Moylan's Insurance
 Mr. Kevin O'Reilly, Chairman
 Insurance Association of Guam
 Mr. Calvin Holloway, Sr. , Attorney General

Senator Joe T. San Agustin had remarks prior to the beginning of testimony. In his opening speech, Senator San Agustin acknowledged that Bill 299 was not a popular one, but it was proposed to "shock" the insurance industry into realizing that Guam's consumers are very frustrated by the very high cost of insurance, particularly typhoon coverage. "The pendulum has swung too far to the right, it's time to bring it back towards reality." Senator San Agustin pointed out that prices are becoming so high as to be prohibitive. "There is a trend of people opting out of insurance because it is so expensive, and that is dangerous," San Agustin pointed out to the committee and attendees. Senator San Agustin concluded opening remarks by adding that deregulation may not be the answer but hopefully the evening's public hearing would stimulate frank and honest discussions between the public, the legislature, and the insurance industry - and from there solutions may be arrived at that would help consumer's on Guam.

Mr. Joseph Duenas submitted written and oral testimony in opposition of Bill 299.

Mr. Duenas explained current Insurance Law requires rates be approved by the Insurance Commissioner prior to advertisement, publication, or usage. The Insurance Commissioner may also alter rates after they go into effect if data gathered of loss and expense warrant changes. This, Mr. Duenas related, is a "prior approval" system. 29 of 50 states and the District of Columbia follow this system. Mr. Duenas added the rationale for using the prior approval system is to keep rates from becoming excessive.

Mr. Duenas stated the reason for opposition to Bill 299 is because the bill indicates a shift away from prior approval to a system called "file and use." In the file and use system, Mr. Duenas clarified, an insurer need only file the rate intended for use with the Insurance Commissioner. Upon filing, the insurer may begin using the rate. This presents problems because insuring the rate is not excessive, inadequate, or unfairly discriminatory will not be done until after the rate is in use.

Mr. Duenas indicated some states are allowing individual insurance companies to file their own rates but insurers must first acquire loss ratio data from rating bureaus. Mr. Duenas related that the only accredited rating bureau on Guam is the Insurance Association of Guam (IAG). But, he added, three companies have filed rates for typhoon insurance that differ from rates secured by the IAG. Of the three independent filings, two have been approved, which would lower their rates by approximately 20%, and the third was sent back requiring additional data for review.

Mr. Duenas concluded his testimony opposing Bill 299 by recalling a 150% increase in rates requested by the IAG in 1993. The former Insurance Commissioner eventually approved an 80% increase. Mr. Duenas pointed

out that had Guam had a file and use system, the 150% increase would have been put into effect.

Mr. Kurt Moylan submitted written and oral testimony in opposition of Bill 299.

Mr. Moylan began testimony by asserting that although Moylan's Insurance is not a member of the IAG, a carrier Moylan's represents, Korea Automobile, Fire and Marine, is a member.

Mr. Moylan went on to give a history of the IAG. In 1959, the Insurance Association of Guam was sanctioned by the Director of Finance, Ricardo Salas, as the official rating body. This was done because the Insurance Commissioner did not want companies to file separate ratings, policies, and endorsements for auto, workers' compensation, and fire insurance. Mr. Moylan added that when the IAG requested rate adjustments, they first had to have an actuary study completed for all companies conducting business on Guam. This study was submitted to the Insurance Commissioner for review. A member company may submit rates directly to the Insurance Commissioner, but Insurance Commissioners, in the past and currently, refer the insurer back to the IAG for their review and approval.

Mr. Moylan stated that the reason IAG is sanctioned is because rates for auto, workers' compensation, and fire are controlled by the government. Mr. Moylan added that if companies filed separate rates the work load would be too large for the understaffed insurance division of Revenue and Taxation and the expense of contracting an actuary to review all rates would be passed on to the consumer.

Mr. Moylan contends that the process and controls in place between the IAG and the Insurance Commissioner has worked well in providing regulated rates, uniform policies, and endorsements but adds that improvements can

and should be made. Mr. Moylan testified that consumers need to have assurances that promises to deliver - be kept and abuses will be controlled and that calls for some kind of regulation. Proper regulation, according to Mr. Moylan, should provide maximum competition while ensuring the fiscal soundness of providers and availability of affordable rates. He adds that the deregulation proposed in Bill 299 with open competition is not a guarantee that Guam's consumers will receive affordable rates from reputable companies licensed with Guam's Insurance Commissioner.

Mr. Moylan went on to explain the importance of reinsurance in that it allows companies to spread their risk and determine the amount of capital they must maintain by law and for its underwriting portfolio. The same reinsurance companies which underwrote Guam's losses of \$110 million, in the aftermath of Typhoon Omar, are the same companies that underwrote \$15.5 billion in losses for areas struck by Hurricane Andrew. After the losses, rates, deductibles, limits of coverage, stricter underwriting guidelines, and lower commissions were placed on all insurance companies remaining in Guam to write typhoon and earthquake coverage, according to Mr. Moylan.

Mr. Moylan gave a list of 6 companies that chose not to remain on Guam or went insolvent as a result of the losses due to Typhoon Omar and the 1993 earthquake those included:

1. National Pacific Insurance (NPI) - domestic
2. Continental Insurance - U.S.
3. CIGNA Insurance - U.S.
4. CIGNA Property and Casualty - U.S.
5. Yasuda Fire and Marine - Foreign
6. Insurance Company of North America - U.S.

Mr. Moylan concluded his testimony with the recommendation Bill 299 be modified to establish by law a commission or committee comprised of members of the IAG, Insurance Commissioner's office and elected officials. This commission would submit findings to the Legislature and the Governor annually and would review the following:

1. The process of rate approvals to ensure maximum efficiency ;
2. Ways to make policies easier to read and understand ;
3. Claims to ensure they are being handled with speed and efficiency ;
4. The entire Insurance Law of 1959 towards improvements ;
5. State and federal governments' efforts to offer affordable hurricane and earthquake coverage to consumers ;
6. The possibility of writing typhoon and earthquake coverage separate from homeowners and commercial risks ;
7. Implementation of continuing education for agents ; and
8. Building codes to strengthen structures for catastrophic occurrences.

Mr. Kevin O'Reilly, representing the members of the Insurance Association of Guam (IAG), submitted written and oral testimony in opposition of Bill 299.

Mr. O'Reilly began by reiterating points comments made by Mr. Moylan. He stated that the IAG advocates creating an Insurance Board made up by members of the Insurance Industry, Legislature, Insurance Commissioner's Office, and the Attorney General's Office. He adds that the insurance industry could be criticized for not educating the public.

Mr. O'Reilly testified that deregulation does not guarantee a drop in rates. Mr. O'Reilly used the auto insurance market as an example. Currently, he testified, auto insurance has been making money but that may change as cars

move faster resulting in more accidents and fatalities - margins are already dropping. He added the IAG has requested a rate increase for auto insurance and have been turned down.

Mr. O'Reilly defended the high rates for typhoon insurance. He stated that the Insurance Industry on Guam cannot drop their prices because they are dictated to by their overseas reinsurance companies. Those same reinsurance companies are experiencing losses in other parts of the world which affects Guam's prices. Mr. O'Reilly stated that while there is a "softening" in the market, they must wait to see how the loss incurred from Typhoon Marilyn in the U.S. Virgin Islands will affect Guam.

Mr. O'Reilly went on to list the "dangers" of Bill 299 if passed in its present form. Rate submittals would flood into the Insurance Commissioner's Office. In a reference to the "Standards" section of Bill 299, Mr. O'Reilly questioned who would be responsible for ensuring rates are not excessive, if the Insurance Commissioner would be relieved of rate setting tasks. Mr. O'Reilly adds that solvency levels would have to be strengthened and certified levels increased greatly to protect consumers. In another reference to the bill, "rates should not endanger the solvency of the company" nor should "rates be so low as to destroy competition on Guam", Mr. O'Reilly questions what consumer will complain if an insurer is offering low rates. Mr. O'Reilly also contends that the bill discriminates in favor of the larger international insurers who can afford to lower their rates more so than a smaller local business.

Mr. O'Reilly concluded his testimony by reiterating that the IAG would like to promote the creation of an advisory panel to discuss problems facing the industry and possible ways to change it.

Attorney General Holloway forwarded written testimony in opposition of Bill 299.

Mr. Holloway contends that deregulation would leave Guam's consumers "to the mercy of the Insurance Industry." He further adds that neither should insurance be regulated by Revenue and Taxation but rather a separate entity should be created. Mr. Holloway adds that there shouldn't be a major expense in creating this entity as the current personnel in the regulatory section of Revenue and Taxation could be transferred to the new agency.

Mr. Holloway also suggested that Bill 299 should be amended to include a provision to permit the government to contract an independent expert to investigate when more than 10 consumers file a complaint because of unreasonable rate increases.

Attorney General Holloway's testimony included an opinion from the Civil Litigation Division - Consumers Protection Unit which listed reasons regulation of rates are necessary. They are:

1. Complex insurance transactions reduce the effectiveness of product or price competition for ordinary consumers ;
2. The volume of insurance products is such that ordinary consumers may not be able to compare all products and prices offered ;
3. Excessive rates will result if insurers decide to compete in ways other than pricing ;
4. Insurers could cooperate in rate setting contrary to public interest ;
5. Unrestrained competition could endanger the solvency of an insurer ;
and
6. Regulated rates are based on actuarial studies done by IAG and Insurance Commissioner.

III. SENATOR'S COMMENTS/QUESTIONS

Senator Francis Santos inquired as to the date of the last rate review conducted by the Insurance Commissioner. Mr. Duenas responds that the last rate review was in 1993 for typhoon, which resulted in the 80% increase. He adds that auto rates were reviewed last year and a rate increase was denied. Senator Santos commented that maybe rate increases wouldn't be so dramatic if rate reviews were conducted more often. Mr. Duenas agreed, adding that he has initiated reviews but his staff cannot keep up. Senator Santos asks the Insurance Commissioner whether he would advocate creating another agency to oversee insurance, pointing out that the Attorney General recommended that in his testimony. Mr. Duenas answered that it would be up to the Legislature and that in his opinion it would be creating another bureaucracy. Senator Santos then expresses concern with the fact that earthquake reviews have not been done in 12 years.

Senator Ben Pangelinan questions whether the Insurance Association of Guam has been desanctioned sighting Mr. Duenas' disclosure in his testimony that three companies have requested rate changes directly to the Insurance Commissioner and not through the IAG. Mr. Duenas responded that he was under the impression the companies had gone to the IAG first. Senator Pangelinan asks Mr. Duenas why he testified against the bill when he has already carried out the first step of the bill. Mr. Duenas responded that although some of the sections of the bill are fine, he testified against the fact that if approved the bill would move us out of a "prior approval" system into a "file and use." Mr. Duenas added that even though he approved two of the three companies' rate changes, he still followed the "prior approval" system.

