



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 262, RELATING TO INSURANCE FRAUD.

**BEFORE THE:**

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE  
AND ON JUDICIARY

**DATE:** Monday, February 2, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Lance M. Goto, Deputy Attorney General

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Chairs Herkes and Karamatsu and Members of the Committees:

The Department of the Attorney General appreciates the intent of this bill, but has concerns.

The purpose of this bill is to expand the authority of the Department of Commerce and Consumer Affairs' Insurance Division to prevent, investigate, and civilly and criminally prosecute insurance fraud of all types, beyond the current motor vehicle insurance cases, but excluding worker's compensation cases.

The bill eliminates the insurance fraud investigations unit and creates a new insurance fraud investigations branch within the Insurance Division. All rights, powers, functions, and duties of the unit are transferred to the branch. All officers and employees whose functions are transferred shall be transferred with their functions and shall continue to perform their regular duties.

The bill may go too far in granting full police powers to all of the branch's investigators, investigator assistants, and auditors. That means that assistants and auditors would have full powers of arrest and the authority to carry firearms. It is unclear why these types of employees should have police power. Furthermore, it is a concern that all existing unit employees may be transferred into the

new branch with these new powers, but without the necessary experience and qualifications.

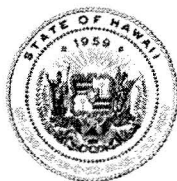
The bill also provides for the employment of attorneys to represent the State "in any criminal, civil, or administrative proceeding to enforce all applicable state laws relating to insurance fraud, including but not limited to criminal prosecutions, disciplinary actions, and actions for declaratory and injunctive relief." The bill further provides:

Each attorney representing the State in such a proceeding shall be designated by the attorney general as a special deputy attorney general. The decision to designate an attorney as a special deputy attorney general shall be solely within the discretion of the attorney general.

These provisions raise several concerns. First, the designation provisions appear to conflict. One seems to require the Attorney General to designate the attorney as a special deputy attorney general, while the other makes it discretionary. Second, the scope of the duties and functions of the appointed special deputy attorneys appears to be too broad. These special deputy attorneys will be representing the State, not only in criminal prosecutions, but also in civil and administrative proceedings that do not require the special appointment and that may actually be beyond the scope of the functions and responsibilities of a deputy attorney general. And third, although these attorneys will be designated as special deputy attorneys general, there is no provision for oversight of these deputies by the Attorney General.

While the branch and its attorneys and investigators will be empowered to handle civil, criminal, and administrative actions regarding insurance fraud, there is no provision for separation of the branch's actions in its various criminal, civil, and administrative roles. Depending on its role, the branch will have different powers and authority to investigate and address insurance fraud.

On page 15, the proposed section 431:2-J provides that criminal fines shall be deposited into the Compliance Resolution Fund. This provision is inconsistent with, and does not account for, section 706-643(2) of the Hawaii Revised Statutes, which requires that all criminal fines collected by the court be deposited into the state general fund. Section 706-643(2) must be amended to allow for special treatment of the fines intended for the Compliance Resolution Fund.



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

STATE OF HAWAII  
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TO THE HOUSE COMMITTEES ON  
CONSUMER PROTECTION & COMMERCE, AND JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

February 2, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 262 - RELATING TO INSURANCE FRAUD**

TO THE HONORABLE ROBERT N. HERKES, AND JON RIKI KARAMATSU, 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, with three suggested amendments.

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. 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  
beyond auto 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 unit 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 all lines 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, 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 and businesses.

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.

Insurance fraud continues to affect every household in Hawaii and every business through increased premiums. This bill will improve the Department's ability to deter insurance fraud and thereby can be expected to save Hawaii's consumers and businesses money.

The Department of Human Resources Development (“DHRD”) informed the Department that section 13 of the bill pertaining to transfer of positions needs clarification. DHRD suggested adding the following paragraph as paragraph 3 and deleting page 43, line 3 to page 44, line 8, such that page 43, line 3 in section 13 of the bill reads:

Any employee who, prior to this Act, was exempt from civil service and who may be transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. No employee who is transferred by this Act shall suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act. The director may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes.

The Department further recommends two changes on page 7. The Department suggests deleting the clause after “claim” on lines 9 to 11 on page 7, such that § 431:2-C(1) reads:

(B) When presenting, or causing or permitting to be presented, false information on a claim;

The reason for these changes is to clarify any ambiguity in the current draft. This change will track the current statute and remove confusion in interpretation, such as, “electronic media” which is not defined in the Hawaii Revised Statutes.

The Department also suggests deleting two words on line 15, page 7, such that § 431:2-C(1) reads:

(D) When presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including knowingly presenting such multiple and duplicative claims to more than one insurer.

The Department makes this suggestion to clarify any confusion in the current language. This change also tracks the current statute and removes any confusion in its interpretation.

Additional staffing and/or funding is not being requested with the passage of this bill. The Insurance Division will evaluate staffing needs at a future date to determine if additional staffing may result in greater prevention and deterrence of insurance fraud.

We thank this Committee for the opportunity to present testimony on this matter and ask that the Committee pass a H.D. 1 with the above requested amendments.

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE  
and  
HOUSE COMMITTEE ON JUDICIARY**

February 2, 2009

House Bill 262 Relating to Insurance Fraud

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection & 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 House Bill 262 Relating to Insurance Fraud.

State Farm supports this bill as written. House Bill 262 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.



