



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1166, S.D. 1, RELATING TO INSURANCE.

**BEFORE THE:**

SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

**DATE:** Wednesday, February 26, 2025      **TIME:** 10:05 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):**      **WRITTEN TESTIMONY ONLY.**

(For more information, contact Andrew I. Kim,  
Deputy Attorney General, at 808-586-1180)

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Chairs Dela Cruz and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

This bill establishes a new cause of action that allows insurers, injured parties, and the Hawaii Property Insurance Association to file claims against a responsible party for damages resulting from climate disasters or extreme weather or other event attributable to climate change. This bill also requires insurance rates to account for any proceeds from subrogation or civil claims against a responsible party.

The title of the bill is "Relating to Insurance." Section 2 of the bill, which provides a new cause of action for "any person" (page 10, lines 18 to 21) to seek damages against a responsible party resulting from climate disasters may be subject to challenge as violating article III, section 14, of the Hawai'i State Constitution, which provides that "[e]ach law shall embrace but one subject, which shall be expressed in its title." A new cause of action to allow "any person" to seek damages against a responsible party may be found to go beyond the scope of the subject expressed in the title of the bill. We respectfully request that this issue be addressed or that this bill be held. The Department is happy to work with the Legislature to address this issue.

Thank you for the opportunity to provide comments.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
KA 'OIHANA PILI KĀLEPA  
335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
cca.hawaii.gov

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO  
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

## Testimony of the Department of Commerce and Consumer Affairs

Before the  
Senate Committees on Ways and Means  
and  
Judiciary  
Wednesday, February 26, 2025  
10:05 a.m.

State Capitol, Conference Room 211 and via videoconference

On the following measure:  
S.B. 1166, S.D. 1, RELATING TO INSURANCE

### WRITTEN TESTIMONY ONLY

Chair Dela Cruz, Chair Rhoads, and Members of the Committee:

My name is Jerry Bump, and I am the Acting Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers the following comments on the bill.

The purpose of this bill is to encourage private insurers and the Hawai'i Property Insurance Association to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses attributable to disasters attributable to climate change; allow the Hawai'i Property Insurance Association to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses resulting from climate disasters and extreme weather attributable to climate change; establish a new, specific cause of action that allows insurers and injured parties to file claims against a

responsible party for damages resulting from climate disasters, extreme weather attributable to climate change, and other long-term changes in the climate system; and require insurance rates to account for any proceeds from subrogation or civil claims against a responsible party.

On page 22, lines 10 to 13, regarding ratemaking, due consideration shall be given to “any proceeds recovered by the insurer through any legal actions, including subrogation claims and direct actions filed pursuant to section 431:13- [Hawaii Revised Statutes (HRS)].” The Department notes that subrogation proceeds recovered by an insurer are already accounted for during the rate filing process, so adding this specific requirement may be duplicative. Accordingly, we respectfully request to remove the amended language proposed for HRS § 431:14-103(a)(2)(C), page 22, lines 10 to 13.

Thank you for the opportunity to testify.



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WAYS AND MEANS SENATE COMMITTEE ON JUDICIARY

February 26, 2025

10:05 AM

Conference Room 211

### In **SUPPORT** of **SB1166 SD1**: RELATING TO INSURANCE

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Aloha Chair Dela Cruz, Chair Rhoads, Vice Chair Moriwaki, Vice Chair Gabbard, and Members of the Committees,

On behalf of our over 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS SB1166 SD1**, which would enlist our insurers in the existential fight to hold Big Oil and other parties responsible for our climate crisis accountable, while also providing relief to policyholders when insurers succeed in their subrogation claims.

Climate projections have made it abundantly clear that Hawai'i and the rest of the world will encounter increasingly worsening extreme weather events in the decades to come. This will without a doubt cause untold tragedy and devastation that will be witnessed if not directly experienced if not by ourselves, then by our children, grandchildren, and the generations to follow. However, we do have a limited window for humankind to mitigate and head off the worst consequences of climate destabilization, including by holding Big Oil and those most responsible for our climate crisis accountable for the planetary destruction happening in real time, and on our generations' watch.

This measure provides a critical tool to do so, by explicitly allowing insurers - who are far better equipped and incentivized to take on the Big Oil corporate oligarchy - to pursue legal claims for insurance payouts resulting from climate disasters. This will help to discourage continued misinformation and deceptive practices by the oil industry, and thereby make way for more meaningful climate actions by society as a whole. It may also encourage insurers to continue providing coverage for the Hawai'i market at rates that are affordable for local homeowners and businesses.

Accordingly, the Sierra Club of Hawai'i respectfully urges the Committees to **PASS** SB1166 SD1. Mahalo nui for the opportunity to testify.



700 Bishop Street, Suite 1100  
Honolulu, Hawaii 96813

## WRITTEN TESTIMONY

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COMMITTEE ON WAYS AND MEANS / COMMITTEE ON JUDICIARY

Senator Donovan Dela Cruz, Chair / Senator Karl Rhoads, Chair

Senator Sharon Moriwaki, Vice Chair / Senator Mike Gabbard, Vice Chair

Wednesday, February 26, 2025

10:05 a.m.

### **SB 1166**

Ways and Means Chair Dela Cruz, Vice Chair Moriwaki, Judiciary Chair Rhoads, Vice Chair Gabbard and members of the Committee on Ways and Means and Committee on Judiciary, thank you for the opportunity to provide written testimony. HPIA is a non-profit unincorporated association of property and casualty member insurance companies. Property and casualty insurers are automatically a member of the association as a condition of their authority to transact business in the state of Hawai'i. HPIA is a property FAIR plan also known as the market of last resort for property insurance in the state.

HPIA submits the following **comments** on this bill.

HPIA supports the principle that HPIA and all insurers have the ability to subrogate their claims where there is negligence or breach of duty, directly causing a loss. The decision to subrogate involves careful consideration of various business factors, which include the apportionment of fault, litigation costs, and potential settlement options. Subrogation is evaluated on a case-by-case basis and actions related to climate change or extreme weather events can be particularly challenging and extremely costly. The foundation of any case must rest upon negligence standards and courts often look to the "reasonable person" standard. In many cases, the expenses associated with litigation may far exceed the resources that HPIA has available and may even be much greater than the potential amount that is sought through subrogation itself. It is important to note that recovery amounts are frequently uncertain and rarely reach 100%.

Additionally, there appears to be a lack of consensus in the scientific field surrounding the issue of climate change. The retention of credentialed climate change and legal expert witnesses would significantly add to anticipated litigation costs, which would ultimately be reflected in homeowner's rates, potentially driving premiums higher for Hawai'i consumers.

Mandating HPIA to report to the insurance commissioner, if the Association does not pursue subrogation, imposes an unnecessary administrative burden. This requirement will lead to increased operational costs and necessitate tracking and reporting that could divert resources away from strategic initiatives aimed at stabilizing the property insurance market and ultimately delay their implementation.



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## WRITTEN TESTIMONY

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COMMITTEE ON WAYS AND MEANS / COMMITTEE ON JUDICIARY  
Senator Donovan Dela Cruz, Chair / Senator Karl Rhoads, Chair  
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Wednesday, February 26, 2025  
10:05 a.m.

### **SB 1166**

#### **Page 2 of 2**

As operational expenses are also factored into rates, an unintended consequence of this mandate will be higher premiums for policyholders across the state, making coverage less affordable for Hawai'i homeowners who are already facing financial pressures.

Additionally, all rates must be approved by the Hawaii Insurance Division and the actuarial indicated rate need is often times not what is requested nor what is approved by the Hawaii Insurance Division. Therefore, a report comparing the rates to be charged with rates that would have been charged had the Association fully recovered the losses from the responsible parties may be of limited value.

Given these concerns, we ask that the bill be amended to remove Hawaii Property Insurance Association's reporting requirement to the insurance commissioner.

Thank you for the opportunity to testify.

## Testimony in Support of SB 1166

Submitted by the Center for Climate Integrity

The Center for Climate Integrity is a nonprofit organization that empowers communities and officials with tools and research to hold major oil and gas corporations accountable for deceiving the public about how their products fuel climate change. We submit this testimony in support of SB 1166, which would help stabilize Hawai'i's insurance market in the face of ever-costly damages from extreme weather events that are becoming more frequent and damaging as a result of increased fossil fuel pollution. Proposed amendments to the legislation will also create pathways for individuals, business owners, and insurers in Hawai'i to recover monetary losses from fossil fuel companies responsible for property damages that are driving up the cost of living across the state. Similar legislation is currently being considered in California<sup>1</sup>, and many other states are grappling with how to rein in insurance costs and retain affordable insurance access.

For decades, the world's biggest oil and gas companies have internally known that the unabated use of their fossil fuel products could lead to, in the words of one Exxon scientist, "potentially catastrophic events."<sup>2</sup> Instead of disclosing these risks to the public, a growing body of evidence shows how the fossil fuel industry deliberately sought to discredit science and deceive the public and policymakers about the very real threats they knew the continued use of their products posed to our economy, ecosystems, and public health.<sup>3</sup> Like tobacco and pharmaceutical companies, major oil companies lied about the harms of their products in order to protect their own profits.

Today, these same companies continue to deceive consumers through misleading advertisements that seek to portray their businesses as advancing climate solutions, even as they slash their trivial investments in renewable energy and continue to increase fossil fuel production.<sup>4</sup> Last year members of Congress told the U.S. Department of Justice that a years-long investigation found that companies including Exxon, Chevron, Shell, and BP "worked in concert to mislead the public, policymakers, and investors with public promises to reduce emissions and meaningfully contribute to the transition away from oil and gas, while privately seeking to lock in continued fossil fuel production for decades into the future."

State and local governments across the U.S. — including the City and County of Honolulu<sup>5</sup> and the County of Maui<sup>6</sup> — have turned to the courts to hold major fossil fuel companies

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202520260SB222](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB222)

<sup>2</sup>

<https://insidetheclimate.org/news/22092015/exxon-confirmed-global-warming-consensus-in-1982-with-in-house-climate-models/>

<sup>3</sup> <https://climateintegrity.org/evidence/climate-deception>

<sup>4</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>

<sup>5</sup> <https://climateintegrity.org/lawsuits/case/honolulu-hi>

<sup>6</sup> <https://climateintegrity.org/lawsuits/case/maui-county-hawaii>

accountable for this deception and make them pay for the damage it has caused. In their complaints, Honolulu and Maui point to the exorbitant costs that the named fossil fuel defendants' deceptive actions have imposed on their communities including damages to municipal infrastructure and increased costs for adaptation and resiliency efforts.

Hawai'i's residents, businesses, and insurers are suffering vast harms as a result of the fossil fuel industry's deception and pollution.<sup>7</sup> The widespread destruction from the deadly 2023 Lahaina wildfire, for example, whose ferocity was intensified by global warming from fossil fuel pollution,<sup>8</sup> was not limited to municipal infrastructure. As SB 1166 explains, insurance companies operating in Hawai'i have already paid out more than \$2.3 billion across more than ten thousand wildfire claims to fire victims, with another \$1 billion of additional insured losses yet to be paid. The mounting costs that the fossil fuel industry's deception and pollution has imposed, and will continue to impose, on property owners and insurers has led to increased rates of nonrenewals and now threatens the stability of the state's insurance market. Between 2018 and 2023, nonrenewal rates increased by 91% in the County of Kauai, 296% in the City and County of Honolulu, 184% in the County of Maui, and 70% in the County of Hawaii.<sup>9</sup>

The people of Hawai'i deserve pathways to hold accountable the corporate actors whose decades-long dishonesty and deception has fueled this crisis. Policyholders should not be on the hook for rate increases while the fossil fuel companies most responsible for this crisis pay nothing. Before any more policyholders in Hawai'i lose insurance coverage, or are forced to pay more, rising insurance costs should be placed back on the entities whose business practices and deliberate decisions created the climate-fueled insurance crisis.

SB 1166 would make it easier for insurers operating in Hawai'i to recover losses attributable to climate change and extreme weather directly from the parties most responsible, instead of increasing rates for policyholders. By encouraging the HPIA to subrogate on behalf of policyholders in order to recover the losses they have experienced as a result of the fossil fuel industry's actions, this important legislation would also protect the stability of Hawai'i's insurance market and limit costly rate hikes for property owners who have no other insurance options. The bill will also establish a specific cause of action for residents, business owners, and others who have suffered monetary damages as a result of climate disasters fueled by corporate deception to recover their losses in court.

We urge this committee to support SB 1166.

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<sup>7</sup> <https://climateintegrity.org/uploads/media/CCI-Hawaii-ImpactsAndCosts-2024.pdf>

<sup>8</sup> <https://www.nytimes.com/2023/08/10/climate/hawaii-fires-climate-change.html>

<sup>9</sup> <https://www.nytimes.com/interactive/2024/12/18/climate/insurance-nonrenewal-rates-policies-state-map.html>



**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO  
SB 1166**

Date: Wednesday, February 26, 2025

Time: 10:05 a.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to **SB 1166, RELATING TO INSURANCE**.

HAJ opposes SB 1166 which: (1) requires that property and casualty insurance rates that incorporate historical or projected losses from fire or catastrophe hazards be conditioned on agreement by the insurer to file and litigate subrogation claims against responsible parties; (2) requires the Hawaii Property Insurance Association (HPIA) to file and litigate subrogation claims against certain responsible parties for claims paid by the insurer for losses that are attributable to climate change; and (3) requires insurance rates to account for proceeds obtained by the HPIA through subrogation claims.

HAJ stands in strong opposition to SB 1166 as the bill's requirement for subrogation appears to conflict with case law and statutory interpretation. See *Yukumoto v. Tawahara*, 140 Haw. 285, 296, 400 P.3d 486, 497 (2017) (holding that when sections 663-10 and 431:13-103(a)(10), HRS, apply, "reimbursement and subrogation for all insurance companies" is limited to a judicially managed lien-claim process). Under sections 663-10 and 431:13-103(a)(10), HRS, it is clear that when a policyholder has entered into a settlement with or obtained a judgment against an alleged tortfeasor against which the insurer wishes to assert subrogation rights, **a judicially managed lien-claim process is the exclusive avenue of relief**. HRS 663-10 clearly and unambiguously sets forth the comprehensive scheme governing rights of subrogation in Hawaii. See *Yukumoto*, 140 Hawai'i at 294-295, 400 P.3d at 495-96.

Moreover, the plain text of HRS § 663-10 establishes that it applies to insurers broadly, including the claims contemplated in this legislation. HRS § 663-10, entitled "Collateral sources; protection for liens and rights of subrogation," provides that:

“In **any** civil action in tort, the court, before any judgment or stipulation to dismiss the action is approved, shall determine the validity of any claim of a lien against the amount of the judgment or settlement by any person who files timely notice of the claim . . . The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to **any** person determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement.” HRS § 663-10(a)(emphasis added).

HRS § 663-10’s comprehensive scope is reflected in the statute’s declaration that it applies broadly to ‘any claim of a lien’ and a specific provision that the “liens referred to in the statute include liens arising out of payments made from collateral sources[.]” Yukumoto, 140 Hawai‘i at 295, 400 P.3d at 496. Finally, HRS § 431:13-103(a)(10) clarifies that reimbursements for insurers after recovery from third-party tortfeasors “shall be allowed pursuant to section 663- 10,” suggesting that HRS § 663-10 provides the *exclusive* mechanism for doing so.

Furthermore, in the recent Supreme Court order filed on February 10, 2025,<sup>1</sup> the court reaffirmed that “the lien provided for under HRS § 663-10(a) is the exclusive remedy for a property and casualty insurer to recover claims paid for damages caused by a third-party tortfeasor in the context of a tort settlement between an insured and the tortfeasor.”

Additionally, HAJ is concerned that the measure may present constitutional issue as HPIA is required to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses from climate change. The requirement for HPIA to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses from climate change could be subject to challenge if it is construed as compelling a private entity to file suit, irrespective of its independent desire.

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<sup>1</sup> <https://www.courts.state.hi.us/wp-content/uploads/2025/02/SCRO-24-0000602ord.pdf>.