Senator Pangelinan countered with the fact that seeking an actuary report from the IAG regarding the rate change is an element in the "prior approval" system. Mr. Moylan remarked that the easiest thing to do is cut rates and if companies are submitting lower rates for approval directly to the Insurance Commissioner they should be turned down. Mr. Moylan contends that before a rate is submitted, the IAG has an actuarial study done and then the Insurance Commissioner hires an actuary to evaluate IAG's study.

Senator Carlotta Leon Guerrero, referring to the list of companies that have become insolvent or ceased doing business on Guam included in his testimony, asked Mr. Moylan whether any new companies have stepped in. Mr. Moylan answered that QBE, who took over NPI, is the only company. Mr. O'Reilly added that A.K. Insurance, the company he represents, has approached many companies worldwide and none are interested in conducting business on Guam. Senator Leon Guerrero inquires whether, with six less companies to compete with, business is better. Mr. Duenas answered that business has actually dwindled perhaps because of the high prices consumers are choosing not to purchase insurance. Mr. O'Reilly added that the drop in business is largely on the commercial side.

Senator Leon Guerrero inquired, once a rate has been approved by the Insurance Commissioner, if that rate is acceptable for all insurance companies or just the one that filed for that rate. Mr. Duenas replied that the rate is just for the company that applied. Senator Leon Guerrero asked Mr. Duenas how then were rates set. Mr. Duenas answered that each company must consider their expenses and desired profit margins when setting a rate.

Senator Joe T. San Agustin asked Mr. Duenas if any filing information is confidential, referring to a remark to that effect made by Mr. Moylan. Mr. Duenas responded that when a rate is filed it is confidential, upon approval it

is opened to the public. Senator San Agustin replied that everything should be opened to the public.

Senator San Agustin also questioned the methods of filing and reporting used by the Insurance Commissioner. Noting that in the Insurance Commissioners Annual Report, there was no separate breakdown of typhoon and earthquake losses. Mr. John Carlos, a Regulatory Examiner on the Insurance Commissioner's staff, responded that the Insurance Commissioner's Office follows the format for reporting set by the National Association of Insurance Commissioners (NAIC). In the NAIC format there is no individual category for typhoon it must be labeled "Allied Lines". Senator San Agustin questioned whether we are governed by the NAIC. Mr. Carlos responded that insurance laws on Guam indicates all insurance companies on Guam must follow the NAIC formats. Senator San Agustin further asked if the decision to report typhoon losses under the label "allied lines" was made arbitrarily and whether anyone in the Insurance Commissioner's office was seeking to change that format as it applies to Guam. Mr. Carlos answered that the decision was made in consultation with the IAG and that it was a compromise because some companies were filing typhoon losses under Fire. The "allied lines", though a mix with other categories, is less a mix than filing under Fire. Senator San Agustin reminded Mr. Carlos of the impact of this decision, in that there cannot be an audit of previous reports. Senator San Agustin pointed out that previous reports filed typhoon losses in a separate category and even if the allied lines category is 95% typhoon and 5% something else, it cannot be an accurate report and the "audit trail" is lost. Mr. Duenas responded that his staff is studying other ways to separate the typhoon category.

IV. COMMITTEE FINDINGS

The Committee on Economic-Agricultural Development and Insurance having conducted a public hearing for Bill 299 finds:

Deregulation of rates warrants further research to insure deregulation does accomplish the goal of lowering insurance prices and stimulating competition without compromising the financial integrity of insurance companies conducting business on Guam.

V. COMMITTEE RECOMMENDATIONS

The Committee on Economic-Agricultural Development and Insurance recommend the creation of an Insurance Advisory Board as an initial phase in stimulating competition in the Insurance Industry.

The Committee further recommends Bill 299 As Substituted be passed.

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

Bill No. 299

Introduced by:

J.T. San Agustin
J.T. San Agustin
E.B. Anderson *EBC*
S.L. Orsini *SO*

AN ACT TO AMEND GUAM GOV'T CODE §§43385, 43386, AND
43387, RELATING TO INSURANCE RATES UNDER THE INSURANCE LAW

Section 1 ... Legislative Findings.
Section 2 ... Amended Guam Gov't Code §43385.
Section 3 ... Amended Guam Gov't Code §43386.
Section 4 ... Amended Guam Gov't Code §43387.
Section 5 ... Severability.
Section 6 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Finding. The Guam Legislature finds
3 that it is in the best interest of the People of Guam that
4 insurance rates be determined by free market forces, thus obviating
5 the approval by the Insurance Commissioner of insurance rates.

6 Section 2. Guam Gov't Code §43385 is hereby amended as
7 follows:

8 **"Representation of Rates.** (a) All rates, rate schedules,
9 rate plans, and methods of computing rates to be applied to any
10 insurance transacted in Guam shall be filed in the office of the
11 Commissioner before any rates may be charged, advertised,
12 publicized or otherwise represented.

13 (b) It shall be unlawful for any insurer to charge any rate
14 for any insurance transacted in Guam other than the rate filed with
15 the office of the Commissioner for such insurer for such risk and
16 class of insurance.

17 //

1 (c) It shall be unlawful for any insurer to use any rates in
2 violation of the provisions of this section."

3 Section 2. Guam Gov't Code §43386 is hereby amended as
4 follows:

5 "**Standards.** An insurer, in making rates, shall apply the
6 standards prescribed as follows:

7 (a) No rate shall be excessive or inadequate, as herein
8 provided, nor shall they be unfairly discriminatory.

9 (b) No rate shall be held excessive unless such rate is
10 unreasonably high for the insurance provided and reasonable degree
11 of competition does not exist in Guam with respect to the
12 classification to which such rate is applicable.

13 (c) No rate shall be held inadequate unless such rate is
14 unreasonably low for the insurance provided and the continued use
15 of such rate endangers the solvency of the insurer; or unless such
16 rate is unreasonably low for the insurance provided and the use of
17 such rate by the insurer will have the effect of destroying
18 competition in Guam.

19 (d) Consideration shall be given, to the extent applicable,
20 to past and prospective loss experiences, prevailing hazards, and
21 underwriting profits, contingencies, expenses or other normal
22 business requirements and factors."

23 //

24 //

25 //

26 //

1 Section 4. Guam Gov't Code §43387 is hereby amended as
2 follows:

3 **"Rating Bureaus.** Insurers are authorized to become members or
4 subscribers of rating bureaus or advisory organizations of a like
5 nature, and may use the rates, rating systems, and underwriting
6 rules and policy forms of such organizations, provided, however,
7 that the same are not excessive, inadequate or unfairly
8 discriminatory, and conform to the provisions of this Title, and
9 are filed with the office of the Commissioner prior to their use as
10 provided herein."

11 Section 5. Severability. If any of the provisions of this
12 Act, or the application thereof to any person or circumstance, is
13 held invalid, such invalidity shall not affect any other provision
14 or application of this Act which can be given effect without the
15 invalid provision or application, and to this end the provisions of
16 this Act are severable.

17 Section 6. Effective Date. This Act shall take effect
18 immediately upon its enactment.



**Committee on Economic-Agricultural
Development and Insurance**

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Kevin O'Reilly
Insurance Association of Guam
Via Fax: 649-6098

Dear Mr. O'Reilly,

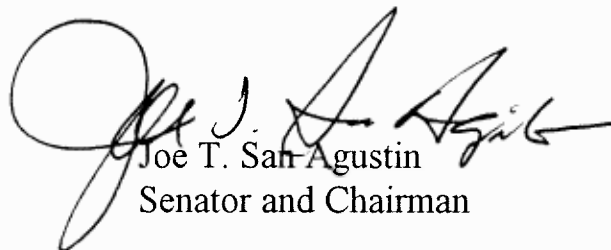
This is to inform you the public hearing for:

**Bill 299 - An Act to Amend Guam Government Code §§43385, 43386,
and 43387, Relating to Insurance Rates Under the Insurance Law**

has been rescheduled. The new time is **Monday, September 18, 1995, at
6:30pm**, in the Public Hearing Room of the Guam Legislature.

We apologize for any inconvenience this may cause you and look forward to
your attendance and input at our hearing.

Sincerely yours,



Joe T. San Agustin
Senator and Chairman



**Committee on Economic-Agricultural
Development and Insurance**

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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Ovidio Calvo, Chairman
Guam Chamber of Commerce
Via Fax: 472-6202

Dear Mr. Calvo,


This is to inform you the public hearing for:

**Bill 299 - An Act to Amend Guam Government Code §§43385, 43386,
and 43387, Relating to Insurance Rates Under the Insurance Law**

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Joe T. San Agustin
Senator and Chairman



**Committee on Economic Agricultural
Development and Insurance**

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Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Mike Katsuren, Vice Chairman
Insurance Association of Guam
Via Fax: 472-3136

Dear Mr. Katsuren,

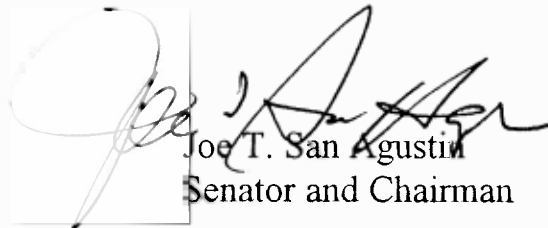
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Joe T. San Agustin
Senator and Chairman



**Committee on Economic-Agricultural
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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Joseph Duenas, Director
Revenue and Taxation
Via Fax: 472-2643

Dear Mr. Duenas,

This is to inform you the public hearing for:

**Bill 299 - An Act to Amend Guam Government Code §§43385, 43386,
and 43387, Relating to Insurance Rates Under the Insurance Law**

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Senator and Chairman



**Committee on Economic-Agricultural
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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Vic Waki
Insurance Association of Guam
Via Fax: 477-2315

Dear Mr. Waki,

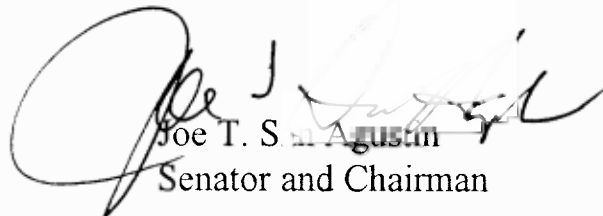
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Senator and Chairman



**Committee on Economic-Agricultural
Development and Insurance**

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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Tom Earhart
Insurance Association of Guam
Via Fax: 477-6290

Dear Mr. Earhart,


This is to inform you the public hearing for:

**Bill 299 - An Act to Amend Guam Government Code §§43385, 43386,
and 43387, Relating to Insurance Rates Under the Insurance Law**

has been rescheduled. The new time is **Monday, September 18, 1995, at
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Sincerely yours,


San Agustin
Senator and Chairman



**Committee on Economic Agricultural
Development and Insurance**

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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 14, 1995

Mr. Raymond Martinez
Insurance Association of Guam
Via Fax: 477-5273

Dear Mr. Martinez,

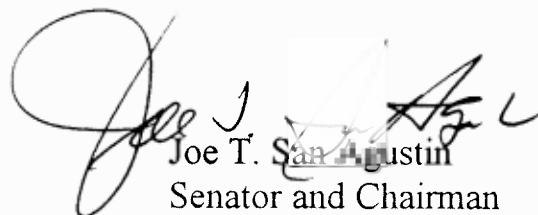
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Senator and Chairman



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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 15, 1995

Mr. Bert Atalig
Insurance Association of Guam
Via Fax: 646-8406

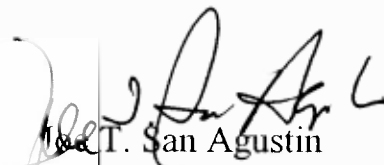
Dear Atalig,

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We look forward to your attendance and input at our hearing.

