



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Monday, February 4, 2013
2:30 p.m.

TESTIMONY ON HOUSE BILL NO. 126 – RELATING TO VICTIM RESTITUTION.

TO THE HONORABLE ANGUS L.K. McKELVEY, 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”). The Department supports this bill, which proposes to expand the
definition of “victim” to include insurance companies for the purposes of criminal
restitution orders.

Insurance related crimes continue to affect every household in Hawaii and every
business through increased premiums. The intent of the bill expects to save Hawaii’s
consumers and businesses money on lower premiums. The Department continues to
support all efforts to reduce costs to Hawaii’s taxpayers.

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

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
**CRIME VICTIM COMPENSATION
COMMISSION**

1136 Union Plaza, Suite 600
Honolulu, Hawaii 96813
Telephone: 808 587-1143
FAX 808 587-1146

MARI MCCAIG
Chair

THOMAS T. WATTS
Commissioner

L. DEW KANESHIRO
Commissioner

PAMELA FERGUSON-BREY
Executive Director

TESTIMONY ON HOUSE BILL 126
RELATING TO VICTIM RESTITUTION

Pamela Ferguson-Brey, Executive Director
Crime Victim Compensation Commission

House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

Monday, February 4, 2013; 2:30 PM
State Capitol, Conference Room 325

Chair McKelvey, Vice Chair Kawakami, and Members of the House Committee on
Consumer Protection & Commerce:

Thank you for providing the Crime Victim Compensation Commission (“Commission”) with
the opportunity to testify before you today. The Commission strongly opposes the passage
of House Bill 126, Relating to Victim Restitution, which expands the definition of “victim”
to include insurance companies for purposes of criminal restitution orders.

The Commission was established in 1967 to mitigate the suffering and financial impact
experienced by victims of violent crime by providing compensation to pay un-reimbursed
crime-related expenses. Many victims of violent crime could not afford to pay their medical
bills, receive needed mental health or rehabilitative services, or bury a loved one if
compensation were not available.

In 2003, the Commission began a pilot project to distribute restitution payments collected
from inmates to their crime victims. Since the inception of the project, the Commission has
opened over 4,000 restitution files. Since 2003, the Commission has operated without

general funds. The Commission's special fund is funded in part by the collection of the compensation fee, inmates' wages and restitution.

RESTITUTION PAYMENTS TO CRIME VICTIMS WILL BE REDUCED

Including insurance companies into the definition of "victim" for purposes of restitution, will adversely affect direct crime victims. When restitution is ordered to multiple parties, restitution payment are divided proportionately between the victims. If a court orders \$100.00 in restitution to a direct crime victim and \$900.00 to an insurance company, the defendant's payment of \$50 will be distributed as follows: \$5 to the victim and \$45 to the insurance company. Since most medical insurance covers 70% to 80% of medical costs, a case involving medical insurance would mean that the insurance companies will be taking 70% to 80 % of any restitution payment. The crime victim will be dramatically affected by allowing insurance companies to collect restitution on equal footing with crime victims.

Crime victims are devastated emotionally and financially by the crimes. Many crime victims do not have the financial resources to financially recover from the crime without restitution or the aid of the Commission. Allowing insurance companies to dilute crime victims' ability to recoup their losses re-victimizes them.

INSURANCE COMPANIES DO NOT NEED TO BE "VICTIMS" TO COVER THEIR PAYMENTS

Crime victims pay their insurance premiums to get the coverage provided by medical, automobile, homeowner or any other type of insurance. In calculating those insurance premiums, the insurance companies take into account that people are victims of crime that will result in losses that the insurance companies will pay. Thus, the insurance companies have been paid for the crime related losses in the form of premiums. Unlike direct crime victims who can be financially devastated by the crime, insurance companies have already factored the losses into their business model. By allowing insurance companies to be "victims" for restitution, the insurance companies essentially receive a windfall.

ALLOWING INSURANCE COMPANIES TO BE "VICTIMS" JEOPARDIZES THE PROBATION FEE AND COMPENSATION FEE

The Commission and Adult Client Services rely in part upon the Crime Victim Compensation Fee and Probation Fee, respectively, to fund their programs. Both fees can be waived based upon the defendant's ability to pay. If insurance companies are allowed to be "victims" for purposes of restitution, the amount of restitution ordered will dramatically increase. Faced with large restitution amounts, the defendants in turn will ask the courts to waive all other fees and costs. Even if the court does not waive the fees and costs, the restitution must be paid first. Thus, programs such as the Commission and Adult Client Services which provide direct assistance to victims and defendants will receive its fees after insurance companies who have already factored the costs into their business models, receive their restitution. The direct crime victims will suffer as a result.

Thank you for providing the Commission with the opportunity to testify in opposition to House Bill 126. The Commission urges you not to modify the definition of victim for purposes of criminal restitution orders.

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair
Rep. Derrick S.K. Kawakami, Vice Chair

Monday, February 4, 2013
2:30 p.m.

HB 126

Chair McKelvey, Vice Chair Kawakami, and members of the Committee, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **supports** HB 126.

Section 706-646 of the Hawaii Revised Statutes empowers the sentencing court to order the criminal defendant to make restitution for reasonable and verified losses suffered by a "victim" of a crime when such restitution is requested by the "victim." Current law provides that the restitution ordered by the sentencing court shall be a dollar amount sufficient to reimburse the "victim" fully for the loss, including but not limited to (a) the full value of stolen or damaged property, as determined by replacement or repair costs; (b) medical expenses; and (c) funeral and burial expenses incurred as a result of the crime.

HB 126 seeks to broaden the definition of the term "victim" in subsection (1) of Section 706-646 by including an "insurance company" that has reimbursed the victim for losses arising as a result of the crime or that has paid for medical care provided to the victim as a result of the crime.

The Hawaii Insurers Council supports HB 126 because the elements of restitution allowed by the current law are frequently paid and actually incurred by insurance companies. For example, (a) the full value of stolen or damaged property is often paid by homeowners insurers, commercial property insurers, and auto insurers; (b) medical expenses are often paid by workers' compensation insurers, as well as auto insurers and liability insurers under medical payments provisions; and (c) funeral and burial expenses are sometimes paid by auto insurers.

Including an "insurance company" in the statutory definition of "victim" is therefore fair and reasonable.

Based on the foregoing, the Hawaii Insurers Council is in support of HB 126. Thank you for the opportunity to testify.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

February 4, 2013

House Bill 126 Relating to Victim Restitution

Chair McKelvey and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing , representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm proposes an amendment to the Hawaii restitution statute in order that insurers would be able to recover restitution. Presently, if an insurance company seeks recovery it has to obtain a civil order, incurring time and expense by filing a lawsuit to obtain a civil judgment before recovery is attempted.

In a recent criminal case, it was determined that one of the local body shops had a number of stolen motorcycles in its possession. Thirteen of those motorcycles were recovered and returned to State Farm, as they belonged to State Farm insureds. State Farm had paid \$103,703.80 in those related claims.

After adjusting for salvage (\$35,118), State Farm had a loss of \$68,585.80 (\$103,703.80 - \$35,118 = \$68,585.80).

The prosecutor obtained claim records from several insurance companies, including State Farm, as it prepared to take the body shop to trial. Among those records were the payments each insurer made to their respective policyholders. The defendants were convicted; however, State Farm learned that the statute does not allow for an insurer to recover under the restitution statute. Hence, this request that the statute is amended.

Thank you for the opportunity to present this testimony.