

**SB 2597**

**CPN/LBR**



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TO THE SENATE COMMITTEES ON COMMERCE AND  
CONSUMER PROTECTION AND LABOR

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 17, 2010  
9:00 a.m.

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

TO THE HONORABLE ROSALYN BAKER AND DWIGHT TAKAMINE, 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"). 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  
"administrator"; and (4) HRS § 431:14A-117 to conform with clarifying language in HRS  
§ 431:14A-101.

The Department does not have any objection to these amendments.

We thank the Committees for the opportunity to present testimony on this matter.

# HEMIC

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## **COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

Senator Rosalyn H. Baker, Chair  
Senator David Y. Ige, Vice Chair

## **COMMITTEE ON LABOR**

Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Testimony Related to SB 2597  
Wednesday, February 17, 2010  
9:00 A.M.  
Conference Room 229

Dear Chair Baker, Chair Takamine, Vice Chair Ige, Vice Chair Taniguchi and  
Committee Members:

I am Bob Dove, CEO and President of the Hawaii Employers' Mutual Insurance  
Company ("HEMIC"). I am here today to testify in support of S.B. 2597.

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 amendment 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. It is not in the best interests of HEMIC members for the company to have a less experienced executive staff and an inexperienced lay Board of Directors at the same time.

It is our Board's opinion, as well as 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 for HEMIC to have a higher (or lower) legal duty or level of legal liability than all other Hawaii workers' compensation insurers. As an additional protection for HEMIC members and their employees the legislature established an Oversight Council to determine if HEMIC was meeting its public purpose (HRS §431-14A-109.5). No other insurer has such oversight. However, recently, 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 for 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. It simply believes that the language should be amended to clarify the original legislative intent so that a future court cannot interpret that HEMIC must meet a higher liability standard than do all other insurers. The proposed amendments to HRS §§431:14A-101 and 431:14A-117 make the necessary clarifications of HEMIC's purpose and liability standard.

Thank you for this opportunity to present testimony in strong support of S.B. 2597 and for your long-standing support of HEMIC.