Sincerely Yours,


Joe T. San Agustin
Senator and Chairman



**Committee on Economic-Agricultural
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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 15, 1995

Mr. Adrienne Aguirre
Insurance Association of Guam
Via Fax: 477-4609


Dear Mr. Aguirre,

This is to inform you that our committee will be conducting a public hearing regarding **Bill 299 - An Act to Amend Guam Government Code §§43385, 43386, and 43387, Relating to Insurance Rates Under the Insurance Law.**

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Sincerely Yours,


Joe T. San Agustin
Senator and Chairman



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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 15, 1995

Mr. Geoff Cutting
Insurance Association of Guam
Via Fax: 635-2836

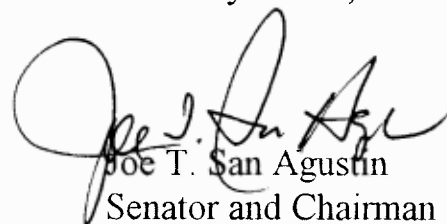
Dear Mr. Cutting,

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We look forward to your attendance and input at our hearing.

Sincerely Yours,


Joe T. San Agustin
Senator and Chairman



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SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 15, 1995

Mr. Kurt Moylan, President
Moylan's Insurance
Via Fax: 477-1837


Dear Kurt,

This is to inform you that our committee will be conducting a public hearing regarding **Bill 299 - An Act to Amend Guam Government Code §§43385, 43386, and 43387, Relating to Insurance Rates Under the Insurance Law.**

The public hearing for Bill 299 will be held on Monday, September 18, 1995, at 6:30pm, in the Public Hearing Room of the Guam Legislature.

We look forward to your attendance and input at our hearing.

Sincerely Yours,


Joe T. San Agustin
Senator and Chairman

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

Bill No. 299

Introduced by:

95 JUN 30 PM 2:48
M. J. S.
J.T. San Agustin
E.B. Anderson *EPO*
S.L. Orsini *[Signature]*

AN ACT TO AMEND GUAM GOV'T CODE §§43385, 43386, AND
43387, RELATING TO INSURANCE RATES UNDER THE INSURANCE LAW

- Section 1 ... Legislative Findings.
- Section 2 ... Amended Guam Gov't Code §43385.
- Section 3 ... Amended Guam Gov't Code §43386.
- Section 4 ... Amended Guam Gov't Code §43387.
- Section 5 ... Severability.
- Section 6 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Finding. The Guam Legislature finds
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4 insurance rates be determined by free market forces, thus obviating
5 the approval by the Insurance Commissioner of insurance rates.

6 Section 2. Guam Gov't Code §43385 is hereby amended as
7 follows:

8 **"Representation of Rates.** (a) All rates, rate schedules,
9 rate plans, and methods of computing rates to be applied to any
10 insurance transacted in Guam shall be filed in the office of the
11 Commissioner before any rates may be charged, advertised,
12 publicized or otherwise represented.

13 (b) It shall be unlawful for any insurer to charge any rate
14 for any insurance transacted in Guam other than the rate filed with
15 the office of the Commissioner for such insurer for such risk and
16 class of insurance.

17 //

1 (c) It shall be unlawful for any insurer to use any rates in
2 violation of the provisions of this section."

3 Section 2. Guam Gov't Code §43386 is hereby amended as
4 follows:

5 "**Standards.** An insurer, in making rates, shall apply the
6 standards prescribed as follows:

7 (a) No rate shall be excessive or inadequate, as herein
8 provided, nor shall they be unfairly discriminatory.

9 (b) No rate shall be held excessive unless such rate is
10 unreasonably high for the insurance provided and reasonable degree
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12 classification to which such rate is applicable.

13 (c) No rate shall be held inadequate unless such rate is
14 unreasonably low for the insurance provided and the continued use
15 of such rate endangers the solvency of the insurer; or unless such
16 rate is unreasonably low for the insurance provided and the use of
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18 competition in Guam.

19 (d) Consideration shall be given, to the extent applicable,
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22 business requirements and factors."

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1 Section 4. Guam Gov't Code §43387 is hereby amended as
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5 nature, and may use the rates, rating systems, and underwriting
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7 that the same are not excessive, inadequate or unfairly
8 discriminatory, and conform to the provisions of this Title, and
9 are filed with the office of the Commissioner prior to their use as
10 provided herein."

11 Section 5. Severability. If any of the provisions of this
12 Act, or the application thereof to any person or circumstance, is
13 held invalid, such invalidity shall not affect any other provision
14 or application of this Act which can be given effect without the
15 invalid provision or application, and to this end the provisions of
16 this Act are severable.

17 Section 6. Effective Date. This Act shall take effect
18 immediately upon its enactment.



STATEMENT ON BILL NO. 299
SENATOR JOE T. SAN AGUSTIN
Committee on Economic-Agricultural Development & Insurance
May 16, 1996

This public hearing will constitute the second public hearing on Bill No. 299, which was originally heard on September 18, 1995. Bill No. 299, during this public hearing received testimonies relating to deregulating insurance rates on Guam. It was my intent as the author to "shock" the insurance industry into realizing that Guam's consumers are very frustrated by the high cost of insurance; particularly, typhoon coverage. The public hearing heard on September 18, 1995, stimulated a lively discussions regarding the insurance industry on Guam. After the public hearing and based on testimony received, it was obvious that Bill No. 299 as submitted needed to be revised, keeping in mind the main focus, to address the needs of the Guam consumers as they pertain to the insurance industry. The creation of the Advisory Insurance Board was suggested. The revised Bill 299 contain two essential features; namely, (1) creation of an Insurance Advisory Board; and (2) to authorize the issuance of Qualifying Certificates to Guam Insurance and to clarify the taxation of Captive Insurance. A mark-up meeting of the revised bill was held on April 12, 1996, attended by representatives of the Insurance Industry, Department of

Revenue & Taxation, Guam Economic Development Authority, along with the Chairman of this Committee and Senator Ben Pangelinan, a former Chairman and a member of the Committee. During this mark-up, it was generally agreed that there is no need for an Insurance Advisory Board; but, the subject of Qualifying Certificates for Guam Insurance^{life} and clarification of the taxation of Captive Insurance were debated at length. It was generally agreed that an inquiry be made by GEDA to ascertain if there is indeed a market to attract General Insurance as well as the role of Captive Insurance.

Bill No. 299 as now substituted needs to have a public hearing inasmuch as it has differed in scope with the original scope, but the intent and objectives remain the same. We are now here to hear pros and cons of Bill 299 as Substituted.

Bill 299
Public Hearing May 16, 1995
Cost Benefit Analysis

Purpose:

- 1) To deregulate the insurance industry in Guam. Making Guam the Bermuda of the Pacific Asia Region
- 2) To preserve the current local insurance industry. Keeping taxes intact.

Benefits

- 1) **Income Tax Float.** Insurance companies must still pay their income taxes. At the end of 180 days, the Government of Guam will return their taxes. The government can invest these income taxes for 180 days to invest in short term Treasuries. Using Bermuda as an example: In 1995 Gross premiums were \$18.8 billion. Assuming 25% of total premiums become taxable, we are looking at \$4.7 billion taxable income. Using a standard corporate tax rate of 35%, Guam will have received \$1.645 billion in taxes. Before rebating all these taxes, Guam can invest these taxes for 180 days @ 6% T-Bills and earn **\$145 million annually.**
- 2) **Creation of jobs.** Again using Bermuda as our bench mark. Bermuda had only Tourism until it opened the insurance industry. It took Bermuda 12 years to develop their insurance industry. Today there are just as many jobs in the insurance industry as there are in the tourism industry (17,000). Additionally, the jobs generated for this industry require higher skills than the hotel or tourism industry. Assuming, 12,000 jobs within 10 years at a **average salary range of \$25,000 per year**, the insurance industry payroll will amount to **\$300 million annually.**
- 3) **Fee's.** Under this legislation, it is estimated that after a 10 year maturity period there will be 1,200 captives sold. Guam will receive **\$969,000 annually in filing fees and \$1.29 million in surveillance fees.**
- 4) **Capital Infusion.** In 1994, Bermuda's capital infusion & surplus funds amounted to **\$2.98 billion.** This money will be circulated in the banking and other professional service industries. Income taxes on banks spreads and income tax on service industries profits will add to Guam's revenue base.
- 5) **New industry.** An industry within an industry will be created. **Large Insurance Management Companies** like Johnson & Higgins, Alexander Insurance and Sedgwick Management or the "Who's Who in the Industry" can be attracted.

I Why Guam?

- A. Need to expand economic base
- B. Will provide new source of revenue for government
- C. No other Asian jurisdiction specializes in this industry
- D. U.S. Territory connotes stability
- E. Creates significant white collar employment
- F. Few demands on infrastructure

II Why now?

- A. World-wide interest in insurance, a result of significant natural disasters
- B. Vacuum created for financial services in Asia by change in Hong Kong status
- C. Caribbean and Atlantic Isle successes will be copied in Pacific
- D. Vast, virtually untapped Asian market for Captives.

