



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 4, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 6, 2015
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 695 Relating to Workers' Compensation

H.B. 695 repeals Chapter 431:14A, Hawaii Revised Statutes (HRS), which statutorily established the Hawaii Employers' Mutual Insurance Company (HEMIC) to provide workers' compensation coverage for Hawaii employers. Section 3 provides for continuing operation of HEMIC as all policies and coverages shall remain in force in accordance with each policy's terms.

The department has concerns about the elimination of the chapter due to its historical reason for being as described below and several key provisions of the law that are positive attributes of the workers' compensation system in the state.

The creation of HEMIC was in response to a time when workers' compensation insurance was not available for high-risk or assigned risk companies from private insurance companies. Since workers' compensation coverage is required by law, when private insurance companies choose not to take certain risk, then there is a crisis of availability. Act 261(SLH, 1995) discontinued requiring HEMIC to provide insurance to assigned high risk companies.

Although there is no current crisis of the availability of workers' compensation insurance, the department is concerned that this may not be the case in the future. HEMIC could exist to be the insurer of last resort and thereby ensuring the availability of workers' compensation insurance for high risk. Without a carrier of

last resort, some of those employers may become delinquent on workers' compensation insurance, which could potentially delay workers' compensation benefits to injured workers as well as increase insurance carriers' annual assessments to the Special Compensation Fund.

Lastly, the department is concerned about the repeal of HRS 431:14A-117 Workplace safety and health programs, which requires HEMIC to work with employers to promote, develop, implement and monitor workplace safety and health and return to work programs.



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TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Friday, February 6, 2015
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 695 – RELATING TO WORKER'S
COMPENSATION.**

TO THE HONORABLE MARK M. NAKASHIMA, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs
("Department"). The Department opposes the bill, and submits the following comments.

This bill would repeal Article 14A of Chapter 431, Hawaii Revised Statutes
("HRS"), which enabled formation of the Hawaii Employers' Mutual Insurance Company
("HEMIC") and established its responsibilities, while leaving intact its board of directors
which would retain its associated powers, duties, and responsibilities.

HEMIC was established in 1996 to offer worker's compensation insurance to
"Hawaii employers otherwise entitled to coverage but not able to or not electing to
purchase coverage in the voluntary insurance market, and not authorized, either
individually or as a part of a group to self-insure." It became a domestic for-profit
corporation, subject to the same regulatory oversight as other insurers that fall under
the Commissioner's supervision.

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DCCA Testimony of Gordon I. Ito
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The Department supports the maintenance of two key provisions of the HEMIC enabling article that distinguish HEMIC from other insurers and have ensured its success in the market: sections 431:14A-103(g) (insurer of last resort) and 431:14A-117 (work safety programs). Although dismantling the enabling framework may allow HEMIC to continue its operations and subject it to all Insurance Code requirements, the legislature and the public have no statutory assurance that HEMIC will maintain its fundamental role.

Section 431:14A-103(g) replaced the Commissioner's worker's compensation insurance pool and provided a single source for the purchase of workers compensation insurance by employers who could not purchase coverage on the voluntary market. The repeal of this statute removes HEMIC as the worker's compensation insurer of last resort for employers who may again find themselves without coverage.

Section 431-14-117 required HEMIC to create workplace safety and health and return-to-work programs. These programs were instrumental in disseminating workplace safety information, promoting workplace safety, and qualifying employers for premium reductions following implementation of these workplace safety programs. In the absence of this statute, the worker's compensation insurance market could decide simply to abandon these beneficial programs.

Should this Committee move this bill forward, the Department respectfully recommends that it retain sections 431:14A-103(g) (insurer of last resort) and 431:14A-117 (work safety programs).

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



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Alison H. Ueoka
Executive Director

TESTIMONY OF ALISON UEOKA

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Friday, February 6, 2015
9:00 a.m.

HB 695

Chair Nakashima, Vice Chair Keohokalole, and members of the Committee, my name is Alison Ueoka, Executive Director of the 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 thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council opposes this bill. This bill repeals the section of law that created HEMIC with the exception of the leaving the Board intact. By doing so, it eliminates this market of last resort and goes back to the assigned risk pool under Section 431:14-116 which proved to be extremely problematic in the mid 1990's.

