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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Wednesday, February 18, 2009
8:30 a.m.

TESTIMONY ON HOUSE BILL NO. 1432 – RELATING TO MOTOR VEHICLE INSURANCE.

TO THE HONORABLE JOSEPH SOUKI, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes this bill.

The purpose of this bill is to amend the Hawaii Motor Vehicle Insurance Law, Hawaii Revised Statutes (“HRS”) chapter 431:10C, to change coverage for personal injury protection (“PIP”) benefits from mandatory to optional, theoretically lowering the cost of motor vehicle insurance.

This bill would require insureds to reject in writing coverage for PIP when the policy is initially issued, similar to the process required for rejection of uninsured and underinsured motorists coverage in HRS § 431:10C-301(d).

PIP benefits are defined in HRS § 431:10C-103.5 and are required to be substantially comparable to benefits provided under prepaid health care plans, pursuant to HRS § 431:10C-103.6. Where the at-fault party has rejected PIP coverage, this bill would increase the burden on prepaid health plans and on the assigned claims program.

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H.B. No. 1432
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This bill would also contravene the express purpose of the Hawaii Motor Vehicle Insurance Law, which is to: (1) create a system of reparations for accidental harm and loss arising from motor vehicle accidents; (2) compensate these damages without regard to fault; and (3) limit tort liability for these accidents. HRS § 431:10C-102.

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

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 18, 2009

The Honorable Joseph Souki, Chair
The Honorable Karen Leinani Awana, Vice Chair

House Committee on Transportation

Re: HB 1432 – Relating to Motor Vehicle Insurance

Dear Chair Souki, Vice Chair Awana and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in opposition to HB 1432.

We believe that under the language in this measure, employers could experience an increase in health plan premiums. This would occur since individuals would be given the option as to whether or not they wanted to include personal injury protection in their motor vehicle insurance coverage. Under HB 1432 the cost of providing care for injured parties could shift from the no-fault provision in motor vehicle insurance to an individual's health plan. The individual is responsible for paying the cost of their motor vehicle insurance while most Hawaii residents receive their health care coverage through their employer. This means that the cost of health care associated with this bill would shift to Hawaii's employers.

We believe that a cost shift of this nature will only exacerbate the difficult business climate that local employers are operating in today. We respectfully request the Committee postpone taking action on this measure. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal flourish extending to the right.

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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON TRANSPORTATION
Representative Joseph M. Souki, Chair
Representative Karen Leinani Awana, Vice Chair

Wednesday, February 18, 2009
8:30 a.m.

HB 1432

Chair Souki, Vice Chair Awana and members of the Transportation Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** H.B. 1432. A detailed actuarial analysis is necessary to determine the true impact of such a sweeping change to Hawaii's relatively stable auto insurance system. However, even without such an analysis, H.B. 1432 is problematic because of the process it would create.

H.B. 1432 eliminates Personal Injury Protection (PIP) coverage and requires a written offer of coverage. Additionally, it requires new offers of PIP coverage with every renewal or replacement policy. If the coverage is not rejected, it is automatically included in the policy. The mechanics of making these offers and executing a proper rejection are not specified, and will likely result in significant litigation.

Insurers and consumers currently must manage and understand a complex offer process for Uninsured Motorist (UM) and Underinsured Motorist (UIM) coverages based

on various court interpretations. Creating a new mandatory offer process around PIP coverage, which is utilized by injured claimants and insureds many times more often than UM and UIM coverages, promises to add an additional burden to consumers. Insurer expenses will almost certainly increase, and those increases will be passed on to insured drivers.

In addition to UM and UIM offers, insurers must currently disclose detailed information about Death benefits coverage, Funeral Expense coverage, Alternative Care Coverage, increased limits of Bodily Injury Liability coverage, increased limits of Property Damage Liability coverage, Comprehensive coverage deductible options and Collision deductible options. Consumers will likely respond to even more mandatory offers by ignoring them or rejecting them without proper consideration of these important coverages.

Outside of consumer confusion and insurer expenses, there are numerous potential issues regarding increases in tort cases and increases in the cost of delivering medical treatment to those injured in auto accidents. For example, an injury that would have been covered under PIP would likely be covered by health insurance. If this occurs, employer-funded health insurance premiums would rise.

Based on the foregoing, we respectfully request that H.B. 1432 be held.

Thank you for this opportunity to testify.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER

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Committee on Transportation
Conference Room 309
Wednesday, February 18, 2009
8:30 a.m.
House Bill 1432
Relating to Motor Vehicle Insurance

Chairman Souki, Vice Chair Awana, Members of the Transportation Committee:

My name is Timothy Dayton, General Manager of GEICO in Hawaii.