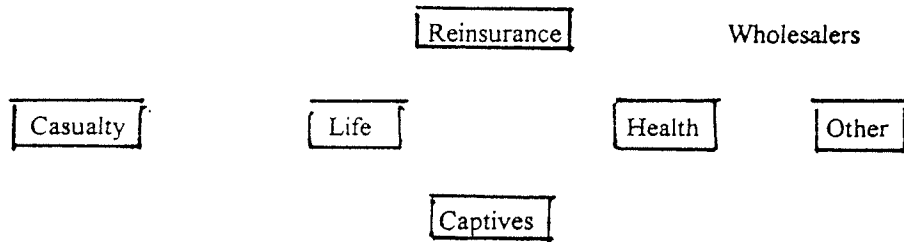
III Supporting assets:

- A. State of Art communication facilities
 - 1) Prospective reduction in communication costs
- B. Educated workforce
 - 1) Current unemployment figures approximate 7%
 - 2) Jobs in insurance industry above minimum wage, ego satisfying
- C. Available office space at reasonable cost
- D. Existing financial structure
 - 1) Sixteen current banks
 - 2) Major stock brokerage firms
 - 3) Expansive legal and accounting services

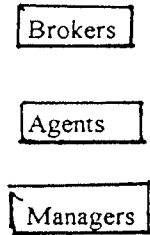
IV Impediments: Internal Revenue Code

THE INSURANCE INDUSTRY
AN OVERVIEW

UNDERWRITING ENTITIES (The risk takers)



SERVICE ENTITIES



Professionals:

- Actuaries
- Lawyers
- Money managers
- Accountants



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

PUBLIC HEARING ON BILL NO. 299

6:30 P.M.
MONDAY, SEPTEMBER 18, 1995
GUAM LEGISLATURE PUBLIC HEARING ROOM

A G E N D A

- I. Call to Order
- II. Introductions of Committee Members
- III. Testimony of Interested Individuals Relative to
Bill No. 299.
- IV. Bill No. 299 - AN ACT TO AMEND GUAM GOV'T CODE SUBSECTION
43385, 43386, AND 43387 RELATING TO INSURANCE
RATES UNDER THE INSURANCE LAW. (Introduced by
J. T. San Agustin, E. B. Anderson, S. L.
Orsini)
- V. Adjournment



Committee on Economic-Agricultural Development and Insurance

TWENTY-THIRD GUAM LEGISLATURE
424 W. O'Brien Dr., Julale Shopping Center, Suite #218
Agaña, Guam 96910
Tel: (671) 477-8527/9120 • Fax: (671) 477-5570

SENATOR JOE T. SAN AGUSTIN (D)
CHAIRMAN

September 15, 1995

MEMORANDUM

TO: Members, Committee on Economic-Agricultural
Development & Insurance

FROM: Chairman

SUBJECT: Public Hearings- September 18, 1995 and September
19, 1995, Guam Legislature Public Hearing Room

The Committee on Economic-Agricultural Development and Insurance has changed the time of the public hearing scheduled for Monday, September 18, 1995, from 9 a.m. to 6:30 p.m. for Bill No. 299 as follows:


Bill No. 299 AN ACT TO AMEND GUAM GOV'T CODE SUBSECTION 43385, 43386, AND 43387 RELATING TO INSURANCE RATES UNDER THE INSURANCE LAW. (Introduced by J. T. San Agustin, E. B. Anderson, S. L. Orsini)

Bill No. 348 (HAS BEEN POSTPONED UNTIL FURTHER NOTICE)

TUESDAY, SEPTEMBER 19, 1995, 6:30 P.M.

Bill No. 337 AN ACT TO CREATE A GUAM BASES REDEVELOPMENT CORPORATION AS A POLITICAL SUBDIVISION WITHIN THE GUAM ECONOMIC DEVELOPMENT AUTHORITY. (Introduced by J. T. San Agustin, J. P. Aguon)

Your presence at this hearing is appreciated. Thank you for your attention to this matter.



JOE T. SAN AGUSTIN

cc: Executive Director Security Audio
Protocol Office Legal All Senators
Maintenance Archives All Media

NOTICE OF PUBLIC HEARING



Twenty-Third Guam Legislature
SENATOR JOE T. SAN AGUSTIN
Chairman

*Committee on Economic-Agricultural
Development and Insurance*

MONDAY, SEPTEMBER 18, 1995
Guam Legislature Public Hearing Room
155 Hesler Street
Agana, Guam
Telephone No.: 477-8527/9120

A G E N D A

9 A.M.

Bill No. 299 AN ACT TO AMEND GUAM GOV'T CODE
SUBSECTION 43385, 43386, AND 43387
RELATING TO INSURANCE RATES
UNDER THE INSURANCE LAW.
(Introduced by J. T. San Agustin, E.B.
Anderson, S.L. Orsini)

Bill No. 348 AN ACT TO AMEND GUAM GOV'T CODE
SUBSECTION 47400 AND 47401
RELATIVE TO CHANGING THE NAME OF
THE GUAM PUBLIC MARKET TO THE
CHAMORRO VILLAGE AND TO ALLOW
FOR THE PRIVATIZATION OF THE
MANAGEMENT AND THE OPERATIONS
OF THE GUAM PUBLIC MARKET.
(Introduced by J. T. San Agustin, V. C.
Pangelinan, C. A. Leon Guerrero)

1 P.M.

Bill No. 337 AN ACT TO CREATE A GUAM BASES
REDEVELOPMENT CORPORATION AS
POLITICAL SUBDIVISION WITHIN THE
GUAM ECONOMIC DEVELOPMENT
AUTHORITY. (Introduced by J.T. San
Agustin, J. P. Aguon)

****The public is invited to express their views****

TWENTY-THIRD GUAM LEGISLATURE
1995 [FIRST] REGULAR SESSION

Bill No. 299

As Substituted by the Committee on
Economic Agricultural Development & Insurance

Introduced by:

J.T. San Agustin

AN ACT TO ADD NEW GOV'T CODE § 43245, 43245.1, 43245.2, 43245.3,
43245.4 AND 43245.5 RELATING TO ADVISORY ORGANIZATIONS UNDER
THE GUAM INSURANCE LAW

Section 1 ... Legislative Intent.
Section 2 ... Definitions
Section 3 ... Insurance Advisory Organization.
Section 4 ... Severability.
Section 5 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Intent. It is the intent of the Guam Legislature by the
3 enactment of this Act to promote competition in the insurance business and
4 provide a means whereby insurance consumers can more easily ^{ly} comparison shop
5 for insurance coverage by allowing insurance advisory organizations to develop
6 and draft for use by all insurers in Guam common forms, coverages,
7 endorsements, and manuals for insurance policies and bonds.

1 Section 2. Definition. As used in this Act:

2 "**Advisory organization**" is every group, association, or other organization
3 of insurers, located on Guam, that develops and prepares policy or bond forms,
4 or manuals, for use by admitted insurers, carries on research relative to the
5 development and preparation of policy and bond forms, and acts in an advisory,
6 as distinguished from a ratemaking capacity.

7 Section 3. Insurance Advisory Organization. New §43245, 43245.1,
8 43245.2, 43245.3, 43245.4 and 43245.5 are hereby added to Article V of
9 Chapter III of Title XXXIX of the Guam Gov't Code as follows:

10 §43245. Conditions prerequisite to conduct operations. No advisory
11 organization shall conduct its operations or other activities in Guam unless and
12 until it has filed with the Commissioner copies (duly certified by the custodian
13 of the originals thereof) of: (a) its constitution, its articles of agreement or
14 association, or its article of incorporation and its certificate of incorporation,
15 and its by-laws, rules and regulations governing its activities; (b) a list of its
16 members; and, (c) the name and address of a resident of Guam upon whom
17 notices or orders of the Commissioner or process issued at the Commissioner's
18 direction may be served. Every advisory organization shall thereafter promptly
19 notify the Commissioner of every change in the documents required to be filed
20 with the Commissioner pursuant to this section.

1 § 43245.1. Insurers cooperating and acting in concert. Two or more
2 insurers may cooperate with and act in concert with others as members of an
3 advisory organization with respect to any matters pertaining to the preparation
4 or making of insurance policy or bond forms, or manuals, or carrying on of
5 research relative to the preparation and development of policy or bond forms,
6 or manuals.

7 § 43245.2. Use of policy or bond forms. Members and subscribers of
8 advisory organizations may use the policy or bond forms, or manuals, of
9 advisory organizations, either consistently or intermittently, but, except for
10 insurers having common ownership or management, shall not agree with each
11 other or others to adhere thereto. The fact that two or more admitted insurers,
12 whether or not members or subscribers of an advisory organization, use, either
13 consistently or intermittently, the policy or bond forms, or manuals, prepared
14 by an advisory organization, shall not be sufficient in itself to support a finding
15 that an agreement to adhere to those forms or manuals exists, and may be used
16 only for the purpose of supplementing or explaining direct evidence of the
17 existence of an agreement to adhere to those forms or manuals.

18 § 43245.3. Submission of policy or bond forms to Commissioner; Review;
19 Establishment of rates. (a) All insurance policy or bond forms, or manuals,
20 including policy writing rules, rating plans, classification codes and descriptions,

1 territory codes and descriptions, and rules that include factors or relativities such
2 as increased limit factors, classification relativities, or similar factors, of and
3 advisory organization shall prior to being used by insures be submitted in
4 writing to the Commissioner for the Commissioner's consideration and approval,
5 together with any information the Commissioner may reasonably require. All
6 those documents shall be available for public inspection at the office of the
7 Commissioner. The Commissioner shall approve only those policy forms or
8 bond forms, or manuals, that are found by him or her to contemplate activities
9 and practices that are not unfair, unreasonable, or otherwise inconsistent with
10 the Insurance Law.

11 (b) Upon submission of any policy forms or bond forms, or manuals, the
12 Commissioner may review them, and if after a hearing, at which representatives
13 of consumers and other interested parties may participate, upon not less than ten
14 (10) days' notice to an advisory organization the Commissioner finds that the
15 policy forms or bond forms, or manuals, are unfair or unreasonable, or
16 otherwise inconsistent with the provisions of the Insurance Law, the
17 Commissioner may issue a written order to the advisory organization specifying
18 in what respect the policy forms, or manuals, are unfair or unreasonable or
19 otherwise inconsistent with the provisions of the Insurance Law, and disapprove
20 the use of the forms manuals. Notwithstanding the provisions of this section,

1 if the commissioner fails to act within ninety (90) days of the submission of a
2 proposed policy or bond form, or manual by an advisory organization, ~~the~~
3 policy or bond form, or manual, shall be deemed approved. For good cause,
4 and after a hearing, at which representatives of consumers and other interested
5 parties may participate, upon not less than ten (10) days' notice to the advisory
6 organization, the Commissioner may revoke approval of any policy form or
7 bond form or manual.

8 § 43245.4. Insurance Advisory Board. (a) There is hereby established an
9 Insurance Advisory Board which shall consist of seven (7) members.