The design of the workers' compensation assigned risk pool allows it to seek adequate rates, however, if claims exceed the capacity of the pool, the losses are assessed to workers' compensation insurers in the voluntary market in proportion to their total market share. In the 1990's when losses exceeded capacity in the pool, insurers were being assessed to pay those losses and in turn, the only way to control the assessments was to reduce their book of business. Insurers had no choice but to nonrenew business in order to shrink their liability of the pool. This made for a very fast and severe market problem as the last insurer in the pool would end up with the total assessment. As insurers raced to reduce their books of business, workers' compensation insurance was very difficult to place.

HEMIC provided much needed market stability by providing a statutory entity that replaced the assigned risk pool and is able to surcharge in a way that regular insurers cannot in order to keep it solvent. The statutory framework of HEMIC is strong and should be left intact to avoid major market disruption if the assigned risk pool cannot pay its claims.

Thank you for the opportunity to testify.

The Twenty-Eighth Legislature
Regular Session of 2015

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Mark M. Nakashima, Chair
Rep. Jarrett Keohokalole, Vice Chair
State Capitol, Conference Room 309
Friday, February 6, 2015; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 695
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **opposes** H.B. 695, which repeals HRS 431:14A, which statutorily established the Hawaii Employers' Mutual Insurance Company (HEMIC) to provide workers' compensation coverage for Hawaii employers.

In 1996, the Hawaii State Legislature established HEMIC in response to employers deemed high-risk or "assigned risk" finding themselves unable to obtain workers' compensation coverage as mandated by law. The statute establishing HEMIC specifically obligated HEMIC to provide workers' compensation coverage to employers who were not able to purchase insurance in the marketplace. Further, HEMIC is restricted exclusively to workers' compensation insurance and is not a state agency.

Since its inception as a legislative creation, HEMIC has grown to become one of the leading carriers of workers' compensation insurance. Their customers include employers from all sectors and all needs who seek coverage, and their rates have been competitive.

However, the fact that they have been successful in the overall workers' compensation market should not detract from the fact that HEMIC continues to fulfill its original function to provide coverage for those employers unable to obtain it from any other carrier.

If the statute on HEMIC is repealed, we are concerned that this function would cease, and some employers would find it impossible to meet the requirements of the law. Moreover, without workers' compensation coverage, the employers may find themselves unable to continue business, putting workers needlessly out of work. Worse yet, some employers may even continue operations without any workers' compensation coverage, thereby placing their employees at risk should an accident occur.

Furthermore, the prevention and safety mandates appear to set HEMIC apart from other insurers. HEMIC is mandated to: promote safety programs to policyholders; analyze reports of industrial accidents to determine causation; conduct studies for risk and hazard identification and assessment; conduct educational programs for frequently recurring industrial accidents; and inspect worksites and investigate unsafe working conditions to promote job safety and eliminate hazards. While other workers' compensation carriers may perform all of these functions, HEMIC is specifically mandated to do so by law.

The ILWU, therefore, opposes H.B. 695 and respectfully requests that the measure be deferred indefinitely. Thank you for the opportunity to share our views and concerns.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Friday, February 6, 2015 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 695 RELATING TO WORKERS' COMPENSATION

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 695, which repeals article 431:14A, HRS, which statutorily established the Hawaii employers' mutual insurance company (HEMIC) to provide workers' compensation coverage for Hawaii employers and also provides for continuing operation of HEMIC and any policies and coverages issued by it.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

HEMIC is crucial in maintaining a stable in the workers' compensation system in Hawaii. As Hawaii's only mutual insurance company, HEMIC is the last resort in workers' compensation claims if all other plans are too expensive and risky. Repealing the statute that established HEMIC may lead to a resurrection of the past, unstable assigned risk plans for workers' compensation – the very same problem that HEMIC was created to resolve.

We respectfully ask that this measure be deferred. Thank you for the opportunity to testify.