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TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION
& COMMERCE AND JUDICIARY

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Thursday, February 8, 2008
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2947 – RELATING TO MARINE INSURANCE

TO THE HONORABLE ROBERT N. HERKES AND THE HONORABLE TOMMY
WATERS, CHAIRS, AND MEMBERS OF THE COMMITTEES:

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 this bill.

H.B. No. 2947 places within the Insurance Code a modified version of the British
Marine Insurance Act of 1906 which governs marine insurance contracts. The majority
of this bill concerns itself with contract law which is outside the regulatory function of the
Insurance Division (e.g., representations pending negotiation of contract, when contract
shall be deemed concluded, voyage and time policies, alteration of port of departure,
etc.). Other parts of this bill are already included as part of the Insurance Code (e.g.,
right to terminate, policy provisions, disclosure, etc.), are in conflict with the Insurance
Code (HRS § 431:1-207, Marine and Transportation Insurance Defined, and HRS §
431:1-211, Ocean Marine Insurance Defined), or would be new to the Insurance Code
(bottomry, barratry, etc.).

The adoption of this bill would take the Insurance Division into uncharted waters
and result in having subject matters which have nothing to do with insurance regulation

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being brought into the Insurance Code. There would be a diversion of the Insurance Division's committed resources areas into an area which is not within the purview of current insurance regulation.

We thank these Committees for this opportunity to testify and respectfully request that this bill be scuttled.

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Testimony Presented to the
House Committee on Consumer Protection & Commerce and
House Committee on Judiciary

February 7, 2008 at 2:00 p.m.

by
Howard G. McPherson, Esq.

WRITTEN TESTIMONY ONLY

Bill No./Title: House Bill 2947, Relating to Marine Insurance

Chairs Herkes and Waters, Vice Chairs McKelvey and Oshiro,
Committee Members:

I am a Hawaii attorney with a practice emphasizing admiralty and maritime law. I support H.B. No. 2947 modeled on the British Marine Insurance Act of 1906 (British Act).

For more than a century, the British Act has been a significant standard for marine insurance legislation throughout the world.

In the United States, under the landmark decision in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955), each State is largely free to promulgate its own marine insurance rules, in keeping with historic federal policy permitting State regulation of insurance matters generally.

In my opinion, enactment of H.B. No. 2947 will better position Hawaii in the national and international marine insurance markets. Enactment of a statute based on the British Act will give greater predictability to marine insurance claims arising under Hawaii law, and therefore promote greater underwriting activity incorporating or relying on such law.

Enactment should thus help to further diversify Hawaii's economy over the long term, by incrementally attracting more marine insurance business to the State.

Thank you for the opportunity to comment on H.B. No. 2947.

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