10 (b) There shall be at least three (3) members who hold executive positions
11 in an insurance company conducting business on Guam and at least four (4)
12 members who are not employees, stockholders, or in no way earning
13 compensation from an insurance company, only one of which may be an
14 employee of the government of Guam.

15 (c) Members shall be appointed by the Governor with the consent of the
16 Legislature. The first appointments shall be for the following terms as
17 designated by the Governor: two (2) members for a term of two (2) years; two
18 (2) members for a term of four (4) years; two (2) members for a term of six
19 (6) years. Thereafter the term of office of each member shall be six (6) years.
20 The Governor may after notice and hearing remove a member for cause.

1 (d) Each member shall receive twenty-five dollars (\$25.00) a day as an
2 honorarium for services, and in lieu of reimbursement for expenses incident to
3 his duties, for each day or portion thereof spent in attending meetings of the
4 Board.

5 (e) The Board shall meet at least once in each calendar quarter. The
6 Chairperson of the Board may call additional meetings of the Board upon at
7 least twenty-four (24) hours' notice, and shall do so upon the request of two (2)
8 members. A majority of the Board shall constitute a quorum, and action taken
9 by a majority of those present at any meeting at which a quorum is present,
10 shall be the action of the Board. No member shall participate in a proceeding
11 before the Board to which any corporation, partnership or unincorporated
12 association of which he or she is or was at any time in the preceding twelve (12)
13 months a director, officer, partner, employee, member, or stockholder is a
14 party. A member may disqualify himself or herself from participating in a
15 proceeding for any cause deemed by him or her to be sufficient.

16 (f) At any meeting at which a quorum is not present, whether by reason of
17 the inability of a member to participate or his or her voluntary disqualification,
18 or otherwise, the Governor may designate the Chief of the Division of
19 Insurance, Securities and Banking, the Attorney General, or the head of any
20 department of the government of Guam, in that order, as acting members of the

1 Board for the purpose of constituting a quorum, but he shall not designate more
2 acting members than shall be necessary to constitute a quorum.

3 (g) Such clerical, technical, and legal assistance as the Board may require
4 shall be provided by the Division.

5 §43245.5. Prohibited activities. None of the provisions of the Insurance
6 Law shall be interpreted to allow an advisory organization to set or establish
7 rates or to issue any manual that contains final rates for any insurance coverage,
8 policy endorsement, or bond. No advisory organization shall engage in any
9 unfair or unreasonable practice with respect to its operations or other activities.

10 Section 4. Severability. If any of the provisions of this Act, or the
11 application thereof to any person or circumstance, is held invalid, such
12 invalidity shall not affect any other provision or application of this Act which
13 can be given effect without the invalid provision or application, and to this end
14 the provisions of this Act are severable.

15 Section 5. Effective Date. This Act shall take effect immediately upon its
16 enactment.

SEP 18 1995

Honorable Joseph T. San Agustin
Chairman, Committee on Economic-Agricultural
Development and Insurance
Twenty-Third Guam Legislature
Agana, Guam 96910

Dear Mr. Chairman and Members of the Committee:

My name is Joseph T. Duenas. I am the Director of the Department of Revenue and Taxation and the Ex-Officio Insurance Commissioner.

I welcome this opportunity to present my testimony on Bill No. 299:

"An Act to Amend Guam Government Code Sections 43385, 43386 and 43387, Relating to Insurance Rates Under the Insurance Law"

Currently the Insurance Law requires that insurance rates must be approved by the Insurance Commissioner prior to their advertisement, publication or usage. The Commissioner retains the right to modify the rates even after they have become effective if the statistical data in the form of trended loss experience and projected expenses support this factual finding. The insurance industry has labeled this system "prior approval".

Most states follow the "prior approval" approach in the regulation of property and liability rates. Some states that have adopted the "prior approval" system for some or all lines of insurance include: Alabama, Alaska, Arizona, Hawaii, Idaho, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia, and District of Columbia.

It must be pointed out that since 1947 California has used the open competition laws. However, with the approval of Proposition 103 in 1988, California changed its ways of regulating insurance rates to the "prior approval" system. I have recently requested the National Association of Insurance Commissioners (NAIC) for updated data on the system used by the various states in the regulation of rates. The data will be submitted to this Committee upon receipt from NAIC.

The rationale for the regulatory use of the "prior approval" system is to keep rates from becoming excessive. For even after the rates have been approved, I am charged with the duty of gathering data on an annual basis. Once the data gathered for a minimum of five years supports a trend towards lower loss ratios, I could initiate a rate rollback, prospectively.

I must point out that under the "prior approval" system, individual companies as well as rating bureaus are not prohibited from filing smaller and more frequent rate changes, either upwards or downwards.

Some states use the "file and use" system. Under this system an insurer is merely required to file the rates that it intends to use with the Insurance Commissioner. After complying with the mechanical act of filing the rates, an insurer may immediately start using said rates. In most of the states the filing is supported by an actuarial memorandum signed by an accredited member of the American Academy of Actuaries.

As written, Bill 299 indicates a shift to let the free market forces dictate the insurance rates to be charged in Guam. Bill 299 will replace the "prior approval" with the "file and use" system in the regulation of rates.

Under the "file and use" system, the rates used shall be what an insurer states in its rate filing with the Commissioner. Insurers shall be free to design their own rates and use them immediately. This may present problems because insuring that the rate classification is not excessive, inadequate or unfairly discriminatory will be done after the rates are in place instead of before.

In the last few years there has been a movement in the states towards the independent filing of rates by individual companies. Individual companies secure loss ratio data from rating bureaus such as Insurance Services Office (ISO), National Council on Compensation Insurance (NCCI) and Surety Association of America. After securing the trended loss ratios, the individual companies develop their own factors for expenses, profits and contingencies.

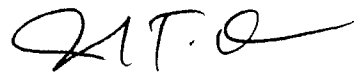
In Guam the accredited rating bureau is the Insurance Association of Guam (IAG). However, I have received independent rate filings for typhoon coverage from three insurers licensed in Guam. These independent rate filings are deviations from the rates secured by the IAG. Two filings have been approved which will reduce the typhoon rates by about 20%. The third insurer has been required to submit supplemental data for further review.

Typhoon and earthquake insurance fall into the category of catastrophic insurance. The main problem as far as catastrophic insurance coverage is one of capacity. When the capacity of the big insurers and reinsurers is sufficient to cover the market, the catastrophic insurance rates will be lower or remain fairly stable. On the other hand, when the capacity of big insurers and reinsurers is sharply reduced by losses from catastrophes such as Typhoons Hugo, Andrew, Iniki, earthquakes in Los Angeles and in Kobe, the rates will go up.

Finally it should be noted that after Typhoon Omar caused severe losses in Guam, the IAG filed for a 150% rate increase. This is what insurers would have charged the consumers had Guam adopted the "file and use" system.

For all of the foregoing reasons, I am respectfully recommending that the "prior approval" system be retained and that Bill 299 be disapproved.

Sincerely,



JOSEPH T. DUENAS
Director and Ex Officio
Insurance Commissioner



Moylan's Insurance Underwriters, Inc.

Home of the Good Guys

101 AGANA SHOPPING CENTER, AGANA, GUAM 96910

TEL.: (671) 477-8613, 8616, 7500, 8150

TELEX: 6502883113 MCI FAX: (671) 477-1837

September 18, 1995

Honorable Joe T. San Agustin
Senator and Chairman
Committee on Economic-Agricultural
Development and Insurance
Twenty-Third Guam Legislature
424 West O'Brien Drive
Julale Shopping Center, Suite #218
Agana, Guam 96910

**RE: BILL 299 - AN ACT TO AMEND GUAM GOVERNMENT
CODE §43385, 43386, AND 43387, RELATING TO
INSURANCE RATES UNDER THE INSURANCE LAW**

Dear Chairman San Agustin:

Thank you for inviting me to participate in this public hearing on Bill 299, a bill to allow open insurance rating. Moylan's Insurance is not a member of the Insurance Association of Guam since we are General Agents but the carrier we represent, Korea Automobile, Fire & Marine is a member of IAG.

It might be helpful to the committee to understand how the IAG became the official rating body of the property and casualty companies doing business in Guam.

In 1959, the Director of Finance, Ricardo Salas sanctioned the Guam Insurance Association as the official rating body. The Association was compromised of AIU, AFIA and New Zealand. This action was taken because the Insurance Commissioner did not want the insurance companies to file separate ratings, policies and endorsements for auto, workers' compensation and fire insurance. When the Association wanted rate adjustments, it had to conduct an actuarial study for all the companies writing business on Guam. The final actuarial report is submitted to the Insurance Commissioner for review.

The Insurance Commissioner had to contract an actuarial consultant to review the rates, losses, expenses, etc. before action was taken by his office. The process usually takes a year since statistical information in preparing an actuarial report must take 3 years of insurance data from all the carriers.

Since 1959 to now, the Insurance Association, a non-profit association of active property and casualty companies, has reviewed all policies, rates and endorsements of its members before it is submitted to the Insurance Commissioner for his final determination.



A member company can submit rates, policies and endorsements directly to the Insurance Commissioner's office now without having to go through the Insurance Association of Guam. What the Insurance Commissioner has done and continues to do today is refer the company back to the Insurance Association for their review and approval before it is re-submitted back to his office.

The reason why the Insurance Association has been sanctioned as the official rating body is because rates for auto, workers' compensation and fire are all controlled by the government. If the companies filed separately, each rate, policy and endorsement would have to be reviewed by an understaff insurance department and a full-time actuary consultant would have to be contracted to review the rates to determine whether they are excessive or under rated. It is just too costly and we all know that this cost would have to be passed back to the consumer in some form or another. Nothing is for free.

The process and controls now in place between the IAG and the Insurance Commissioner has worked well in providing the government and consumers regulated rates, uniform policies and endorsements for automobile, workers' compensation and fire coverages. Certainly, improvements can be and should be made in this arrangement.

Insurance business should not be considered like selling generators. Insurance is different because it is the sale of a promise to deliver, to indemnify, on the occurrence of some event that may or may not happen. Consumers need to have some assurances that these promises will be kept and that abuses will be controlled. To achieve these results calls for some kind of regulation.

Competition creates a healthy environment whether in a business or a personal situation, but in the insurance market, regulations are essential to the consumer that all play by the same rules so that injustices and fraud are not done to the insureds. Proper regulation should provide the maximum amount of competition while ensuring the financial health of providers and availability of coverage on an affordable basis.

Residents of Guam have every right to demand that coverage will be available and affordable, and that insurance companies will be there when it is time to pay a claim. Open competition without some kind of regulation does not guarantee that our people will have insurance coverage that is available and affordable from reputable insurance companies licensed with the Insurance Commissioner in Guam.



