



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

S.B. NO. 2313, S.D. 1, RELATING TO INSURANCE.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE
AND ON JUDICIARY

DATE: Thursday, March 13, 2008 **TIME:** 2:00 PM

LOCATION: State Capitol Room 325
Deliver to: CPC Vice Chair State Capitol, Room 315, 5 copies

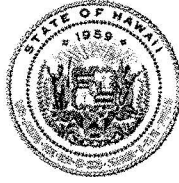
TESTIFIER(S): Mark J. Bennett, Attorney General
or James F. Nagle, Deputy Attorney General

Chairs Herkes and Waters and Members of the Committees:

Although we support the intent of this bill, we cannot support that portion of the bill that takes away the Attorney General's discretion in designating an attorney as a special deputy attorney general. Section 431:2-B(e) of the original bill provided, in relevant part, that: "[t]he decision to designate an attorney as a special deputy attorney general shall be solely within the discretion of the attorney general."

The Senate Draft 1 of this bill deleted that sentence. Additionally, Senate Standing Committee Report No. 2791 states that this change is being made to make "it clear that attorneys representing the State in insurance fraud prosecutions shall be designated special deputies attorney general by operation of law, without need of designation by the attorney general."

The Attorney General wishes to retain the ability to designate an attorney as a special deputy attorney general. Thus, we ask that the above-referenced sentence that was deleted in the S.D. 1 version be re-inserted into the bill.



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

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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE
AND JUDICIARY

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Thursday, March 13, 2008
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 2313, S.D. 1 - RELATING TO INSURANCE

TO THE HONORABLE ROBERT HERKES AND 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"). Thank you for hearing this bill.

The Department strongly supports this bill. This bill is similar to a consensus bill
developed in meetings with private plaintiffs' attorneys, insurance agents' associations,
health insurers, property and casualty insurers and life insurers in 2004. However, this
bill does not include the workers' compensation insurance provisions that were included
at that time.

The purpose of this bill is to expand the authority of the Insurance Division's
insurance fraud investigations unit ("IFIU") to investigate and prosecute insurance fraud
in all lines of insurance, except workers' compensation insurance, within the State of
Hawaii.

Specifically, this bill:

- (1) Expands the definition of insurance fraud to include the filing of false
insurance applications and fraudulent sales of insurance, whereas the
current definition applies only to the filing of claims;

- (2) Establishes the offense of insurance fraud and criminal and civil penalty provisions in the Insurance Code, Hawaii Revised Statutes ("HRS") chapter 431 ("Insurance Code");
- (3) Allows the filing of administrative and civil insurance fraud actions, whereas current law authorizes criminal prosecution only; and
- (4) Establishes the IFIU in Article 2 of the Insurance Code governing the administration of insurance laws, rather than in Article 10C governing motor vehicle insurance.

Currently, the jurisdiction of the insurance fraud investigations branch is governed by HRS § 431:10C-307.8. According to the Attorney General's Office, the current placement of the IFIU in Article 10C, rather than in Article 2, restricts the IFIU's jurisdiction to motor vehicle insurance fraud. This placement causes confusion and may prompt arguments by defense counsel that the IFIU lacks authority to prosecute insurance fraud in other insurance lines. The original intent of the Fraud Unit was to cover all lines of insurance. This bill corrects this problem and allows the Insurance Division to pursue fraud in any line of insurance (except workers compensation insurance).

Whenever any state has focused on pursuing and prosecuting insurance fraud, there has been a reduction in premiums for that state's citizens. The Coalition Against Insurance Fraud recently published its Hall of Shame, the worst cases of fraud across the nation. Included were several cases of health insurance fraud, homeowner's insurance fraud, life insurance fraud, and business liability fraud as well as auto insurance fraud. We know fraud occurs in every line of insurance. It is a significant cost that, if reduced, will reduce premiums for our citizens.

Additionally, this bill will have the positive effect of assisting in the workload of other state law enforcement agencies by allowing the insurance fraud investigations unit to take action in preventing, investigating, and prosecuting all types of insurance fraud. With the passage of this bill, a more comprehensive approach will be taken to deter perpetrators and make them aware that insurance fraud of any type will not be tolerated.

Additional staffing and/or funding is not being requested with the initial passage of this bill. The Insurance Division will evaluate additional staffing needs at a future date, should it be determined that additional staffing may result in greater prevention and deterrence of insurance fraud.

Insurance fraud continues to affect every household in Hawaii and every employer through increased premiums. This bill will improve the Department's ability to

DCCA Testimony of J.P. Schmidt
March 13, 2008
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deter insurance fraud and thereby can be expected to save Hawaii's consumers and employers money.