**ASSOCIATION OF INSURANCE  
AND FINANCIAL ADVISORS™**

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

House Committee on Judiciary  
Representative Jon Riki Karamatsu, Chair

**House Bill 262: Relating to Insurance Fraud**

**Hearing Date: Monday -- February 2, 2009**

**Time: 2:00 pm**

Chair Herkes and Chair Karamatsu and members of the Committees, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii, an organization made up of life insurance agents and financial advisors across Hawaii **supports HB 262.**

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. HB 262 specifically excludes workers' compensation.

This measure on insurance fraud has been addressed since the 2004 legislative session in cooperation with Insurance Division. From the 2005 to 2008 legislative sessions, a consensus draft was introduced which represented the stakeholders from the insurance sector and Insurance Division.

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

Cynthia Hayakawa  
Executive Director

(Faxed on 1-30-09)



AMERICAN COUNCIL OF LIFE INSURANCE  
TESTIMONY IN SUPPORT OF HB 262  
RELATING TO INSURANCE FRAUD

February 2, 2009

Via E Mail: [cpctestimony@capitol.hawaii.gov](mailto:cpctestimony@capitol.hawaii.gov)

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

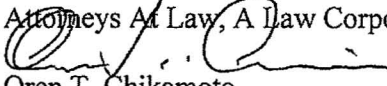
Dear Chair Herkes, Chair Karamatsu and Committee Members:

Thank you for the opportunity to testify in support of HB 262, relating to Insurance Fraud.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred forty (340) member company's account for 94% 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 fifty-three (253) 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 supports HB 262, 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 both civilly and criminally insurance fraud beyond motor vehicle insurance case to all lines of insurance except worker's compensation.

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CAMPBELL & YOSHIDA  
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- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

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**House Committee on Consumer Protection and Commerce**  
**House Committee on Judiciary**  
Conference Room 229, State Capitol  
Monday, February 2, 2009, 2:00 p.m.  
**HB 262 - RELATING TO INSURANCE FRAUD**

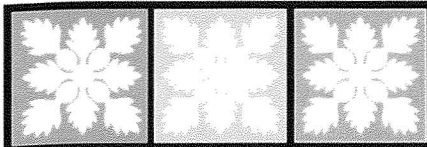
Chairman Herkes, Vice-Chairman Wakai, Members of the CPC, Chairman Karamatsu, Vice Chairman Ito and Members of the Judiciary Committee:

My name is Timothy Dayton, General Manager of GEICO in Hawaii. GEICO provides jobs for 170 associates at its Hawaii Branch office and is Hawaii's largest motor vehicle insurer.

**GEICO supports House Bill Number 262.**

This measure expands the authority of the insurance division to investigate and prosecute insurance fraud in lines of insurance other than motor vehicle insurance cases to include all lines except workers' compensation.

GEICO generally believes that all lines of insurance should be included in the statute that allows the insurance division to prevent, investigate and prosecute fraud and supports the bill in its current form. GEICO wishes to point out that the current law is ambiguous with regard to its treatment of fraud involving motorcycles. Motorcycles are not treated in the code sections regarding motor vehicle insurance. It is possible that the failure to include motorcycle in the current version was inadvertently omitted. In any event, it is GEICO's position that motorcycles should be included in any version of the bill. It is appropriate that the authority of the Insurance Division be expanded to unequivocally include prevention, investigation, and prosecution of all lines of insurance. **GEICO respectfully urges the committee to pass House Bill 262.**



## Hawaii Association of Health Plans

February 2, 2009

The Honorable Robert N. Herkes, Chair  
The Honorable Jon Riki Karamatsu, Chair

House Committees on Consumer Protection and Commerce and Judiciary

**Re: HB 262 – Relating to Insurance Fraud**

Dear Chair Herkes, Chair Karamatsu 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 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 on HB 262 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.

We would respectfully suggest one small amendment to HB 262 that would reflect the consensus language reached previously on this issue. There seems to be an inconsistency with the definition of “knowingly”. Page 10, lines 19-20 uses an existing statutory definition to define “knowingly” (HRS 702-206) but on page 12, lines 7-12 a new definition is created instead of relying on the existing statutory language. We believe that the intent was for the definition of “knowingly” in HRS 702-206 to be used consistently throughout this measure. To make this consistent, the language on page 12, lines 7-12 should be changed to reflect the language on page 10, lines 19-20.

We would respectfully urge the committee to support HB 262 with this change. 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

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 2, 2009

The Honorable Robert N. Herkes, Chair  
The Honorable Jon Riki Karamatsu, Chair

House Committees on Consumer Protection and Commerce and Judiciary

## **Re: HB 262 – Relating to Insurance Fraud**

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 262 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.

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 HB 262 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 two small amendments. The first is 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 19:

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.

The second amendment would change an inconsistency in the manner in which "knowingly" is defined in the measure. On page 10, lines 19-20, "knowingly" is defined using the existing statutory definition in HRS 702-206. On page 12, lines 7-14,

“knowingly” is defined using newly created language. We believe that for consistency the “knowingly” definition in HRS 702-206 should be used uniformly. To accomplish this the language on page 12, lines 7-14 should be removed and replaced with language similar to that on page 10, lines 19-20:

(d) For the purpose of subsection (b), "knowingly" shall have the same meaning as defined in section 702-206.

Thank you for the opportunity to provide testimony in support of HB 262.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal line extending to the right.

Jennifer Diesman  
Assistant Vice President  
Government Relations