Reinsurance is important because it allows companies to spread their risk and it helps them determine the amount of capital they must maintain by law and for its underwriting portfolio. Much of the planning that an insurance company undertakes in attempting to set rates, loss reserves, and investments is based on the historical data concerning the frequency of losses. Any year in which losses paid far exceeds what was expected will have a profound effect on the company's future plans of continuing to write business in that particular area. Guam is no different to insurance companies when they review the losses sustained.

In 1992, catastrophic losses from Hurricane Andrew were \$15.5 billion. In the same month and year, Typhoon Omar which hit Guam, had losses in excess of \$110 million. The same reinsurance companies which underwrote the Guam losses were involved in Hurricane Andrew. The losses in 1992 had a huge impact on what reinsurance companies were prepared to accept further catastrophic coverages in Guam. Rates, deductibles, limits of coverage, stricter underwriting guidelines, and lower commissions were placed on all the insurance companies willing to remain in Guam to write typhoon and earthquake coverages.

Insurance companies who chose not to remain in Guam or who became insolvent because of the losses sustained by Omar and the big 8.3 earthquake of 1993, were;

1. National Pacific Insurance (domestic)
2. Continental Insurance (U.S.)
3. CIGNA Insurance (U.S.)
4. CIGNA Property and Casualty (U.S.)
5. Yasuda Fire and Marine (alien)
6. Insurance Company of North America (U.S.)

Guam has a very small base of remaining insurance companies who rely entirely on the reinsurance market for earthquake and typhoon coverage. Guam is located on the Rim of Fire and where seasonal typhoons tract through Guam on their way to Asia. To make certain that our people will have earthquake and typhoon coverage, we need a regulated insurance industry. For this reason, we do not support the passage of Bill 299 as structured since the Insurance Commissioner can open the ratings now by de-sanctioning the Insurance Association of Guam.

We do recommend that this bill be modified to establish by law, a commission or committee, comprised of representatives from the IAG, public, Insurance Commissioner's office, and elected representatives who will review the following:



1. Review the process of rate approvals to see if it can be more efficient.
2. Review how to make policies easier to read and understand.
3. Review claims to see if they are being handled quickly and efficiently.
4. Review the entire Insurance Law of 1959 to see if improvements can be made.
5. Review what states and the federal government are doing to make hurricane and earthquake coverages available and affordable to all their citizens.
6. Review the possibility of writing typhoon and earthquake coverages separate from homeowners and commercial risks.
7. Review the implementation of continuing education for agents.
8. Review the Building Code to strengthen the structures for catastrophic occurrences.

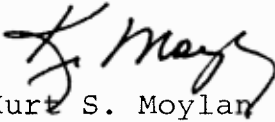
Have the findings submitted to the Legislature and Governor to review. This can be an annual review process in joint cooperation with the government.

The insurance industry wants to remain an active partner with the citizens of Guam.

If you have any questions, I would be happy to respond.

Thank you.

Respectfully yours,


Kurt S. Moylan
President



1995 Member Companies:

- American Home Assurance Company
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Isla Insurance Company
- Korea Automobile Fire & Marine Insurance Company
- Mitsui Marine & Fire Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- New Zealand Insurance Company, Ltd.
- Pacific Indemnity Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

1995 Officers:

Kevin O'Reilly
Chairman
646-3681

Michael Katsuren
Vice-Chairman
477-0672

Adrienne Aguirre
Secretary / Treasurer
477-9423

HAND DELIVER

Joe T. San Agustin
Senator, Twenty-Third Guam Legislature
2nd Floor Julale Shopping Center
Agana, Guam

RECEIVED
COMMITTEE ON ECONOMIC-AGRICULTURAL
DEVELOPMENT INSURANCE
DATE: 9/15/95
TIME: 9:50 AM
RE: [Signature]

September 14, 1995


Dear Senator San Agustin,

**RE: POSITION PAPER FROM INSURANCE ASSOCIATION OF GUAM
ON BILL NO. 299**

On behalf of the IAG I wish to present to you a position paper on Bill 299. I have taken a cross-section of our members' comments and trust that you will consider these informed opinions at the Public Hearing on Monday 18th September 1995.

If you have any questions arising from our paper please do not hesitate to contact me in my official capacity as Chairman of IAG. Indeed, we would welcome a separate discussion with you to discuss Bill 299 and its implications for the Insurance industry on Guam.

Yours Sincerely,


Kevin C. O'Reilly
Chairman
Insurance Association of Guam

attachments: 10

1995 Member Companies:

- American Home Assurance Company
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Isla Insurance Company
- Korea Automobile Fire & Marine Insurance Company
- Mitsui Marine & Fire Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- New Zealand Insurance Company, Ltd.
- Pacific Indemnity Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

1995 Officers:

Kevin O'Reilly
Chairman
646-3681

Michael Katsuren
Vice-Chairman
477-0672

Adrienne Aguirre
Secretary / Treasurer
477-9423

INSURANCE ASSOCIATION OF GUAM

**POSITION PAPER
ON BILL NO.299**

- Firstly, the members of the IAG believe that Bill 299 is inappropriate and is not based upon a complete understanding of the Insurance markets and associated Reinsurance difficulties. However, the Insurance industry on Guam wishes to show support for the Government by offering to participate in a working party or Advisory Board to undertake a more detailed study of the issue.
- IAG have serious questions about the language contained in Bill No. 299. The intent of the Bill is to abolish the requirement that the Insurance Commissioner approve all rates before they can be charged to the public. We believe that the proposed Bill does not accomplish this. In addition, the Bill raises the possibility of substantial and frequent litigation between insurance carriers and the public concerning the rates which are to be charged. A legal opinion on Bill No. 299 is attached for reference.
- The total insurance market on Guam is so tiny in world standards that any major upheaval could react detrimentally against the consumer as Insurers may consider withdrawal from the market because of long-term instability.

1995 Member Companies:

- American Home Assurance Company
- Chung Kuo Insurance Company, Ltd.
- Dai-Tokyo Fire & Marine Company, Ltd.
- Isla Insurance Company
- Korea Automobile Fire & Marine Insurance Company
- Mitsui Marine & Fire Insurance Company
- National Union Fire Insurance Company
- New Hampshire Insurance Company
- New Zealand Insurance Company, Ltd.
- Pacific Indemnity Company
- QBE Insurance (International) Ltd.
- Tokio Marine & Fire Insurance Company
- Zurich Insurance (Guam), Inc.

1995 Officers:

Kevin O'Reilly
Chairman
646-3681

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- All insurance companies rely on Reinsurers for their capacity. Whatever happens, reinsurance premiums are likely to remain at the same level as they are now. Any drop in the direct insurance premium total (paid by the consumer) could result in a percentage increase which reinsurers would demand to retain their own present level of reinsurance premium income.
- What we have at present is a structured market and Bill No. 299 would result in the loss of a balanced market place. There would be upheaval with insurers' results likely to deteriorate thereby leaving insurance companies to question the viability of remaining on Guam. There are markets elsewhere that might be more readily attractive to them.
- Guam is prone to Earthquakes and Typhoons. Cover for these perils is passed back to the reinsurers who may prefer not to continue cover for insurance companies. If that results, then the insurance industry could conceivably see rates increase rather than decrease. This of course would be highly unfavorable to the consumer.
- Removal of price stability may leave the consumer with no guarantee of continuity from existing underwriters who might look for markets elsewhere. Obviously, this is not the ideal situation and is one which the IAG would prefer to avoid. The quality of underwriters may decline as insurance companies of ill-repute or financial instability might look for short term premium income until an earthquake or typhoon occurs. These companies do not provide a long term commitment to small islands such as Guam.

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- The IAG has an open mind regarding the restructuring of the Tariff in its present form. However, we are opposed to the introduction of "free competition" in relation to catastrophe perils, given that it will lead to price undercutting by general agents, and some carriers, immediately without any guarantee that reinsurance rates will reduce. In the long run this will again result in massive instability in the Guam Insurance market.

- The position on Guam at present is that Typhoon and Earthquake coverage are available. This is not the case in some other territories e.g. California, Hawaii, etc. If pricing difficulties make the market on Guam unviable to Insurers then the consumer could be considerably worse off if the coverage becomes difficult to obtain and premiums increase instead of decrease. This would be the inevitable result if a number of insurance companies opt to depart Guam.

- Unfortunately, Guam is exposed to Earthquake and Typhoon perils and, like it or not, the rates are driven by experience and are reactive to the Global Reinsurance markets. Very often, the carriers on Guam have little control over the pricing for this catastrophe coverage. It is dictated by international reinsurers.

- If the Bill is approved, the Insurance Commissioner's office is likely to be flooded by rate filings as there is nothing to prevent a rate being filed for individual risks. Of course, this defeats the whole purpose of filing any rates at all. The Insurance Commissioner's office is unlikely to be able to keep up with the volume of filings and Insurers would be burdened with a bureaucratic set-up plus an unstable market.

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- The Bill intends to de-regulate the entire insurance industry. If passed, it would make it extremely difficult to regulate the industry on Guam. There are no experienced authorities available to assess the adequacy of ratings and the solvency margins of individual companies. The Bill states that "no rates shall be excessive unless such rate is unreasonably high" and this poses the question of who will determine if the rate is "unreasonably high" and how it is to be determined. Solvency levels of insurance companies would have to be strengthened and certified deposits increased dramatically in order to protect the consumer from under strength insurance companies. An example of this is the recent debacle following the receivership of National Pacific Insurance.

- The IAG believes Bill 299 is not the best format to achieve its stated purpose. Furthermore, it is unlikely to produce a long term sustainable reduction in insurance pricing for the consumer. The section relating to "inadequate rates which may endanger the solvency of an insurer" is an example of the impracticality of the Bill. NPI was subject to the same Tariff as all the other Insurers, yet it became insolvent. The Bill may have minimal, if any affect, on the protection of consumers by "regulating" inadequate rates.

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The section on rating raises the question of how it is to be determined if an inadequate rate will endanger the solvency of the Insurer. One of our members provided the example whereby a large international insurance conglomerate with a branch on Guam could give insurance away for nothing in a competitive environment without endangering the solvency of the entire group. However, this would provide inbuilt discrimination for smaller Insurers who would be materially affected by rate cutting within the Guam insurance market. In particular, this would apply to a small local insurance company who may find it difficult to compete with international insurers if a "free competition" situation is introduced. Again, the NPI situation should be proof positive of the dangers of a local company going out of business with resultant damage to the industry, losses to policy holders, loss of jobs, etc..

