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TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Friday, January 20, 2012
10:05 a.m.

**TESTIMONY ON HOUSE BILL NO. 944 - RELATING TO MOTOR VEHICLE
INSURANCE**

TO THE HONORABLE KARL RHOADS, 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 bill and offers the following comments.

This bill proposes to exclude workers' compensation benefits from the covered
loss deductible in Hawaii Revised Statutes ("HRS") § 431:10C-301.5 retroactive to
January 1, 2012.

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**

To: Chair Karl Rhodes and Members of the House Committee on Labor and Public
Employment:

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, relating to motor
vehicle insurance

H.B. No. 994 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.

yamashita2 ----Aulii

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 18, 2012 7:40 PM
To: LABtestimony
Cc: dustinandrewsoahu@gmail.com
Subject: Testimony for HB994 on 1/20/2012 10:05:00 AM

Testimony for LAB 1/20/2012 10:05:00 AM HB994

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Dustin Andrews
Organization: Individual
E-mail: dustinandrewsoahu@gmail.com
Submitted on: 1/18/2012

Comments: