

LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Monday, January 28, 2008
2:05 p.m.

TESTIMONY ON HOUSE BILL NO. 2256 – RELATING TO INSURANCE

TO THE HONORABLE ROBERT N. 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 H. B. 2256, which would weaken the anti-
bundling provisions of the Insurance Code.

Under Hawaii Revised Statutes section 431:13-103(a)(4)(B), part of the unfair
methods of competition and unfair and deceptive acts and practices in the business of
insurance statute, insurance companies are prohibited from making the purchase of one
class of insurance contingent upon the purchase of another class of insurance. This is
known as the “anti-bundling” provision and is designed to protect consumers from an
insurer who would seek to force consumers to purchase multiple types of insurance in
order to buy a policy that they want to buy. The rule does not prohibit an insurer from
offering different classes of insurance together in an attractively priced package. There
is no violation if the consumer has the option of taking the package or just taking the
insurance wanted. The law only prohibits an insurer from refusing to sell one policy
unless another policy or other policies are also purchased.

In other words, under current law a health insurer could bundle a life insurance policy with a health insurance policy and offer the package to consumers who are free to accept or reject the life insurance. But, under current law the insurer can not refuse to sell the health policy unless the consumer also buys the life insurance.

H. B. 2256 would allow insurers with less than a 10% market share to force customers to purchase a bundle of insurance products as a condition of sale. The Insurance Division is aware of only one insurer engaging in this practice presently and that is the health insurer Hawaii Management Alliance Association ("HMAA"). Presently, HMAA requires sole proprietors to purchase not only health insurance related coverages such as vision and dental insurance, but also life insurance. The Insurance Division is moving to halt this practice, this bill seeks to reverse the Division's action.

Although this bill only applies to insurers with less than 10% market share, issue is not market share, the issue is what the U.S. Supreme Court in *Jefferson Parish Hosp. Dist. No. 2 v. Hyde* called "market power". The Court stated:

... we have condemned tying arrangements when the seller has some special ability-usually called "market power"-to force a purchaser to do something that he would not do in a competitive market. [citations omitted] ^{FN 20} When "forcing" occurs, our cases have found the tying arrangement to be unlawful.

Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 13-14, 104 S.Ct. 1551, 1559 (U.S.La., 1984)

In footnote 20, the court noted:

FN20. This type of market power has sometimes been referred to as "leverage." Professors Areeda and Turner provide a definition that suits present purposes. "'Leverage' is loosely defined here as a supplier's ability to induce his customer for one product to buy a second product from him that would not otherwise be purchased solely on the merit of that second product." V P. Areeda & D. Turner, *Antitrust Law* ¶ 1134a at 202 (1980).

Jefferson Parish Hosp. Dist. No. 2 v. Hyde, 466 U.S. 2, 14, 104 S.Ct. 1551, 1559 (U.S.La., 1984)

HMAA has that "leverage" -- although HMAA has less than a 10% share of the "accident and sickness insurance market", HMAA presently controls 100% of the market for group policies to sole proprietors.

Sole proprietors who don't qualify as "group of one" employers under Hawaii's HIPAA statute can get group health insurance only from HMAA. Other insurers could sell group insurance to sole proprietors but they are not required to do so by law (at least by our interpretation of Hawaii's HIPAA statute) -- so they don't. Because sole proprietors can only get group health insurance from HMAA, HMAA has "market power" even though it has less than ten per cent share of the "accident and sickness insurance market."

The Committee should understand that allowing this practice does not mean lower premiums for the insured. In HMAA's case for example, HMAA got a rebate, or "kick-back" if you will, from the life insurer of profits on the insurance. This rebate was not passed on to the customer; it went to a HMAA affiliated company as additional profit. In addition to this rebate, another HMAA affiliated company got commissions for placement of the life insurance, again not to the benefit of the consumer but to increase the profit of a privately owned company acting as an insurance agent for HMAA.

H. B. 2256 is not limited to health insurers -- it applies to all insurers with less than 10% market share. The Property & Casualty market in Hawaii is made up of 33 different lines of insurance, i.e., private auto, commercial auto, worker's compensation, homeowners' insurance and premiums of \$2.323 billion were written for the year ended 2006 (latest available). No one insurer wrote more than 10% of the total (i.e., \$232 million). There were only two companies whose Property & Casualty premiums exceeded \$100 million. If affiliates' premiums are grouped, there may be one or two companies that exceed 10%. This bill, by the way, does not define market share, so whether affiliates' premiums are to be considered is not known.

Thus, this bill would allow your auto insurer to require that you take life or health or homeowner's insurance from them if you want their auto insurance, it would also allow your homeowner's insurer to require that you take auto or life or health from them

to get your homeowner's policy. In short, this bill would allow many different types of insurers to require you to take whatever line of insurance they choose to bundle with whatever type of insurance over which they have market power.

The anti-bundling rules are there to protect consumers; it would be bad policy to allow so called "small insurers" to use their market power to force consumers to take insurance they don't want or need.

