

**SB2369**

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Pauahi Tower, Suite 2010  
1003 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS  
Senator Brian T. Taniguchi, Chair  
Senator Dwight Y. Takamine, Vice Chair

Tuesday, February 23, 2010  
10:00 a.m.

### **S.B. 2369, S.D. 1**

Chair Taniguchi, Vice-Chair Takamine and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 2369, S.D. 1. While the apparent intent of this bill is to prevent discrimination against victims of domestic abuse, the changes proposed in Part V of the bill pertaining to insurance do little to advance this intent and would place unreasonable restrictions on insurance underwriting and claims handling procedures.

Hawaii Insurers Council opposes this bill for the following reasons:

- There is no need for the expanded protection against discrimination in issuing insurance policies afforded in this bill. Hawaii Revised Statutes § 431:10-217.5, and related statutes pertaining to health insurance and fraternal benefit societies, have been in effect since July of 1998 and already prohibit insurers from denying

or refusing to accept applications for insurance, or refusing to “renew, cancel, restrict or otherwise terminate a policy of insurance” on the basis that the applicant or insured is a victim of domestic abuse. Given these preexisting statutes, and in the absence of any evidence that victims of domestic abuse are being discriminated against in applying for or maintaining their insurance coverage, there is no need for the expanded and burdensome restrictions that this bill would impose on insurers.

- The enforcement provisions in Section 17 of this bill create a private cause of action for any applicant or insured “who believes that they have been adversely affected by an act or practice of an insurer in violation of section 431:10-217.5” and provide for a recovery of statutory damages in the amount of “\$5,000 for each violation,” in lieu of compensatory damages, at the election of the aggrieved individual. This proposed creation of a private cause of action is not only unnecessary, it has the potential for encouraging collusive or unwarranted claims of discrimination in instances where the existence of domestic abuse was not a factor in the insurer’s underwriting decision. The imposition of such a punitive enforcement mechanism in the absence of any evidence that the current enforcement scheme is not working is not appropriate.
- The proposed changes to HRS § 431:10-217.5, revised subsection (c), as set forth in Section 19 of the bill, place unreasonable restrictions on insurers’ subrogation rights. In its current form, HRS § 431:10-217.5(c)(3) preserves an insurers’ right, after paying a claim, “to recover against the perpetrator of the act that caused the loss.” This bill would delete that language and prohibit subrogation of claims resulting from domestic abuse “without the informed consent of the subject of domestic abuse.” While the apparent intent of this proposed change is to prevent additional abuse arising from efforts to pursue a subrogation claim against the abuser, this creation of potential amnesty for the

reprehensible conduct of abusive individuals is an ill-advised means to achieve that goal.

- It is also unclear what “informed consent of the subject of domestic abuse” means. Is it enough to inform the subject that a subrogation claim will be pursued and obtain their verbal consent, or is it necessary to obtain their consent in writing? Once obtained, is the “informed consent” good for all efforts that may be undertaken to pursue a subrogation claim, or is it necessary to advise the subject of each step of the subrogation process and obtain a renewed “informed consent” from them?
- Finally, it is relevant to note that placing the decision of whether an insurer can pursue subrogation of a claim resulting from domestic abuse in the hands of subjects of domestic abuse could create the potential for collusion and become the unintended source of additional abuse. If perpetrators of abuse know that they cannot be held liable for damage that they cause unless the subject consents, it has the potential, if not likelihood, of creating an additional source of tension in the abusive relationship.
- Section 19 of the bill, proposed subsection (e), places unreasonable and unworkable restrictions on handling of claims that may involve subjects of domestic abuse. Specifically, employees of insurers are prohibited, without first obtaining consent from subjects of domestic abuse, from disclosing or transferring medical information, addresses or telephone numbers of subjects of domestic abuse. The most obvious problem with these new proposed restrictions is that insurance employees may not know that the claim they are handling involves a subject of domestic abuse or a “domestic abuse-related medical condition” and they may be in technical violation of these restrictions without even knowing it. Once appropriate disclosure of a “domestic abuse-

related medical condition" is made, so that the insurance employee is charged with that knowledge, this bill would impose vague and unworkable restrictions on the transfer of information to the point that processing of such claims would be extremely burdensome, if not impossible.

For the foregoing reasons we respectfully request that S.B. 2369, S.D. 1 be held.

Thank you for the opportunity to testify.