Accordingly, existing Hawaii law should be upheld to preserve HRS 663-10 and 431:13 as the judicially managed lien-claim process which serves as the exclusive avenue of relief in the subrogation process. Therefore, HAJ respectfully encourages the legislature to reconsider SB 1166.

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.

## **Dave Jones**

### **Former California Insurance Commissioner, 2011-2018**

#### **Testimony in Support of SB 1166**

My name is Dave Jones. I currently serve as the Director of the Climate Risk Initiative at the University of California (UC) Berkeley School of Law, Center for Law, Energy & the Environment. From 2019 through 2021 I served as Senior Director for Environmental Risk at The Nature Conservancy.

I served as Insurance Commissioner for the State of California from 2011 through 2018. As California's Insurance Commissioner, I regulated the largest insurance market in the United States. I worked on insurance regulatory matters with leaders and staff of the Hawai'i Division of Insurance, through the National Association of Insurance Commissioners (NAIC). During my term as insurance commissioner, California suffered from more frequent and severe wildfires, which killed and injured Californians, destroyed homes, businesses, and whole communities, and caused insurers to have to pay increasing amounts in claims.

I submit this testimony in support of SB 1166, which would help stabilize Hawai'i's insurance market in the face of ever-costly damages from climate-fueled extreme weather events. Proposed amendments to the legislation will also create pathways for individuals, business owners, and insurers in Hawai'i and the Hawai'i Property Insurance Association (HPIA) to recover monetary losses from fossil fuel companies responsible for property damages that are driving up the cost of living across the state. Similar legislation is currently being considered in California<sup>1</sup>, and many other states are grappling with how to rein in insurance costs and retain affordable insurance access.

Subrogation is a common law, statutory, and/or contractual right available to insurers throughout the United States. Subrogation enables insurers to recover, from third parties whose actions or inactions have caused damage or losses to their policyholder, claims payments the insurers have made to policyholders under the terms of their insurance policy. Subrogation allows insurers to stand in the shoes of their policyholders and bring civil claims against third parties available to their policyholders which have not otherwise been brought by the policyholder.

The funds that an insurance company recovers through subrogation or any other claim against a third party, are offset against the losses or "experience" of the insurance company for

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202520260SB222](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB222)

purposes of determining the rate needed by the insurance company going forward. Consistent with this approach, SB 1166 explicitly provides that proceeds from civil actions brought by insurers and the Hawai'i Property Insurance Association against responsible parties will be considered in setting rates (premium prices) for the insurer and the Hawai'i Property Insurance Association.

An example of subrogation can be seen in California with the Camp Fire and civil lawsuits brought by insurers exercising subrogation claims for insurance payouts to customers due to losses and damage to their homes and businesses from the Camp Fire. In 2018, during my term as California Insurance Commissioner, the Camp Fire killed at least 85 Californians, destroyed 18,840 structures including 13,500 homes, wiped out the town of Paradise, and caused insurers to pay out over \$12 billion in claims payments. The Camp Fire was ignited by equipment owned and operated by the Pacific Gas and Electric Company (PG&E), which provides gas and electricity to customers in northern California.

Insurers in California, exercising subrogation claims, recovered \$11 Billion that they paid out to customers due to the Camp Fire. These proceeds were then considered by the California Department of Insurance as it reviewed and approved rates for the insurers going forward. SB 1166 provides for the same recovery of losses and consideration of those recovered proceeds in future rates for insurers and the HPIA, helping to reduce pressure on rates for individuals and businesses in Hawaii.

SB 1166 would make it easier for insurers operating in Hawai'i and the Hawai'i Property Insurance Association to recover losses attributable to climate change and extreme weather from deceptive fossil fuel companies instead of policyholders via increased rates. Amendments to the bill also establish a specific cause of action for residents, business owners, and others who have suffered monetary damages as a result of climate disasters fueled by corporate deception to recover their losses in court. By encouraging the HPIA and insurers to bring claims in order to recover the losses they have experienced as a result of the fossil fuel industry's actions, this important legislation would also protect the stability of Hawai'i's insurance market and reduce costly rate hikes for property owners who have no other insurance options.

I urge the committees to support SB 1166.