We thank this Committee for this opportunity to testify and ask that this bill be held.



**BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Representative Robert N. Herkes, Chair
Representative Angus L.K. McKelvey, Vice Chair

HB 2256 RELATING TO INSURANCE

**TESTIMONY OF
JOHN HENRY FELIX
Chairman of the Board and Chief Executive Officer**

January 28, 2008, 2:05 pm
State Capitol Conference Room 325

Chair Herkes, Vice Chair McKelvey and Committee Members:

My name is John Henry Felix, Chairman of the Board and Chief Executive Officer of Hawaii Medical Assurance Association (HMAA). HMAA **STRONGLY SUPPORTS** HB 2256, which would enable small insurers that occupy less than ten percent of the health insurance market to continue combining different types of health and sickness-related insurance benefits into a single unified policy.

By way of background, HMAA is a non-profit mutual benefit society which provides health insurance to over 30,000 Hawaii residents. HMAA occupies about three percent of Hawaii's health insurance market. As a small insurer, HMAA takes special pride in providing health insurance to sole-proprietors and small businesses, a segment of Hawaii's market which has a difficult time obtaining affordable health related insurance. Because these types of businesses are unable to take advantage of larger risk pools characteristic of larger employers, their insurance premiums tend to be more costly.

HB 2256 is intended to help self-employed workers and small businesses by allowing broader coverage for less cost. This bill is necessary because the current administration has recently chosen to interpret Hawaii law in a different way than it has ever been interpreted, to prohibit the combination of drug and medical coverage, or the combination of medical, dental and drug coverage, or any other combination of health related coverages, into one insurance policy. Numerous Hawaii laws already permit the combination of various types of health coverages under one policy, and this should be encouraged, not discouraged, to help provide the broadest health coverage possible for Hawaii's residents.

The current administration has deemed these combined benefits as a violation of state anti-tying laws, even though the U.S. Supreme Court has made clear that a company with less than 30% market share has no coercive power in the marketplace and cannot violate federal anti-tying laws. *Jefferson Parish Hospital v. Hyde*, U.S. 466 U.S. 2 (1984). Consistent with the federal standard, HB 2256 will encourage the existing practice by smaller accident and sickness insurers to "bundle" together different classes of insurance, such as health, dental, and vision, thereby continuing the State's historical acceptance of this practice by small insurers who lack coercive power in the marketplace. In these circumstances, bundling provides broader health care coverage in single unified policies, ultimately resulting in lower overall premiums, fostering greater competition within the Hawaii insurance marketplace, and providing consumers with greater flexibility, coverage and pricing options.

HB 2256 codifies into Hawaii law the same rules applicable to similar federal anti-tying laws, though using a more conservative standard of 10% market share. HB 2256 does not change the Prepaid Health Care Act in any way, but rather simply provides that HMAA's 18 year practice of providing broad, cost-effective benefits to Hawaii's smallest business groups is not an unfair insurance practice. Without passage of HB 2256, hundreds of sole-proprietors, small businesses, and their families currently insured by HMAA could be forced to shop for more expensive individual policies with much less coverage.

HMAA STRONGLY SUPPORTS HB 2256 and urges the passage of this measure. Thank you for the opportunity to testify.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

January 28, 2008

HB 2256 Relating to Insurance

Chair Herkes and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm opposes House Bill 2256 Relating to Insurance.

We are concerned that there may be unintended consequences of amending section 431:13, which applies to all insurers and all lines of insurance not just health insurers. We suggest that this prohibition be inserted instead in chapters 432 and 432D. The net effect of its current placement would be to allow small insurers of say auto insurance to boycott, coerce or intimidate without being subject to this law. We don't believe the drafters of this bill intended that consequence. While there may be arguments for such an exemption for health, dental, and vision insurance it seems unnecessary in the broader property and casualty, and life insurance markets. For these reasons we request that this measure be held or deferred until the language is appropriately vetted.

Thank you for the opportunity to present this testimony.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON H.B. 2256 RELATING TO INSURANCE

January 28, 2008

Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes and Committee Members:

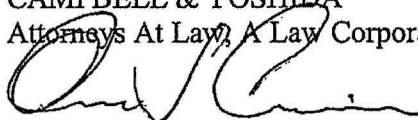
Thank you for the opportunity to comment on House Bill 2256, relating to Life Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred fifty-three (353) member companies account for 93% 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 sixty-one (261) ACLI member companies currently do business in the State of Hawaii.

ACLI is in the process of reviewing House Bill 2256 with its member companies and may submit additional testimony on this bill in the future.

Again, thank you for the opportunity to comment on House Bill 2256.

CHAR HAMILTON
CAMPBELL & YOSHIDA
Attorneys At Law, A Law Corporation



Oren T. Chikamoto
737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 524-3800
Facsimile: (808) 523-1714
E mail: ochikamoto@chctlaw.com