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TO THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

April 6, 2009
10:00 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 262 H.D. 2, S.D. 1 - RELATING TO INSURANCE FRAUD

TO THE HONORABLE BRIAN T. TANIGUCHI, 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"). Thank you for hearing this bill.

The Department strongly supports this bill, with three suggested amendments.

This bill is similar to a consensus bill developed in meetings with private plaintiff's attorneys, insurance agents' associations, health insurers, property and casualty insurers and life insurers in 2004. However, this bill does not include the workers' compensation insurance provisions that were included at that time.

The purpose of this bill is to expand the authority of the Insurance Division's Insurance Fraud Investigations Unit ("IFIU") to investigate and prosecute insurance fraud beyond auto fraud in all lines of insurance, except workers' compensation insurance, within the State of Hawaii.

Currently, the jurisdiction of the insurance fraud investigations unit is governed by HRS Section 431:10C-307.8. According to the Attorney General's Office, the current placement of the IFIU in Article 10C, rather than in Article 2, restricts the IFIU's jurisdiction to motor vehicle insurance fraud. This placement causes confusion and may prompt arguments by defense counsel that the IFIU lacks authority to prosecute insurance fraud in other insurance lines. The original intent of the Fraud Unit was to cover all lines of insurance. This bill corrects this problem and allows the Insurance Division to pursue fraud in all lines of insurance (except workers' compensation insurance).

Whenever any state has focused on pursuing and prosecuting insurance fraud, there has been a reduction in premiums for that state's citizens. The Coalition Against Insurance Fraud recently published its Hall of Shame, the worst cases of fraud across the nation. Included were several cases of health insurance fraud, homeowner's insurance fraud, life insurance fraud, business liability fraud as well as auto insurance fraud. We know fraud occurs in every line of insurance. It is a significant cost that, if reduced, will reduce premiums for our citizens.

Additionally, this bill will have the positive effect of assisting in the workload of other State law enforcement agencies by allowing the insurance fraud investigations unit to take action in preventing, investigating, and prosecuting all types of insurance fraud. With the passage of this bill, a more comprehensive approach will be taken to deter perpetrators and make them aware that insurance fraud of any type will not be tolerated.

Insurance fraud continues to affect every household in Hawaii and every business through increased premiums. This bill will improve the Department's ability to deter insurance fraud and thereby can be expected to save Hawaii's consumers and businesses money.

The Department suggests the following amendments (underlined) to Section 431:2-(C) starting on page 6:

(A) When presenting, or causing or permitting to be presented, an application, whether written, typed, or transmitted through electronic media, for the issuance or renewal of an insurance policy or reinsurance contract;

(B) When presenting, or causing or permitting to be presented, false information on a claim for payment;

(C) When presenting, or causing or permitting to be presented, a claim for the payment of a loss;

(D) When presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including knowingly presenting such multiple and duplicative claims to more than one insurer;

(E) When presenting, or causing or permitting to be presented, any claim for payment of a health care benefit;

(F) When presenting, or causing or permitting to be presented, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;

(G) When presenting, or causing or permitting to be presented, improper multiple and duplicative claims for payment of the same health care benefit;

(H) When presenting, or causing or permitting to be presented, for payment, any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;

(I) When fabricating, altering, concealing, making an entry in, or destroying a document whether typed, written, or through an audio or video tape or electronic media;

(J) When presenting, or causing or permitting to be presented, to a person, insurer, or other licensee false, incomplete, or misleading information to obtain coverage or payment otherwise available under an insurance policy;

(K) When presenting, or causing or permitting to be presented, to a person or producer, information about a person's status as a licensee that induces a person or insurer to purchase an insurance policy or reinsurance contract; and

(L) When making, or causing or permitting to be made, any statement, either typed, written, or through audio or video tape or electronic media, or claims by the person or on behalf of a person with regard to obtaining legal recovery or benefits;

The Department recommends the above amendments to be consistent with the current statute. In many instances, an insurance fraud offender does not "present" the false claim. On these occasions, the offender obtains insurance after a loss and allows the insurance company to initiate their claim process. The offender subsequently provides fraudulent information to validate the claim made on their policy. Thus, the offender would not "present" the claim but instead would cause or permit a claim to be presented.

The Department also suggests the following amendment on line 7, page 9:

(b) [~~Where the person acting with intent to defraud under subsection (a) possessed actual knowledge or acted in deliberate ignorance of the truth or falsity of the misrepresentation or concealment of the material facts, opinions, intention, or law, insurance fraud is~~] Violation of subsection (a) is a criminal offense and shall constitute:

(1) A class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than $20,000;

(2) A class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than $300; or

(3) A misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is $300 or less.

The Department of the Attorney General recommended the above changes in order to make the language consistent with the current statute and to eliminate added burdens and confusion that the deleted language produced.

