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TO THE HOUSE COMMITTEES ON  
CONSUMER PROTECTION & COMMERCE  
AND  
JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Monday, March 29, 2010  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2597, H.D.1 – RELATING TO THE HAWAII  
EMPLOYERS' MUTUAL INSURANCE COMPANY.**

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, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department supports this bill.

The purpose of this bill is to clarify that Article 14A, Hawaii Revised Statutes ("HRS") chapter 431, establishing the Hawaii Employers' Mutual Insurance Company ("HEMIC"), does not create any additional legal liability towards its members or beneficiaries, other than that expressly created by HRS chapters 386 or 431 or applicable to workers' compensation insurers. Also, this bill amends: (1) the definition of "administrator" in HRS § 431:14A-102 to mean HEMIC's chief executive officer; (2) HRS § 431:14A-105(b) to prohibit a director from serving more than two consecutive full terms; (3) HRS § 431:14A-108(a) to conform with the proposed definition of

Hawaii Employers' Mutual Insurance Company, Inc.

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Honolulu, Hawaii 96813  
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**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair

**COMMITTEE ON JUDICIARY**

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair

Testimony Related to SB 2597, HD1  
Monday, March 29, 2010  
2:00 p.m.  
Conference Room 325

Dear Chair Herkes, Chair Karamatsu, Vice Chair Wakai, Vice Chair Ito and Committee Members:

I am Paul Naso, General Counsel of the Hawaii Employers' Mutual Insurance Company, Inc. ("HEMIC"). I am here today on behalf of HEMIC and its CEO/President, Bob Dove, to testify in support of S.B. 2597 HD1.

The measure has two purposes. The first purpose is to facilitate executive succession. The original legislation requires that the "administrator" be both CEO and President. S.B. 2597 amends HRS §431:14A-102 and 431:14A-108(a) to specify that the administrator shall be the "CEO". Being able to split the titles and inherent responsibilities of "CEO" and "President" will allow a smoother transition of executive leadership. Please note that the change would not create an additional position. During transition HEMIC would simply have a CEO, and a "President/CFO" or "President/COO" rather than having a CEO/President, CFO, and COO.

In the same vein, the revision to HRS §431:14A-105(b) allows HEMIC to retain a more experienced Board of Directors as executive leadership shifts. By inserting "consecutive" to the two term limitation, the bill allows Directors who have served two full terms to be re-elected by the members after sitting out a term or more. It is not in the best interest of HEMIC members for the company to have a transitioning executive staff and an inexperienced lay Board of Directors at the same time.

It is our Board's opinion, as well as Mr. Dove's and my own, that these two changes are important to achieving a seamless transition to new leadership. Ultimately HEMIC members and Hawaii employers are better served.

The second effect of the proposed bill is to assure that the original legislative intent of Hawaii Revised Statutes ("HRS") Article 14A is not misconstrued by the courts. The Legislature intended for HEMIC to provide a high level of service to Hawaii employers, especially in the area of workplace safety, and set forth the purpose of HEMIC in HRS §431:14A-101:

**[§431:14A-101] Purpose.** The Hawaii Employers' Mutual Insurance Company is established to provide workers' compensation coverage to employers of the State at the highest level of service with the lowest possible cost, consistent with reasonable and applicable actuarial standards and the sound financial integrity of the company. The purposes of the company are to provide the highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder's experience, practice, and operating effectiveness. (Emphasis added.)

In codifying HEMIC's purpose in HRS §431-14A-101, the Legislature did not intend to establish a higher (or lower) standard of legal liability for HEMIC than that applying to all other Hawaii workers' compensation insurers. Nor did it intend for the courts to have discretion to do so. Instead, the Legislature established an Oversight Council (HRS §431-14A-109.5) to assure that HEMIC was meeting its legislated purpose. Recently, however, a district court judge, during a settlement proceeding, suggested that, in spite of the findings of the Oversight Council, the "purpose" language in HRS §431:14A-101 could be construed by a court as establishing a higher legal standard for HEMIC than that applying to other insurers. She recommended a legislative clarification if the legislature did not intend for the courts to have that discretion.

I know that I do not have to explain why HEMIC would be in an untenable position if its legal obligation to third parties was higher than that of the remainder of the insurance industry. HEMIC is not seeking to limit its liability beyond the original legislative intent or to have a liability threshold different than other workers' compensation insurers. We simply believe that legislative language should be inserted to clarify the original legislative intent. While we believe the original Senate language was sufficient to accomplish that purpose the amended language in HD1 makes it even clearer that HEMIC is subject to the same legal liability standards as are all other Hawaii workers' compensation insurers. For that reason we strongly support S.B. 2597 HD1.

Thank you for this opportunity to present this testimony and for your long-standing support of HEMIC.



