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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Tuesday, February 10, 2009  
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 718 – RELATING TO MEDICAL MALPRACTICE  
CAPTIVE INSURANCE.**

TO THE HONORABLE RYAN I. YAMANE, 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”). Thank you for hearing this bill. The Department strongly opposes this  
bill.

The purpose of this bill is to create a captive insurance company specifically for  
the purpose of insuring medical malpractice coverage for Hawaii physicians. This bill  
will unnecessarily introduce a separate Article under Chapter 431, which currently  
includes Article 19 for captive insurance companies.

Under the current Article 19, formation of a Class 3 risk retention captive  
insurance company is allowed for individual physicians and/or medical facilities, to  
group, to insure medical malpractice coverage. The individual physicians and/or  
medical facilities would be the members/insureds of the captive. Currently, we have 31  
captive insurance companies related to health care, and of the 31 captives, 30 provide  
medical malpractice coverage. Furthermore, of the 30 that provide medical malpractice  
coverage, 9 are Class 3 risk retention captive insurance companies, groups formed by

either individual physicians and/or medical facilities, who are the members/insureds of the captive. As such, a separate Article is not considered necessary.

Moreover, we do not agree that it is prudent management practice that this captive formation be excluded from the surplus requirements of domestic mutual insurers from January 1, 2010, through December 31, 2020. A surplus requirement as established by the Commissioner and maintenance of this requirement are vital to continue on going operation and to meet an insurer's current and future obligations.

We also do not agree with the perception that this captive formation be exempt from contributing financially to an association, guaranty or insolvency fund...but shall participate in the property and liability insurance guaranty association. Under Chapter 431, Article 19, HRS, "No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, except as provided under chapter 386, nor shall any captive insurance company, its insured, or its parent or any affiliated company, or any member organization of its association, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company."

We thank the Committee for the opportunity to present testimony on this measure and ask that this bill be held.