Finally, the Department recommends an amendment to line 3, page 10, Section 431:2-D Restitution:

[~~Where the ability to make restitution can be demonstrated,~~] Any person convicted under this part shall be ordered by a court to make restitution to any insurer, person, or licensee for any financial loss sustained by that insurer, person, or licensee that was caused by the act or acts for which the person was convicted.

In 2006, HRS Section 706-646 "Victim Restitution" was amended to eliminate a court considering the defendant's ability to pay when determining the restitution amount. Therefore, to be consistent with the Victim Restitution section, the Department requests the current bill exclude the bracketed language.

Additional staffing and/or funding are not being requested with the passage of this bill. The Insurance Division will evaluate additional staffing needs at a future date to determine if additional staffing may result in greater prevention and deterrence of insurance fraud.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

AMERICAN COUNCIL OF LIFE INSURANCE
TESTIMONY IN SUUPORT OF HB 262, HD 2, SD 1
RELATING TO INSURANCE FRAUD

April 6, 2009

Via E Mail: jgotestimony@capitol.hawaii.gov

Hon. Senator Brian T. Taniguchi, Chair
Committee on Judiciary and Government Operations
State Senate
Hawaii State Capital, Conference Room 016
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Taniguchi and Committee Members:

Thank you for the opportunity to testify in support of HB 262, HD 2, SD 1, relating to Insurance Fraud.

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

Insurance fraud is costly to both the insurance industry and consumers alike.

Accordingly, ACLI supports HB 262, HD 2, SD 1, which expands the authority of the Insurance Division's newly named Insurance Fraud Investigations Branch. The Fraud Investigations Branch is, under the new law, tasked to prevent, investigate, and prosecute both civilly and criminally insurance fraud beyond motor vehicle insurance cases to all lines of insurance, except worker's compensation.

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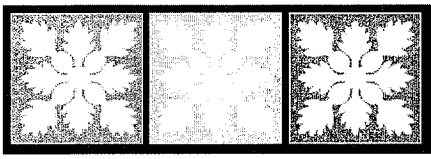

Hawaii Association of Health Plans

April 6, 2009

The Honorable, Brian Taniguchi, Chair
The Honorable Dwight Takamine, Vice Chair

Senate Committee on Judiciary and Government Operations

Re: HB 262 HD2 SD1 – Relating to Insurance Fraud

Dear Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

My name is Rick Jackson and I am currently President of the Hawaii Association of Health Plans ("HAHP"). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.
MDX Hawai'i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in support of HB 262 HD2 SD1 which would give the Insurance Commissioner the necessary authority and staffing to investigate, identify and prosecute instances of fraud.

Health care fraud is a drain on the system financially and can jeopardize the security and health care of consumers – both directly and indirectly. The cost of fraud is estimated to be from 3 percent to 5 percent of our nation's health care expenditures. It is true that everyone pays for fraud through higher health care costs. HAHP supports efforts that strengthen the Insurance Commissioner's ability to perform in this area.

The measure before the committee today is the latest version of insurance fraud legislation introduced by the insurance division since 2004. During the 2005 legislative session, HAHP reached consensus, along with many other insurers, on an insurance fraud bill. All insurers covered by this proposal met and reached agreement on the content of the measure. Unfortunately, it failed to meet legislative deadlines and did not pass.

The measure before you today represents this collaborative effort and we would respectfully urge the committee to support HB 262 HD2 SD1. Thank you for the opportunity to provide comments today.

Sincerely,

Rick Jackson
President

HMSA

Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

April 6, 2009

The Honorable, Brian Taniguchi, Chair
The Honorable Dwight Takamine, Vice Chair

Senate Committee on Judiciary and Government Operations

Re: HB 262 HD2 SD1 – Relating to Insurance Fraud

Dear Chair Taniguchi, Vice Chair Takamine and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 262 HD2 SD1.

Since the 2004 legislative session, HMSA, along with many other stakeholders have been working on finding consensus language pertaining to fraud and abuse. Since then numerous parties have worked in concert to produce mutually agreeable language. HMSA supports HB 262 HD2 SD1 as a means to both give the insurance division greater enforcement authority in this area and also for the insurance industry to protect itself from the potential costs associated with such abuses.

We would respectfully urge the Committee's support of this measure.

Sincerely,

Jennifer Diesman
Assistant Vice President
Government Relations

SENATE COMMITTEE ON
JUDICIARY AND GOVERNMENT OPERATIONS

April 6, 2009

House Bill 262, HD 2, SD 1 Relating to Insurance Fraud

Chair Taniguchi and members of the Senate Committee on Judiciary and Government Operations, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports House Bill 262, HD 2, SD 1 Relating to Insurance Fraud.

State Farm strongly supports this bill as written. House Bill 262, HD 2, SD 1 proposes to expand the insurance fraud investigations branch to cover other lines of insurance. This measure represents a compromise reached with the industry and the Department of Commerce and Consumer Affairs on the terms of the expansion. We ask for the passage of this measure.

Thank you for the opportunity to present this testimony.