## Hawaii Injured Worker's Alliance

715 South King Street Suite #410  
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Web Site: [www.hawaiiinjuredworkersalliance.com](http://www.hawaiiinjuredworkersalliance.com)

March 29, 2010

House of Representatives  
The Twenty Fifth Legislature  
Committee on Consumer Protection and Commerce  
And  
Committee on Judiciary

SB 2597 HD1 Clarifies that the Hawaii Employers' Mutual Insurance Company shall not have any additional third-party duty nor incur any additional liability toward members or beneficiaries beyond that explicitly created by statute. Makes housekeeping amendments.

We agree with the housekeeping parts of Senate Bill 2597.

We support HD1 which says "Nothing in this article shall create any implied third-party duty or impose additional legal liability for the company toward its members or beneficiaries beyond that explicitly created by this chapter, chapter 386, or common law, and generally applicable to all issuers of workers' compensation insurance in this state."

We ask this bill be passed.

George Waialeale  
Executive Director  
Hawaii Injured Workers Alliance

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

## COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

## COMMITTEE ON JUDICIARY

Rep. Jon Riki Karamatsu, Chair

DATE: Monday, March 29, 2010

TIME: 2:00 p.m.

PLACE: Conference Room 325

State Capitol

415 South Beretania Street

### Testimony in Support of SB 2597, HD1

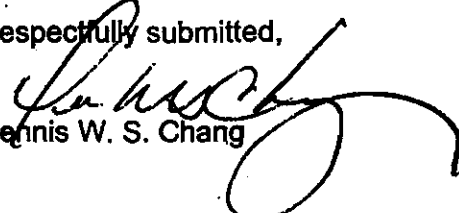
Dear Chairs Herkes and Karamatsu:

I staunchly support SB 2597, HD1 (HSCR 859-10) as amended regarding HEMIC's concerns. The bill was first introduced purportedly for housecleaning purposes and to prevent any additional third party liability towards HEMIC's members or beneficiaries. However, the language as initially proposed clearly would have placed HEMIC in a unique position by insulating it from getting sued for bad faith irrespective how egregious its acts may be towards injured workers. E.g., Exhibit 1. Your prior committee fortunately recognized this and inserted wording that HEMIC was subject to "common law" suits for bad faith like any other insurance company. This puts HEMIC in equal footing as any insurance company as represented by Bob Dove, the CEO and President of HEMIC, in his prior testimony.

The litmus test is whether HEMIC will continue to push for a change in the amended language and an unequivocal statement of the Committee's intent that HEMIC is not subject to any more liability than another insurance carrier in the State merely because it is a creature of the legislature. If HEMIC continues to push for changes, the Legislature must ask why. Clearly, there would be some sinister strategy behind HEMIC's continued lobbying for changes in the language to insulate itself from any bad faith lawsuits and place itself in a unique position unlike any other insurance carrier.

If HEMIC does not ask that the Committees change the wording of the bill as amended, then I fully endorse the bill as amended on behalf of all of my clients who are injured workers who constantly have trouble with the denial and endless outrageous delay in the payment of benefits. Our only preventive measure for the delay and/or denial of rightful payment of benefits is the threat that HEMIC is subject to a lawsuit for bad faith. For this reason and this reason alone, I staunchly object to any changes to the bill that would prevent HEMIC from being sued for **common law** causes of action as well as its duties and responsibilities under HRS Chapters 386 and 431.

Respectfully submitted,

  
Dennis W. S. Chang

Enclosure: Exhibit 1

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

# DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

January 8, 2010

Bob Dove, President  
HEMIC  
PO Box 3376  
Honolulu, HI 96801

RE: McMillan, Gayle Allen  
ER: Altres Staffing Inc  
IC: HEMIC  
DA: 06/02/2008  
CN: 20806414

## TRANSMITTAL

#Document	Date	Description	Instruction
1, copy	12/30/09	Letter from HEMIC to Disability Compensation Division	See remarks
1, copy	12/30/09	Vocational rehabilitation report	See remarks
1, copy	1/6/10	Letter from attorney for Claimant to Disability Compensation Division	See remarks

VIA: (XXX) Mail Hand Deliver Facsimile Pick Up

Are Transmitted: (XXX) Herein ( ) Under Separate Cover

Dear President Dove:

I represent Claimant Gayle Allen McMillan in his workers' compensation case and have enclosed the documents listed above for your careful review. I believe something is amiss, and you may not be aware of the developments by HEMIC and current tactics which are increasing the cost of doing business in our State, aside from causing undue emotional distress and financial ruin to injured workers. These workers suffer needlessly, and the above-referenced case typifies the processing of claims. (I have other similar cases.) This type of handling is contrary to the mandate and spirit of the social legislation.

Very truly yours,

  
Dennis W. S. Chang

DWSC:ty

c: Gary Hamada/DCD (via hand delivery)  
Walter Kawamura/DCD (via hand delivery)  
Bruce Berger  
Gayle Allen McMillan

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EXHIBIT "1"