The Rating Section in Bill 299 states that "the rates cannot be so low as to destroy competition on Guam". This raises several questions:

- A) What consumer is likely to complain about low rates at the time they purchase insurance coverage?
- B) When comparing rates, the Government Regulators would also be forced to compare the expense base and reinsurance costs of competing insurers. This again discriminates in favor of the larger international insurers who would have larger net retentions (low reinsurance costs) and economies of scale available to them. It discriminates against the smaller local insurance company.

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- If the Bill intends to create a "free competition" situation in respect of Workers Compensation Insurance then IAG are of the opinion that this could be detrimental to certain parties in the commercial sector. The premiums for Workers Compensation Insurance would become experience related rather than Tariff as they are at present. Commercial organizations would find it difficult to budget each year for Workers Compensation insurance and there would be wide swings in rates from year to year dependent upon the claims experience.

- The IAG have already advocated the setting up of an Insurance Advisory Board with representatives from the Insurance Industry, Insurance Commissioner's office, Attorney General's office, Legislature and other sectors of the community. This would allow for informed discussion on sensitive insurance matters such as Typhoon pricing, international reinsurance support, solvency margins for insurance companies, etc..

- We do not believe that Bill 299 is the ideal solution from the view point of the government, the consumer or the insurance industry to achieve cheaper insurance, which on the surface, would seem to be in the "best interest of the people of Guam". However, it is clear the Bill has many areas which should be of concern to Insurers and Consumers alike. The members of the Insurance Association of Guam are unable to support the Bill given it's inherent flaws but do believe that our industry should be offering some positive input into a long term restructuring of the Guam Insurance market.

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If the Bill also intends to abolish the Tariff on Motor Vehicle insurance, then there is no guarantee that prices for Auto insurance will decrease. Currently, most insurers on Guam are struggling to show a profit on their Auto insurance portfolio with the likelihood in future of worsening performance. Because of the Tariff situation we are unable to secure rate increases which are needed. Abolishing this Tariff will allow insurers to underwrite as they see fit resulting in higher prices and selective underwriting. With the Tariff abolished insurers would not be obliged to accept otherwise uninsurable risks at a pre-determined premium as is the case at present.

We believe the wording in this Bill is flawed and will result in a more difficult insurance market for the consumer. To reiterate, it is the intention of the Insurance Association of Guam to be proactive and cooperative. To this end, we would welcome a discussion meeting between the Association and the Senators' proposing Bill 299.



Kevin C. O'Reilly
Chairman
Insurance Association of Guam

KOR/ssnc

Attachments:

LAW OFFICES

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CIVILLE DOOLEY & ROBERTS**

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THOMAS L. ROBERTS
TRAYLOR T. MERCER
JOSEPH A. CALVO
JOYCE C. TANG

July 19, 1995

VIA FACSIMILE TRANSMISSION
649-6098

Ms. Sherry S.N. Cruz
INSURANCE ASSOCIATION OF GUAM
c/o ATKINS KROLL INSURANCE
Suite 203, Hengi Plaza
278 South Marine Drive
Tamuning, Guam 96911

RE: PROPOSED BILL NO. 299

Dear Sherry:

Thank you for sending to me Senator San Agustin's proposed Bill No. 299. I have a few comments which I wish to pass on to you concerning the proposed legislation.

I certainly believe that our current system of setting insurance rates needs to be revised so that market forces have more of an impact. However, I have serious questions about the language which is contained in Bill No. 299.

I understand that the intent of the Bill is to abolish the requirement that the Insurance Commissioner approve all rates before they can be charged to the public. I believe that the proposed Bill does not accomplish this purpose. In addition, the proposed Bill may subject insurance carriers to litigation with the public concerning the rates which are charged.

I suggest that the Bill will still leave with the Insurance Commissioner the right to review rates. Although the proposed statute deletes any reference to the requirement that rates be approved by the Commissioner, nonetheless, various standards for rate setting are still imposed by the statute. Specifically, Section 2 of Bill 299 requires that rates not be "excessive" or "unfairly discriminatory". This statute will remain as a part of the Insurance Code of Guam. Pursuant to Government Code § 43028, the Insurance Commissioner will still have overall power to administer and enforce the Insurance Code. The broad powers which are given by § 43028 therefore include the power to enforce the

Ms. Sherry S.N. Cruz
INSURANCE ASSOCIATION OF GUAM
July 19, 1995
Page 2

rate making standards which will be imposed by the new proposed bill. Thus, I suggest that an aggressive Insurance Commissioner will still be able to require insurers to justify any rates which they intend to charge notwithstanding the amendments which are contemplated by Bill No. 299. Because the Insurance Commissioner retains authority to enforce all sections of the Insurance Code, I suggest that he will retain the right to review rates in order to ensure they are no "excessive" and/or "unnecessarily discriminatory". Bill No. 299 therefore does not accomplish its essential purpose.

In addition, the bill does not state who will enforce the standards which are established by Section 2. As I stated previously, I believe that Government Code § 43028 will still give administrative authority over rates to the Insurance Commissioner. However, if I am incorrect, then the question becomes: "who will enforce these standards?". Does the statute give authority to a member of the public to challenge an insurance company's rates? Can an insured claim that a rate is "excessive" or "unfairly discriminatory"? By setting forth standards which must be followed by insurance companies without establishing a mechanism for enforcement of these standards, I believe that the statute is flawed. I suggest that a very strong argument can be made that any potential insured in the Territory of Guam may have standing to challenge any insurance rate based upon an assertion that the rate is "excessive" and/or "unfairly discriminatory". As long as standards are to be imposed by the Bill, then someone will have the right to enforce these standards. These standards may therefore be subject to enforcement in litigation by members of the public and/or consumer protection groups.

If the Legislature truly wants to have insurance rates set solely by market forces, then the Legislature should say so. I suggest that the Legislature could repeal §§ 43385 through 43388. In their place, a new § 43385 could be enacted which states:

§ 43385. All rates, rate schedules, rate plans and methods of computing rates to be applied to any insurance transacted in the Territory of Guam shall be within the sole discretion of the insurer who is charging said rate. Rates shall not be subject to the scrutiny and/or review of the Insurance Commissioner or any other government agency.

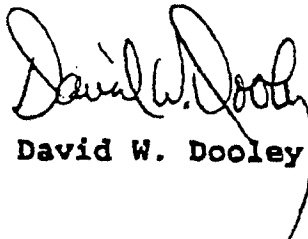
Ms. Sherry S.N. Cruz
INSURANCE ASSOCIATION OF GUAM
July 19, 1995
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Anything less than an outright repeal of the prior statutes will create confusion, litigation and the potential for further regulation by the government. If the Legislature wishes to free rates from the control of the government, then the Legislature should already state this rather than simply deleting certain words from existing statutes.

I am sure that there are a number of other issues which I could discuss with you concerning the proposed amendment. However, I am sure that you now understand that I do not believe that Bill No. 299 will accomplish the stated purpose of the Legislature. Should you wish to discuss this matter further, please feel free to call me at your convenience.

Sincerely,

MOORE CHING BOERTZEL
CIVILLE DOOLEY & ROBERTS



David W. Dooley



Calvin E. Holloway, Sr.
Attorney General

Office of the Attorney General
Territory of Guam

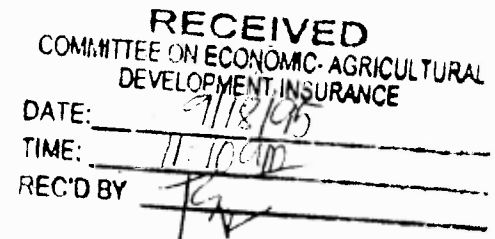
Phone: (671) 475-3324
Telefax: (671) 472-2493

Gus F. Diaz
Chief Deputy Attorney General

September 18, 1995

HANDCARRY & FACSIMILE

The Honorable Joe T. San Agustin
Chairman, Committee on Economic-Agricultural
Development and Insurance
Twenty-Third Guam Legislature
424 W. O'Brien Drive
Julale Shopping Center, Suite #218
Agana, Guam 96910



Re: Comments Regarding Bill 299

Dear Senator San Agustin:

Hafa Adai!

This letter is to express our opposition to the passage of Bill 299. I am concerned about the potential adverse impact on the consumers of Guam, thus I asked our Civil Litigation Division - Consumer Protection Unit to prepare an evaluation of Bill 299. I have attached their response. I fully endorse the comments of our Civil Litigation Division - Consumer Protection Unit.

If there is de-regulation of the insurance industry on Guam, I shudder for the consumers of Guam. I have read the "Position Paper On Bill No. 299" by the Insurance Association of Guam. We disagree with several of the contentions of their paper...."The total insurance market on Guam is so tiny in world standards that any major upheaval could react detrimentally against the consumer as Insurers may consider withdrawal from the market because of long-term instability. ... What we have at present is a structured market and Bill No. 299 would result in the loss of a balanced market place. There would be upheaval with insurers' results likely to deteriorate thereby leaving insurance companies to question the viability of remaining on Guam." In essence, if



Commonwealth Now!

Letter to the Honorable Joe T. San Agustin
Re: Comments Regarding Bill 299
September 18, 1995
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they (insurers) are not allowed to dictate the rates charged to the consumers of Guam, they will pack up and go home.

The insurance industry on Guam is a multi-million dollar business. Yes! We are a small island, but even the largest insurance companies cannot ignore the realities of the viability of Guam's insurance industry, as well as the enormous potential as our economy rebounds. We should not be held hostage by throats that our insurers will leave Guam.

We oppose Bill 299, but not for the same reasons given by the Guam insurance industry. The Guam insurance industry desire that passage of Bill No. 299 delete any regulatory authority from the government. This would in effect leave the consumers of Guam to the mercy of the insurance industry. I am reminded of an old phrase... The Fox in the hen house. The Guam insurance industry should not be regulated by the Department of Revenue and Taxation, rather it should be a separate entity...Commission, Agency, etc. There are potential problems in the existing regulatory scheme. The Insurance Commissioner wears several hats...among them the Director of Revenue and Taxation. We propose that the insurance industry be regulated by a separate commission, agency, department, etc. It would not necessitate any major budgetary increases, etc. Simply reassign the present personnel and function of the insurance regulatory body from the Department of Revenue and Taxation to a separate commission, agency, department, as an independent regulatory body.

Guam's insurance companies are exempted from the anti-trust act, so the various insurance companies can presently collectively bring pressure on the Insurance Commissioner for rates adverse to the interest of the consumers. Most of our consumers are well aware of the rate increase which the Guam insurance industry pushed through a few years ago. Our consumers are very angry -- including myself.

