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KEALI'I S. LOPEZ
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TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Thursday, February 23, 2012
9 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 2767, S.D. 1 – RELATING TO INSURANCE.

TO THE HONORABLE DAVID Y. IGE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). Thank you for hearing this bill. The Department strongly supports this Administration bill, with two requested amendments.

The purpose of this bill is to update the Hawaii Insurance Guaranty Association Act and the Hawaii Life and Disability Insurance Guaranty Association Act by adopting the National Association of Insurance Commissioners' (“NAIC”) Property and Casualty Insurance Guaranty Association Model Act (April 2009) and the NAIC Life and Health Insurance Guaranty Association Model Act (July 2009), respectively.

The insurance guaranty association laws are contained in Article 16, Hawaii Revised Statutes (“HRS”) chapter 431: Part I pertains to property and casualty insurers and Part II pertains to life and health insurers.

When a Hawaii-licensed insurer is deemed insolvent, the insurance guaranty association provides a mechanism for the payment of covered claims or contractual obligations within certain statutory limits.

Current limits on covered claims for the Hawaii Insurance Guaranty Association (“HIGA”) are: (1) the full amount for benefits under a workers’ compensation insurance policy; (2) up to \$10,000 per policy for return of unearned premium; and (3) up to \$300,000 per claim for all other covered claims.

Current limits on covered claims for the Hawaii Life and Disability Insurance Guaranty Association (“HLDIGA”) are: (1) \$300,000 for life insurance coverage; (2) \$100,000 for accident and health or sickness coverage; and (3) \$100,000 for annuity coverage.

The insurance guaranty associations requested that the Insurance Division introduce this bill on their behalf.

For Part I, three sections are updated by: (1) adding three new definitions and revising the definitions of “covered claim” and “net direct written premium” in HRS § 431:16-105; (2) adding a new subsection (c) in HRS § 431:16-108 requiring suits brought by and against HIGA to be filed in Hawaii courts; and (3) clarifying exhaustion of coverage in HRS § 431:16-112(a).

For Part II, the most significant changes clarify limitations on covered claims in HRS § 431:16-203 as follows: (1) \$300,000 for long-term care coverage (currently \$100,000); (2) \$250,000 for annuity coverage and structured settlement annuity coverage (currently \$100,000); (3) \$300,000 for disability insurance coverage (currently \$100,000); and (4) \$500,000 for basic hospital medical surgical coverage (currently \$100,000). The cap on life insurance coverage remains the same.

The new limits and other revisions in Part II will not apply to any member insurer placed under an order of liquidation prior to July 1, 2012. The remaining changes in Part II are largely technical revisions designed to improve the operations of HLDIGA, eliminate coverage gaps by enabling consistent coverage across state lines, conform the statute to the technical ways that insolvencies are actually handled, and facilitate greater coordination among the various state guaranty associations.

The Department requests two amendments to the bill as follows:

1. Replace proposed language: “of competent jurisdiction:” in subsection (f) in section 7 on page 40, line 15, with the following language: “in this state:”. This language follows the Model Act and Department believes following a court order issued in this state, rather than an order issued outside of Hawaii, appropriate; and

2. Language in subsection (g) in section 10 on page 63, lines 4 to 13, not be deleted from HRS § 431:16-212. HRS § 431:16-212(g) requires HLDIGA to submit a report to the Commissioner which contains pertinent information regarding the history and causes of any insurer insolvency where HLDIGA paid covered claims. The Department believes this requirement is important and should not be removed.

This bill ensures that the insurance guaranty associations are able to fulfill their statutory purpose of protecting Hawaii policyholders and consumers.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

HAWAII INSURANCE GUARANTY ASSOCIATION

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TESTIMONY OF BLAKE OBATA

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

TESTIMONY ON SENATE BILL NO. 2767, SD1- RELATING TO INSURANCE

TO THE HONORABLE DAVID Y. IGE, CHAIR AND HONORABLE MICHELLE N.
KIDANI, VICE-CHAIR AND MEMBERS OF THE COMMITTEE:

SENATOR SUZANNE CHUN OAKLAND

SENATOR DONNA MERCADO KIM

SENATOR DONOVAN M. DELA CRUZ

SENATOR RONALD D. KOUCHI

SENATOR J. KALANI ENGLISH

SENATOR POHAI RYAN

SENATOR WILL ESPERO

SENATOR JILL N. TOKUDA

SENATOR CAROL FUKUNAGA

SENATOR GLENN WAKAI

SENATOR GILBERT KAHELE

SENATOR SAM SLOM

Hearing Date & Time

Thursday, February 23, 2012

9:00 AM

Conference Room 211

My name is Blake Obata, Executive Director of the Hawaii Insurance Guaranty Association (“HIGA”). HIGA supports SB 2767, SD1.

Introduction

In 1971, the Hawaii Legislature along with all states, except for New York, including the District of Columbia, Puerto Rico and the Virgin Islands, adopted the NAIC Post- Assessment Property & Liability Insurance Guaranty Association Model Act. This Act is now found in Part I of Article 16, Chapter 431 of the Hawaii Revised Statutes, and is known as the Hawaii Insurance Guaranty Association Act (“HIGA Act”).

Since its enactment, the “HIGA” has successfully and timely managed 38 insurance company insolvencies, in no small part guided by the “HIGA Act” which requires all stakeholders in the insolvency process to share and compromise in a finite and limited resource base afforded to parties dislocated by any given insolvency.

Purpose of Amendments

The “HIGA Act” was initially adopted in 1971, recodified in 1987, and variously modified in 2000, 2002, 2003 and 2004. The “HIGA” supports amendments in SB 2767, SD1 that updates mandates of the “HIGA Act” consistent with the 2009 NAIC Property & Casualty Insurance Guaranty Association Model Act. The referenced amendment further strengthens protections for policyholders and claimants of the insolvent carrier and reinforces/refines the consumer safety net under existing law.

Thank you for the opportunity to offer testimony in support of SB 2767, SD1.

HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

Subject: **Senate Bill 2767, SD1**

Hearing Date: February 23, 2012

WRITTEN TESTIMONY OF THE HAWAII LIFE AND DISABILITY INSURANCE
GUARANTY ASSOCIATION TO THE SENATE COMMITTEE ON WAYS AND MEANS.

The Honorable Sen. David Ige, Chair, and Members of the Senate Committee on Ways and
Means:

The Hawaii Life and Disability Insurance Guaranty Association is an entity created by the Hawaii Life and Disability Insurance Guaranty Association Act under Hawaii Revised Statutes 431:16 to carry out the purposes of the Act and protect consumers, subject to certain limitations, against failure in the performance of contractual obligations under specified life and accident and health insurance policies because of the financial insolvency of the member insurer that issued the policies or contracts.

The proposed amendments to the Hawaii Life and Disability Insurance Guaranty Association Act will provide substantial additional benefits to Hawaii insurance consumers and allow the Guaranty Association system to more effectively and efficiently meet its statutory mandate of protecting insurance consumers.

Each state has a life and health insurance Guaranty Association. When an insurance company that writes life or health insurance becomes insolvent, the Guaranty Association steps in to provide coverage up to certain limits. In general, each Guaranty Association protects the residents of its state. This system has been in existence for decades and has provided billions of

dollars to protect insurance consumers across the country when their insurance company has failed.

The Hawaii Life and Disability Insurance Guaranty Association was created in 1979. The guaranty association law was then re-codified in 1988. As insurance products and the economic situation in the country evolved over time, insurance regulators, the insurance industry and the consumer advocates recognized a need to update the Model Act on which the state based guaranty association system is based. Like the laws in other states, the Hawaii law needs updating.

The proposed revisions are all based on the latest updated version of the Life and Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners and will help ensure that Hawaii residents are protected by the Hawaii Guaranty Association when there is an insolvency. Some of the biggest benefits of the amendments are the increases in covered benefits available to Hawaii residents. Specifically, the following increases in coverage are proposed:

- Increasing Long Term Care Coverage from \$100,000 to \$300,000
- Increasing Annuity Coverage from \$100,000 to \$250,000
- Increasing Structured Settlement Annuity Coverage from \$100,000 to \$250,000
- Increasing Disability Insurance Coverage from \$100,000 to \$300,000
- Increasing Basic Hospital Medical Surgical Coverage from \$100,000 to \$500,000

The remaining changes are largely technical revisions designed to improve the operations of the Guaranty Association, eliminate potential coverage gaps by enabling consistent coverage across state lines, conform the statute to the technical ways that insolvencies are actually handled and facilitate greater coordination among individual state Guaranty Associations. This is important because most insurance insolvencies are multi-state in that they impact the residents of

numerous states. The Guaranty Associations coordinate to provide coverage and protect consumers. Consistency among the various state laws helps ensure that no consumers fall through the cracks and that coverage can be provided quickly and efficiently.

Accordingly, the Association supports the Committee's favorable consideration of S.B. 2767, SD1.

Respectfully Submitted:

Hiram Tanaka, Executive Director
Hawaii Life and Disability Insurance Guaranty Association
1132 Bishop St.; Suite 1590; Honolulu HI 96813

Testimony of
American Insurance Association
1015 K Street, Suite 200
Sacramento, California 95814 - 3803

TO: Senator David Y. Ige
Chair, Committee on Ways and Means
Via Email: WAMTestimony@Capitol.hawaii.gov

DATE: February 22, 2012

RE: **S.B. No. 2767 – Relating to Insurance**
Hearing Date: Thursday, February 23, 2012 at 9:00 a.m.
Conference Room 277

The American Insurance Association (AIA) submits the following comments, and respectfully requests that S.B. 2767 be amended to remove a provision that would adversely affect the usage of structured settlements in workers' compensation claims and impose substantial unanticipated costs.

AIA is the leading property-casualty insurance trade organization, representing approximately 300 insurers that write more than \$100 billion in premiums each year. AIA member companies offer all types of property - casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

S.B. 2767 amends the Hawaii Life and Health Guaranty Association law to make changes in accord with the National Association of Insurance Commissioners (NAIC) Model Act.

The Model Act, and the bill, includes a provision that would discourage the use of structured settlements in workers' compensation claims and impose unforeseen costs. Workers, employers and insurers should not be prevented from using a valuable settlement tool for claims.

The legislation as currently drafted provides the Life and Health Guaranty Association with a right to subrogation for any benefits provided by the guaranty association under a structured settlement annuity, following the insolvency of the annuity issuer. The right to subrogation provision contains an exception for "qualified assignments" under Section 130 of the Internal Revenue Code. A qualified assignment is one where the defendant and its insurer are released from the underlying claim and the obligation to make future payments is transferred to the annuity issuer.

The "qualified assignment" exception to the right of subrogation has worked to protect most structured settlements but would create potential problems for workers' compensation insurers entering structured settlement agreements. The bill's subrogation provision decreases the effectiveness of the use of structured settlements in workers' compensation as, in cases of

insolvency of the annuity issuer, the Guaranty Association would likely be able to collect from the employer or workers' compensation insurer all payments the Association made to the injured worker.

For a workers' compensation claim an employer or insurer has the option of continuing to pay statutorily prescribed benefits, rather than entering into a settlement. After entering into a structured workers' compensation settlement, if an employer or workers' compensation insurer must bear the risk that the insolvency of a structured settlement annuity issuer may expose it to Guaranty Association subrogation claims, employers and workers' compensation insurers will determine that it is not worthwhile to enter into a structured workers' compensation settlement. Employers, insurers, injured workers and the state would be deprived of a useful, cost-effective, tax-advantaged method of resolving workers' compensation claims.

Also, S.B. 2767 would allow the Guaranty Associations to apply the subrogation provisions against property and casualty insurers retrospectively. This would impose additional unforeseen costs.

We respectfully request that S.B. 2767, Sec. 7, Hawaii Revised Statutes Sec. 431:16-208 sub. div. (j)(3) remain as it is in current statute – that is, no amendments. The amendments provided in the bill should be removed, and the current statutory provision should remain as it is. Such an amendment would serve to preserve the use of structured settlements and avoid imposition of significant unforeseen expenses.

STEVEN SUCHIL

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