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TO THE HOUSE COMMITTEE ON CONSUMER  
PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Thursday, January 29, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 239 – RELATING TO INSURANCE.**

TO THE HONORABLE ROBERT HERKES, 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 the repeal Hawaii Revised Statutes (“HRS”) § 431:10-  
240, which currently prohibits coverage in any insurance policy for punitive or exemplary  
damages, unless the insurance policy otherwise specifically includes.

This was a public policy decision that those who intentionally do wrong should  
not benefit by having insurance cover their wrongful act. This is known as a moral  
hazard and generally seen as a bad collateral effect that should be limited or eliminated.

We thank this Committee for the opportunity to present testimony on this matter.

**Testimony of Robert Toyofuku**  
**On behalf of Hawaii Association for Justice**  
**In SUPPORT of**  
**H.B. No. 239**

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH\*) in Support of H.B. No. 239.

Insurance contracts are purchased by consumers on pre-printed forms with no opportunity to negotiate terms and conditions. These are known as contracts of adhesion because consumers must buy insurance policies on a take-it or leave-it basis. Under current law, these insurance contracts of adhesion do not include coverage for punitive damages unless specifically included in the policy. This hurts consumers because most, if not all, consumers are not aware of this limitation and therefore do not shop for policies that include punitive damages coverage.

The law should require an insurance policy to affirmatively “exclude” coverage for punitive damages if an insurance company does not wish to provide that coverage. This would help the consumer because “exclusions” must be brought to the consumer’s attention so the consumer will become aware that the policy lacks that coverage. The consumer may then buy a policy from a different insurance company if that coverage is desired. Currently, policies that do not cover punitive damages need not state that punitive damages are not covered and consumers are not informed of that fact until it is too late.

This measure does not require that insurance companies sell punitive damages coverage; only that insurance companies let consumers know that the coverage is “excluded” if it is not included in the policy. This will give consumers greater opportunity to make informed decisions about their insurance purchases while still allowing insurance companies the option to sell or not sell punitive damages coverage.

Thank you for this opportunity to testify in SUPPORT of H.B. No. 239.

\* CLH has changed its name to conform to the name of its national organization the American Association for Justice.



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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair

Thursday, January 29, 2009  
2:00 p.m.

### **HB 239**

Chair Herkes, Vice Chair Wakai and members of the Consumer Protection & Commerce 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. 239, which would repeal Chapter 431:10-240 that limits insurance coverage for punitive damages to contracts that specifically provides such coverage.

In 1986 the Legislature passed a bill for the purpose of ensuring affordability and availability of liability insurance. The legislation that passed was a combination of reforms to both the tort system and the insurance regulatory system. Chapter 431:10-240 was enacted into law as part of that tort reform. As a result it is absolutely clear to consumers and insurers that punitive or exemplary damages are not covered under an insurance policy unless specifically included in the policy by the insurer. Unlike most jurisdictions around the country, the guesswork, confusion and misunderstanding on

this issue in Hawaii was eliminated. This created a stable environment for all consumers and businesses. By repealing Chapter 431:10-240, this stability will be taken away and create uncertainty on the issue of whether punitive or exemplary damages are covered under an insurance policy. Parties will then be obligated to seek clarification from the courts and litigation, risk, expense and ambiguity will undoubtedly ensue. To avoid being at the mercy of potentially adverse legal decisions, insurers will be forced to proactively add exclusions and provisions on each liability policy to attempt to clarify to policyholders, once again, that punitive or exemplary damages are not covered under their policies. These increased costs to insurers could again adversely impact affordability and availability of liability insurance in Hawaii.

We respectfully request that H.B. 239 be held.

Thank you for this opportunity to testify.



MAUI CONTRACTORS  
ASSOCIATION

January 26, 2009

Honorable Robert N. Herkes, Chair  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
State Capitol, Room 325  
Honolulu, HI 96813

Re: House Bill No. 627, Relating to Contractors

Dear Chair Herkes and Committee,

I am Jacqueline Haraguchi, Executive Director of the Maui Contractors Association. Maui Contractors Association has over 220 members and has been the voice of the Building Industry in Maui County for over 40 years.

Though Maui Contractors Association agrees with the intent of HB627, we believe that we must support the Regulated Industry Complaints Office of DCCA to enforce the law as they seem appropriate. I have worked with RICO on several different occasions and believe they need the flexibility to enforce every case differently to the benefit of the consumer.

Maui Contractors Association has had a chance to review proposed amendments by RICO and ask your committee to give them careful consideration. It is Maui Contractors Association policy to assist in anyway to enforce unlicensed activity in Maui County.

Thank you for the opportunity to provide testimony on this bill.

Sincerely,

Jacqueline Haraguchi  
Executive Director