We thank the Committees for the opportunity to present testimony on this matter and ask for your favorable consideration.

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

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

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

Hearing Date: Thursday, March 13, 2008
Time: 2:00 p.m.
Place: Conference Room 325, State Capitol

TESTIMONY OF FRED GALDONES, ILWU LOCAL 142
RE: SB 2313, SD1, RELATING TO INSURANCE

Thank you for the opportunity to present testimony regarding SB 2313, SD 1.

S.B. 2313, SD 1 expands the insurance division's fraud unit to investigate and prosecute insurance fraud beyond motor vehicle cases but excludes workers compensation fraud from the scope of the unit's responsibilities..

S.B. 2313, SD 1 recognizes that further government intervention in the workers' compensation area is unnecessary because Section 386-98 HRS already provides a means of addressing fraud. Section 386-89(b) HRS permits reopening of a claim when fraud is practiced upon the Director or any party. An insurer may recoup "all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter." A fine of \$10,000 per violation may be assessed under Section 386-98(e)(1) HRS. Attorneys' fees and costs can be reimbursed under Section 386-98(e)(6) HRS. Criminal penalties can be imposed, including misdemeanors and Class C felonies, pursuant to Section 386-98(d) HRS. Used properly, these penalties are more than adequate deterrence to fraud.

If the committee recognizes an appropriate need to expand the insurance division's fraud unit in the Department of Commerce and Consumer Affairs to other kinds of insurance beyond motor vehicle insurance, ILWU Local 142 would support such action, provided the bill continues to exclude workers' compensation from the unit's responsibilities.

HMSA



Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

March 13, 2008

The Honorable Robert N. Herkes, Chair
The Honorable Tommy Waters, Chair

House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 2313 SD1 – Relating to Insurance

Dear Chair Herkes, Chair Waters and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2313 SD1 which would expand the authority of the insurance division's insurance fraud investigations unit to prevent, investigate, and prosecute both civilly and criminally insurance fraud relating to all lines of insurance, excluding worker's compensation insurance. HMSA supports this measure.

Nationally, fraudulent or abusive claims translate to between \$36 and \$144 billion in losses to the health care industry each year. Although fraud and abuse is probably on the lower end of the spectrum locally, if only three percent of claims paid in Hawaii are fraudulent, this would amount to \$60 million dollars in losses annually. HMSA has been a proponent of legislation designed to strengthen a health plan's ability to combat fraud.

Since the 2004 legislative session, HMSA, along with many other stakeholders have been working on finding consensus language pertaining to fraud and abuse. Since then numerous parties have worked in concert to produce mutually agreeable language. HMSA supports SB 2313 SD1 as a means to both give the insurance division greater enforcement authority in this area and also for the insurance industry to protect itself from the potential costs associated with such abuses.

That being said we would like to request one small amendment to clarify the sharing of information between health plans and the Insurance Division. We believe that the current language of the measure may lead to duplicative or unnecessary efforts when reporting fraud information to the Division. This could be clarified by adding a sentence to page 14, line 10:

The insurance fraud investigations branch will work with the insurer or licensee to determine what information shall be provided.

We believe that this will give both the health plans and the Division the flexibility to determine what information should be provided to the newly created Branch to ensure it can effectively perform its fraud investigations

Thank you for the opportunity to provide testimony in support of SB 2313 SD1.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", written in a cursive style.

Jennifer Diesman
Assistant Vice President
Government Relations

House Committee on Consumer Protection and Commerce
Representative Robert Herkes, Chair
House Committee on Judiciary
Representative Tommy Waters, Chair

Senate Bill 2313, SD 1: Relating to Insurance

Hearing Date: March 13, 2008

Time: 2:00 pm

Chair Herkes and Chair Waters and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii, an organization made up of life insurance agents and financial advisors across Hawaii **supports SB 2313, SD 1.**

This measure will establish a new part in Chapter 431, HRS, titled "Insurance Fraud". A new "insurance fraud investigations branch" will also be established to regulate insurance fraud. SB 2313, SD1, specifically excludes workers' compensation.

This measure on insurance fraud has been addressed since the 2004 legislative session in cooperation with Insurance Division. In the 2005, 2006, and 2007 legislative sessions, a consensus draft was introduced which represented the stakeholders -- State Farm, HMSA, ILWU, HIIAA ("Hawaii Independent Insurance Agents Association"), HIC ("Hawaii Insurers Council"), ACLI ("American Council of Life Insurers") and NAIFA Hawaii, as well as the Insurance Division.

Thank you for the opportunity to express our support and we ask for your favorable consideration.