Yet, the insurance industry was not able to provide the data to support their losses for particular classes. Ask the insurance industry what was the total claims paid for each of the recent typhoons for Class A, Class AA and other residential structures? When I asked that question in a meeting with Mr. Joaquin Blaz, former Director, Department of Revenue and Taxation and various members of the Guam Insurance Industry headed at that time by Mr. Schnabel, they could not provide an answer. I was told the data was not available since the industry is not as sophisticated as their counterparts in the mainland. Strange??? What basis did the Guam insurance industry use to justify the consolidation which resulted in my paying significantly more for that consolidation.

Letter to the Honorable Joe T. San Agustin
Re: Comments Regarding Bill 299
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I along with most homeowners are paying more for less coverage.

The subject of the typhoon insurance was particularly galling to me as I read ~~DA~~'s letter. My home insurance rates nearly doubled because my home was consolidated with Class A from Class AA. This was done after the insurance industry obtained a \$2,500 deductible on typhoon insurance. I am in effect paying for typhoon insurance which I will never be able to file a claim. My home is built of pre-cast concrete. I have special typhoon proof windows, steel typhoon shutters. All of our floors are tiled except the bedrooms which are carpeted. However, my total the carpets could be replaced for less than \$2,500, assuming the water was able to get through the shutters and the windows---which I seriously doubt. I have tried to get relief from First Hawaiian my bank, no response to date.

It is strange that in California, a state which have occasional earthquakes---there is no requirements for earthquake insurance. Yet Guam is required to have earthquake insurance. Contrast that requirement with the fact we are required to carry typhoon insurance with a \$2,500 deductible, yet our concrete homes with shutters have no potential claim. It is a win - win situation for the Guam insurance industry. The consumers of Guam owning completely built concrete homes are being "taken advantage of".

If Bill No. 299 is adopted, it should be amended to include a provision to permit the government to contract an independent expert when more than ten(10) consumers file a complaint because their rates are increased beyond reasonableness. We agree with the Insurance Association(IGA) of Guam that there are no experienced authorities available to assess the adequacy of ratings and the solvency margins of individual companies. An independent Commissioner of Insurance could contract for such expertise on a tri-annual basis, or more frequently, similar to our retention of experts when the Government of Guam negotiates the health insurance rates for government employees. There is no need for a full-time expert.

Senator San Agustin, I urge extreme caution in deregulating the insurance industry. It is one of the few industries which is exempted from the anti-trust act. Banking is the other industry exempted from the anti-trust act. If our consumers are successful in obtaining a waiver for mandatory typhoon coverage from our banks, it will be for nought if the insurance industry is permitted to make up the difference in premium increases without regulatory controls.

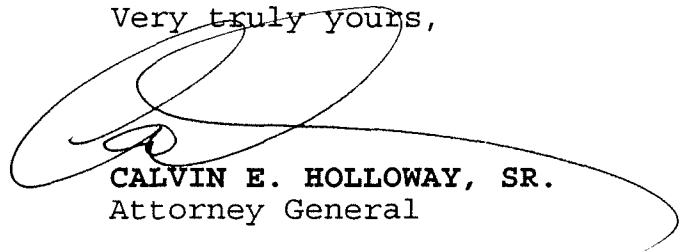
With thanks in anticipation of your deliberate consideration. We

Letter to the Honorable Joe T. San Agustin
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are supportive of any endeavor that will provide a fair return on their investment in the insurance industry, and provide reasonable insurance rates to our consumers.

Dangkolo Na Agradesimo - Thank You Very Much!

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

CALVIN E. HOLLOWAY, SR.
Attorney General

cc: Mr. Kevin C. O'Reilly
Chairman
Insurance Association of Guam



GOVERNMENT OF GUAM
AGANA GUAM 96910

September 15, 1995

Intra-Office Memorandum

To: Attorney General
From: Litigation Director
Subject: Bill 299 Concerning Insurance Rates

This Bill removes the requirement that insurance rates must be approved by the Insurance Commissioner. Yet it retains the rate making standards which require that insurance rates be neither excessive nor inadequate. Without a review of rates by the Commissioner, these rates standards are virtually meaningless. Thus the Bill completely de-regulation insurance rates.

There are several distinctive characteristics of the insurance business which have increasingly been regarded as necessitating some degree of regulation to preserve and reinforce competition as an instrument for development of premium rates.

The specific objectives of rate regulation are to assure that premiums: (1) are adequate to provide funds for paying losses and administrative costs, (2) do not result in unreasonable profits for an insurer (that is, which are not excessive), and (3) are not unreasonably high for some policyholders and unreasonably low for others (that is, which are not "discriminatory"). In other words, the regulation of premium rates is generally intended to assure that an insurer's income is adequate to cover the risks without being either excessively expensive for the purchasers or unfairly discriminatory among purchasers.

There are a number of factors which contribute to the need for rate regulation of insurers.

First, the complexity of insurance transactions frequently reduces the effectiveness of either product or price competition for ordinary consumers.

Second, the proliferation of insurance products often makes it a virtually hopeless task for the ordinary consumer to compare the products and prices offered by different insurers.



Intra-Office Memo to AG
September 15, 1995
Page 2

Third, an industry-wide practice of caution about the unpredictable elements in future loss experience can result in excessive premium rates. Moreover, this remains true whether it is the product of concerted action by many insurers or merely the cumulative effect of separate decisions by executives of different companies who prefer to compete in ways other than pricing.

Fourth, unrestrained opportunities for cooperation among insurers in setting premium rates can be contrary to the public interest. The risk that premium rates may be set by insurers at excessively high levels is obvious. This is not to say, however, that all cooperation should be forbidden. In some circumstances, exchanges of information among insurers are essential to the determination of appropriate premium rates. This is true in regard to accumulating of appropriate premium rates. This is true in regard to accumulating and sharing data to produce a more comprehensive and therefore, at least theoretically, a more reliable base for predicting future losses.

Fifth, unrestrained competition may also produce premium rates that endanger the solvency of insurance companies, and in turn the members of the public they serve -- that is, inadequate premiums can ultimately result in the inability of an insurer to provide indemnification for the losses they have undertaken to insure. A rule of survival of the fittest may be defensible in relation to the interests of the manufacturers and stockholders for some types of consumer products. But to permit the less fit among insurance companies to go into insolvency without providing for the claims of their policyholders and others entitled to insurance benefits is generally viewed as an intolerable result.

Sixth, rate regulation addresses perils of insolvency for insurance companies arising from the possibility that insurers may miscalculate future losses. Actuarial projection in the field of insurance is a process of making precise calculations that can only be guesses about the future. However precise these computations may be, the conclusions are no more than predictions of the unknown and unknowable. Although the element of uncertainty can be reduced in some degree by the use of relatively complete and reliable data about past experience upon which the predictions about the future are based, in the end a degree of guesswork inevitably is involved in setting premiums rates.

Seventh, public policy interests of various types (including policies against discrimination based on race, sex, and other individual characteristics over which the individual has no control) sometimes weigh against the use of insurance rating categories based on the correlation between loss experience and selected individual characteristics.

Intra-Office Memo to AG
September 15, 1995
Page 3

In conclusion rate de-regulation as proposed by Bill 299 would almost certainly have a serious adverse impact on both the consumers of Guam and Guam's insurance industry.

A handwritten signature in cursive script, appearing to read "Pat Mason", followed by a long horizontal line extending to the right.

PAT MASON

Introduced

AUG 03 1995

TWENTY-THIRD GUAM LEGISLATURE
1995 (FIRST) REGULAR SESSION

Bill No. 299 (L)

Introduced by:

J.T. San Agustin
E.B. Anderson
S.L. Orsini

AN ACT TO AMEND GUAM GOV'T CODE §§43385, 43386, AND
43387, RELATING TO INSURANCE RATES UNDER THE INSURANCE LAW

- Section 1 ... Legislative Findings.
- Section 2 ... Amended Guam Gov't Code §43385.
- Section 3 ... Amended Guam Gov't Code §43386.
- Section 4 ... Amended Guam Gov't Code §43387.
- Section 5 ... Severability.
- Section 6 ... Effective Date.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Finding. The Guam Legislature finds
3 that it is in the best interest of the People of Guam that
4 insurance rates be determined by free market forces, thus obviating
5 the approval by the Insurance Commissioner of insurance rates.

6 Section 2. Guam Gov't Code §43385 is hereby amended as
7 follows:

8 **"Representation of Rates.** (a) All rates, rate schedules,
9 rate plans, and methods of computing rates to be applied to any
10 insurance transacted in Guam shall be filed in the office of the
11 Commissioner before any rates may be charged, advertised,
12 publicized or otherwise represented.

13 (b) It shall be unlawful for any insurer to charge any rate
14 for any insurance transacted in Guam other than the rate filed with
15 the office of the Commissioner for such insurer for such risk and
16 class of insurance.

17 //

1 (c) It shall be unlawful for any insurer to use any rates in
2 violation of the provisions of this section."

3 Section 2. Guam Gov't Code §43386 is hereby amended as
4 follows:

5 **"Standards.** An insurer, in making rates, shall apply the
6 standards prescribed as follows:

7 (a) No rate shall be excessive or inadequate, as herein
8 provided, nor shall they be unfairly discriminatory.

9 (b) No rate shall be held excessive unless such rate is
10 unreasonably high for the insurance provided and reasonable degree
11 of competition does not exist in Guam with respect to the
12 classification to which such rate is applicable.

13 (c) No rate shall be held inadequate unless such rate is
14 unreasonably low for the insurance provided and the continued use
15 of such rate endangers the solvency of the insurer; or unless such
16 rate is unreasonably low for the insurance provided and the use of
17 such rate by the insurer will have the effect of destroying
18 competition in Guam.

19 (d) Consideration shall be given, to the extent applicable,
20 to past and prospective loss experiences, prevailing hazards, and
21 underwriting profits, contingencies, expenses or other normal
22 business requirements and factors."

23 //
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1 Section 4. Guam Gov't Code §43387 is hereby amended as
2 follows:

3 **"Rating Bureaus.** Insurers are authorized to become members or
4 subscribers of rating bureaus or advisory organizations of a like
5 nature, and may use the rates, rating systems, and underwriting
6 rules and policy forms of such organizations, provided, however,
7 that the same are not excessive, inadequate or unfairly
8 discriminatory, and conform to the provisions of this Title, and
9 are filed with the office of the Commissioner prior to their use as
10 provided herein."

11 Section 5. Severability. If any of the provisions of this
12 Act, or the application thereof to any person or circumstance, is
13 held invalid, such invalidity shall not affect any other provision
14 or application of this Act which can be given effect without the
15 invalid provision or application, and to this end the provisions of
16 this Act are severable.

17 Section 6. Effective Date. This Act shall take effect
18 immediately upon its enactment.