GEICO provides jobs for 170 associates at its Hawaii Branch office and is Hawaii's largest motor vehicle insurer. **GEICO opposes House Bill Number 1432.**

House Bill 1432 would change no-fault insurance coverage for personal injury protection benefits from required coverage to required optional coverage.

This change would undermine the whole cloth of personal automobile insurance as it exists in Hawaii today. In the 1990's, the law was changed to create the modified no-fault system of automobile insurance we have today. In doing so, the legislature abolished tort liability so as to allow tort recovery only in the event of the most serious bodily injuries or death. As a part of this whole cloth, PIP was made a required, mandatory coverage, the recovery of which was not based on the fault of a liable party. The purpose of making PIP a required, mandatory coverage

was to make sure that injured persons had available a certain, minimum amount of money for the payment of medical expenses and certain other enumerated expenses. The current insurance scheme allows persons with less serious injury a source of compensation available to them for the payment of their medical bills, lost wages, and other covered expenses, without the time and expense of proving up a liability claim. Because the amount of PIP coverage creates a “threshold” below which there is no tort recovery pursuant to 431:10C-306(B)(4), it raises the question whether making PIP an optional coverage could possibly have the effect of denying a person a right to recover in tort. It would also have the effect of imposing upon persons who did not purchase optional PIP coverage, added time and expense in proving a liability case to recover those expenses.

It appears that the purpose of the bill is to save Hawaii insurance consumers money. However, the amount of premium collected for Personal Injury Protection Coverage (PIP) is only a small percentage of the entire amount of premium that GEICO collects. Therefore, the amount of premium saved by a consumer is a small amount of the total automobile insurance premium. While every savings to a consumer is important, this purported savings is especially small given the questions that would be raised if this bill passed.

It is obvious that the questions raised by this ill-thought-out plan would result in an environment of uncertainty and litigation.

Making coverages mandatory with rights of rejection creates record-keeping complications that result in customer dissatisfaction. To add PIP coverage as a mandatory, optional coverage with a right of rejection would add an additional page to the existing disclosure form that could become lost or separated from the other signature pages in the application package. If the customer wants to reject the coverage, but the insurer does not receive the rejection form, a frustrating cycle can result with the customer receiving rates that are higher than expected due to the insurer's failure to receive the signed rejection form.

In short, the proposal would, as a percentage of premium, not result in the anticipated savings to Hawaii insurance consumers, especially in light of the damage that could be done. The measure would undo some of the tort reforms of the 1990's, and might even deny the ability to pursue a tort claim to some seriously injured persons. It would certainly create a new environment of uncertainty and litigation. This proposal is not well-thought-out and should not pass this Committee. **GEICO asks that you vote against passage of HB 1432.**

I very much appreciate the opportunity to testify and am happy to answer any questions.



Timothy M. Dayton

**HOUSE COMMITTEE ON
TRANSPORTATION**

February 18, 2009

House Bill 1432 Relating to Motor Vehicle Insurance

Chair Souki and members of the House Committee on Transportation, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes House Bill 1432 Relating to Motor Vehicle Insurance.

House Bill 1432 amends Hawaii's auto insurance coverage by making personal injury protection (PIP) benefits an optional coverage. Hawaii's auto insurance and Hawaii's prepaid health care are complementary but separate avenues of providing necessary medical care to injured persons. By making the PIP benefits optional, the costs will be shifted from employees who drive to employers as part of the mandated prepaid health care. We believe that this shift may pose problems in this time of economic stress, as employers are struggling to survive.

Second, the elimination of PIP coverage will cause a shift of the covered loss deductible currently covered by PIP to the non-PIP insured driver or their occupants, or to their prepaid health insurer, and consequently the employer. This will then lead to pressure to eliminate the covered loss deductible which has eliminated much of the small cases from the auto insurance system and kept costs down over the years. In short, eliminating mandatory PIP will cause liability insurance to rise.

Third, currently PIP medical costs are managed through the workers compensation fee schedule. Whatever opinions there may be about that schedule, it has acted as a moderating and cost reduction mechanism for auto insurance. During the 1990's there was much debate and discussion regarding the unavailability and high cost of auto insurance. The last major revision of the auto insurance laws resulted in the system in place today. It was a compromise amongst all parties. And it has resulted in affordable insurance coverage and current statistics show that only 12% of Hawaii drivers are uninsured. During the previous debate uninsured motorists were estimated to be almost double that amount. We do not believe that in this time of economic distress we should return to that situation, which would be caused by this bill.

Finally, this bill will lead to more PIP claims made against the joint underwriting plan (JUP), which covers individuals who do not have insurance coverage due to the elimination of coverage for occupants of a motor vehicle. Under current law all of those occupants would be covered by the PIP protection. Its elimination would result in more claims against the JUP, the cost of which is assessed against all the other drivers who buy PIP coverage.

For all of these reasons we respectfully request that the committee hold this measure. Thank you for the opportunity to present this testimony.