Cynthia Hayakawa
Executive Director



**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

and

HOUSE COMMITTEE ON JUDICIARY

March 13, 2008

Senate Bill 2313, SD 1 Relating to Insurance

Chair Herkes, Chair Waters, members of the House Committee on Consumer Protection and Commerce, and members of the House Committee on Judiciary, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports Senate Bill 2313, SD 1 Relating to Insurance.

State Farm supports this bill as written. Senate Bill 2313, SD 1 proposes to expand the insurance fraud investigations branch to cover other lines of insurance. This measure represents a compromise reached with the industry and the Department of Commerce and Consumer Affairs on the terms of the expansion.

Thank you for the opportunity to present this testimony.

AMERICAN COUNCIL OF LIFE INSURANCE
TESTIMONY COMMENTING ON SB 2313, SD 1
RELATING TO INSURANCE

March 13, 2008

Via E Mail: testimony@capitol.hawaii.gov
Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
Representative Tommy Waters, Chair
Committee on Judiciary
State House of Representatives
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes, Chair Waters and Committee Members:

Thank you for the opportunity to comment on SB 2313, SD 1, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred fifty-three (353) member company's 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.

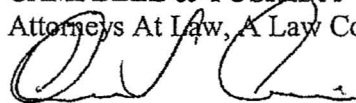
Insurance fraud is costly to both the insurance industry and consumers alike.

Accordingly, ACLI generally supports the intent and purposes of SB 2313, SD 1, which expands the authority of the Insurance Division's insurance fraud investigations unit under the Department of Commerce and Consumer Affairs to prevent, investigate, and prosecute insurance fraud beyond motor vehicle insurance case to all lines of insurance except worker's compensation.

However, ACLI is in the process of reviewing the amendments made in SB 2313, SD 1, with its member companies and may submit additional oral testimony on this bill at its hearing or in the future.

Again, thank you for the opportunity to comment on SB 2313, SD 1

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Attorneys At Law, A Law Corporation



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**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

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

To: The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce

The Honorable Tommy Waters, Chair
House Committee on Judiciary

From: Samuel Sorich, Vice President

RE: **SB 2313 SD 1 – Relating to Insurance**
PCI Position: Support

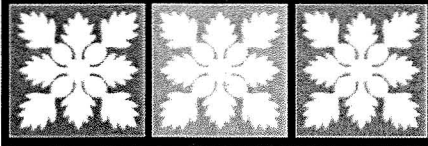
Date: Thursday, March 13, 2008
2:00 p.m.; Conference Room 325

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 supports SB 2313 SD1 because the bill establishes a system that will combat insurance fraud in lines of insurance beyond just motor vehicle insurance. The successful execution of SB 2313's strengthened attack on insurance fraud will lower insurance costs for Hawaii consumers and businesses.

SB 2313 SD1 replaces the existing limited fraud investigation unit with a new branch within the insurance division. The bill provides this new division branch with direction to prevent, to investigate, to prosecute and to educate the public on insurance fraud and gives the branch the authority to carry out that direction. The sound operation of the new division branch, in addition to SB 2313's clear definition of "insurance fraud" and the bill's penalties for acts of insurance fraud, creates a system that will effectively address the serious problem of insurance fraud.

SB 2313 SD1 offers the opportunity to significantly improve efforts to combat insurance fraud. PCI requests that the Committees vote Yes on the bill.



Hawaii Association of Health Plans

March 13, 2008

The Honorable Robert N. Herkes, Chair
The Honorable Tommy Waters, Chair

House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 2313 SD1 – Relating to Health Insurance

Dear Chair Herkes, Chair Waters and Members of the Committees:

My name is Rick Jackson and I am currently President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of six (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 on SB 2313 SD1 which would give the Insurance Commissioner the necessary authority and staffing to investigate, identify and prosecute instances of fraud.

Health care fraud is a drain on the system financially and can jeopardize the security and health care of consumers – both directly and indirectly. The cost of fraud is estimated to be from 3 percent to 5 percent of our nation’s health care expenditures. It is true that everyone pays for fraud through higher health care costs. HAHP supports efforts that strengthen the Insurance Commissioner’s ability to perform in this area.

The measure before the committee today is the latest version of insurance fraud legislation introduced by the insurance division since 2004. During the 2005 legislative session, HAHP reached consensus, along with many other insurers, on an insurance fraud bill. All insurers

covered by this proposal met and reached agreement on the content of the measure. Unfortunately, it failed to meet legislative deadlines and did not pass.

The measure before you today reflects this consensus language. We would respectfully urge the committee to support SB 2313 SD1.

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Jackson", written in a cursive style.

Rick Jackson
President