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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Monday, February 6, 2012  
2 p.m.

**TESTIMONY ON HOUSE BILL NO. 994, H.D. 1 - RELATING TO MOTOR VEHICLE  
INSURANCE**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon I. Ito, State Insurance Commissioner ("Commissioner"),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
("Department").

The Department takes no position on this version of the bill and offers the  
following comments.

The purpose of this bill excludes workers' compensation benefits from the  
covered loss deductible in Hawaii Revised Statutes ("HRS") § 431:10C-301.5  
retroactive to January 1, 2012. The H.D. 1 contains an effective date of January 1,  
2013.

Under the covered loss deductible, a motor vehicle insurance claimant's recovery  
is reduced by \$5,000 or the amount of person injury protection benefits ("PIP") incurred,  
whichever is greater, up to the maximum limit. The purpose of the covered loss  
deductible was to discourage frivolous lawsuits and to set a reasonable standard for  
litigation on legitimate claims.

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

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF H.B. NO. 994, HD 1**

To: Chairman Robert Herkes and Members of the House Committee on Consumer Protection and Commerce:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in support of H.B. No. 994, HD 1 relating to motor vehicle insurance.

H.B. No. 994, HD 1 amends the CLD (Covered Loss Deductible) provision found in H.R.S. § 431:10C-301.5 to conform to the original legislative intent and practice followed by many insurance companies in automobile accident cases involving workers' compensation payments.

The CLD was originally created as a disincentive for over utilization of medical services in automobile accident cases by deducting the amount of medical expense from injury awards. This prevented a windfall to the claimant who might otherwise receive a recovery for medical expenses that were already paid by an automobile insurer under the required PIP (Personal Injury Protection) medical coverage. It has since turned out that here are two circumstances where PIP does not pay for medical expense in automobile accident cases: 1) where the injured person is covered by public assistance (Medicaid), and (2) where the injured person is covered by workers' compensation. The CLD should not apply in these situations because both Medicaid and workers' compensation have their own statutory rights of reimbursement.

The legislature amended the CLD in 2004 to correct this defect in Medicaid cases. House Standing Committee Report No. 195-04 states: "Your Committees find that

recipients of government medical assistance have the cost of medical services deducted from an award or settlement due to the covered loss deductible. They in effect pay twice for these services when they are also required to repay the government for the cost of medical services.” Similarly, Senate Standing Committee Report No. 3139 states: “Presently, the covered loss deductible under section 431:10C-301.5, Hawaii Revised Statutes, requires that any judgment, settlement, or award of any automobile liability claim be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. As a result, the recipients of government medical assistance have the cost of medical services deducted from an award or settlement due to the covered loss deductible. Your Committee believes that it is unfair that they be made to pay twice for these services when they are also required to repay the government for the cost of medical services.” The CLD was thus amended to exclude cases involving public assistance Medicaid payments.

The situation is exactly the same for injured persons covered by workers’ compensation because they are required by H.R.S. § 386- 8 to repay the workers’ compensation insurer for medical, wage loss, and permanent disability payments out of the award. In fact, the workers’ compensation insurer is permitted to sue separately to be paid for its expenses before the injured person is allowed to collect anything for their injuries. For the same reasons that the legislature found in public assistance cases that “it is unfair that they be made to pay twice for these services when they are also required to repay the government for the cost of medical services” it is equally unfair for injured workers to pay twice (once through the CLD and again to the workers’ compensation insurer) for the cost of medical services.

Some automobile insurance companies recognize the inherent unfairness of applying the CLD to workers' compensation cases and are not doing so; however, there is no uniform practice currently as some insurers do attempt to apply both the CLD and workers' compensation lien to injured workers. This amendment is needed to create uniformity and fairness in effectuating the purpose of the CLD.

Thank you very much for allowing me to testify in Support of this measure. Please feel free to contact me should you have any questions or desire additional information.