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TO THE SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Tuesday, March 18, 2008
9:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 2151, H.D. 1 – RELATING TO CAPTIVE
INSURANCE.**

TO THE HONORABLE RUSSELL KOKUBUN, 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”). While the Department supports the apparent intent of this bill, which is to lower medical malpractice insurance costs for Hawaii’s medical doctors and increase patient access to efficient and effective medical care, we are strongly opposed to the bill’s proposed approach.

As currently drafted, this bill basically establishes a “new” insurance company to provide medical malpractice insurance coverage to Hawaii doctors in the hope that its costs will be lower than those offered by Hawaii’s commercial insurance companies, and will thus be able to pass along savings to doctors in the form of lower premiums. This approach does NOT address the primary medical malpractice insurance cost driver, the current healthcare liability system which includes a costly and ineffective mechanism for resolving healthcare liability claims and compensating injured patients.

This bill proposes to organize and establish the MMCIC as a domestic mutual insurance company pursuant to HRS 431 article 4 part III, and also designated and licensed as a captive insurance company pursuant to HRS 431 article 19. Implementing and operating the MMCIC simultaneously under these two separate and distinct sections of the Insurance Code creates uncertainty and conflicts that will eliminate the ability for the MMCIC to operate in an efficient and effective manner. For example, on one hand, the underlying objective of a mutual insurance company is "risk sharing" among its insureds, whereas this bill also proposes a Class 4 captive insurance company that will "segregate" the risks of each insured so that each insured will be responsible for funding his/her own losses and therefore not allow for the sharing of risk among the participating physicians.

The bill exempts the MMCIC from the surplus requirements of domestic mutual insurers for a period of 10 years; however it is silent on the initial and ongoing capital and surplus mandated by the captive insurance statutes, HRS chapter 431, article 19. In order for the MMCIC to be established with reasonable actuarial standards and sound financial integrity, it would have to maintain a minimal level of capital and surplus relative to the volume of risk it insures. The current minimum required capital and surplus in order for the issuance of a Class 4 captive licensees is \$1 million.

This bill also appropriates an unspecified sum from the general fund for the fiscal year 2008-2009 for the Commissioner to oversee the establishment of the MMCIC, but does not provide any funding for retaining or securing appropriate professional and other service required for the prudent organization and implementation of the MMCIC.

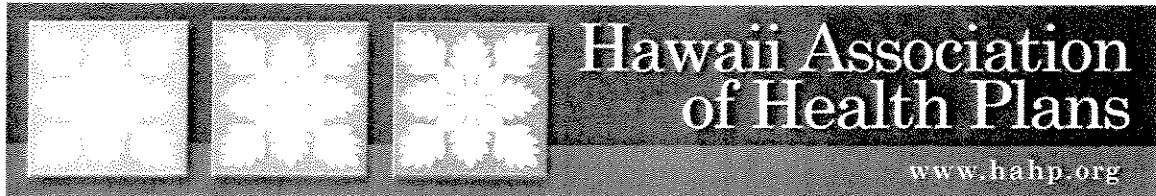
It is unclear whether the MMCIC is intended to replace or supplement the voluntary commercial insurance market for medical malpractice insurance in Hawaii.

The Department prefers the comprehensive approach taken in H. B. No. 3102 and S.B. No. 3024, because it establishes some certainty and predictability to the essential elements that directly impact medical malpractice insurance costs. These elements include: economic damages and contingent legal fees, as well as definitions of terms such as recovery, medical tort and health care providers. Enhanced predictability of these elements will have the ultimate effect of moderating and even

decreasing the cost of medical malpractice insurance for Hawaii's doctors so that Hawaii's citizens will have effective and timely access to medical care.

We strongly urge this committee to replace the approach contemplated by this bill, and replace it with the approach and language in H.B. No. 3102 or S.B. No. 3024.

Thank you for the opportunity to testify on this measure and we respectfully request that it be held.



March 18, 2008

The Honorable Russell Kokubun, Chair
The Honorable David Ige, Vice Chair

Senate Committee on Commerce, Consumer Protection and Affordable Housing

Re: HB 2151 HD1 – Relating to Captive Insurance

Dear Chair Kokubun, Vice Chair Ige and Members of the Committee:

My name is Rick Jackson and I am 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 2151 HD1 which could offer another alternative to physicians in Hawaii through the creation of a captive medical malpractice insurer offering coverage for self-employed physicians. This entity may be able to offer lower medical malpractice insurance premiums thus assisting physicians with the spiraling cost of medical malpractice insurance.

We agree with statements made by local physician organizations that the current medical tort system drives significant “defensive medicine” costs and has led to neighbor island shortages in key surgical specialties. In our role as health insurance providers, the members of HAHP see these facts daily in our medical claims costs and in limitations in the numbers and types of our contracted physicians on neighbor islands.

• *AlohaCare* • *HMAA* • *HMSA* • *HWMG* • *MDX Hawaii* • *UHA* • *UnitedHealthcare* •
HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813
www.hahp.org

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Jackson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rick Jackson
President



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance.

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Russell S. Kokubun, Chair
Senate Committee on Commerce, Consumer Protection
and Affordable Housing

From: Samuel Sorich, Vice President

RE: **HB 2151 HD1 – Relating to Captive Insurance**
PCI Position: Oppose

Date: Tuesday, March 18, 2008
9:30 a.m.; Conference Room 229

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2151 HD1 because there is no compelling evidence that the bill is necessary. In essence, HB 2151 HD1 would create a new insurance company that would write medical malpractice insurance. The availability of medical malpractice insurance is not the fundamental problem in Hawaii's medical malpractice system. Insurance coverage is available from insurers competing in the Hawaii market. Instead, for many doctors, the system's problem is that insurance coverage is expensive. That problem is not addressed by the creation of a new insurance company. HB 2151 HD1 is not the answer. Rather, the problem is found in changing liability laws to make medical malpractice recoveries more reasonable and more predictable.

In addition, PCI is opposed to HB 2151 HD1 because the bill has four significant flaws. First, the nature of the company created by the bill is not certain. On one hand, the bill states that it creates a captive insurance company, but other provisions in the bill characterize the company as a domestic mutual insurance company. The surplus requirements, organization and operation of captives and mutual insurance companies are substantially different.

Second, HB 2151 HD1 provides that its new company would participate in the property and liability guaranty association. Because of the uncertainty about how the new insurance company will be capitalized and operated, the company's guaranty association participation raises serious concerns that Hawaii auto, homeowners and business policyholders could be facing higher fees to cover a company that is not regulated in the same fashion as other insurers participating in the guaranty association.

Third, it is not clear whether HB 2151's new company will write workers compensation insurance. The provisions in the bill that create the new company state that the company is to write medical malpractice insurance and "shall not write other lines of insurance." However, provisions in the bill that list the duties and responsibilities of the company state that the board of the new company "may transact workers compensation insurance policies required or authorized by state law to the same extent as any other insurer."

Fourth, HB 2151 HD1 contains contradictory provisions regarding its new company's policyholders. The bill states that the company is established to provide coverage to self-employed medical doctors. However, later provisions in the bill would transfer residual market and assigned risk policies into the company. These transferred policies are not limited to self-employed medical doctors.

PCI requests that the Committees vote No on the bill.