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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 127 – RELATING TO INSURANCE.

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 opposes this bill which proposes to amend Hawaii's Uniform Electronic Transactions Act ("UETA"), Chapter 489E, HRS to approve and codify specific practices for the insurance industry. The proposal contradicts the underlying principal of UETA, conflicts with certain provisions of the federal Electronic Signatures in Global and National Commerce ("ESIGN") law, 15 U.S.C. § 7001 et. seq., and impacts important consumer protections of the Insurance Code.

Section 4 of this bill amends § 489E-3(b)(3)(C), HRS so that the cancellation, termination, lapse, or material alterations of an insurance contract is subject to UETA. Insurance benefits, life settlement or viatical settlement agreement, or service contracts would continue to be exempt from UETA. The insurance contract exemption, as well as the other insurance exemptions, is found in the national model of UETA and its revocation represents a deviation from the national standard.

At the same time, Section 2 of this bill subjects all insurance and insurance policies to the new electronic transactions laws, notwithstanding any other provisions of the UETA chapter. Section 2 and Section 4 are confusing and not workable.

Federal ESIGN has a partial exemption for insurance. ESIGN does not apply to: "the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities)." 15 U.S.C. § 7003 (b)(2)(C). If Section 2 applies the new laws to all insurance and insurance contracts, then Hawaii risks the preemption of its UETA by federal ESIGN. 15 U.S.C § 7002.

This bill proposes to codify specific procedures that apply only to insurance. However, the single purpose of UETA is to provide a law of general applicability that facilitates the recognition of electronic transactions.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective—that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

See, The National Conference of Commissioners on Uniform State Laws website at: <http://uniformlaws.org/ActSummary.aspx?title=Electronic%20Transactions%20Act>.

UETA is not intended to adopt special rules for a particular business, the insurance industry. If that is the desired goal, amendment of the Insurance Code is the preferred means.

The proposal includes provisions that are not included in UETA or ESIGN and may be a significant erosion of consumer interests. Section 489E-__(b) definition of "delivered by electronic means" has no equivalent in UETA or ESIGN. The unique definition creates an entirely new means of providing notice by proposing to allow an insurer to provide notice by simply directing the consumer to a web-posting. The consumer would not receive the actual notice, but only a notice that they should look at another web-posting.

Subsection 489E-__ (d) substitutes an electronic message for all other delivery notices or evidence of notice that may be required by statute, including certified mail, certificate of mail, or certificate of mailing. There is no comparable provision in either UETA or ESIGN.

Finally, § 489E-__(l) proposes to recognize a recording of an oral communication as a record that the consumer has received the notice or the delivery of a document. This proposal is expressly prohibited by ESIGN:

(6) Oral communications

An oral communication or a recording of an oral communication **shall not qualify** as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

See, 15 U.S.C. § 7001(c)(6)(emphasis added). The bill's proposal risks preemption by ESIGN.

This bill will make wholesale changes on the way insurers communicate with consumers on most types of insurance. The Insurance Code, for the most part, is based on models that have nation-wide acceptance and application. Insurance, such as life insurance, medicare supplement, annuities, and long-term care, are transportable to other states and subject to their laws. Unilateral and wholesale changes to an important consumer protection feature are not recommended.

A partial list of affected provisions is:

Article 3A, Chapter 431

Notices related to the privacy of personal financial information;

Article 10, Chapter 431

Disclosure of healthcare coverage;

Application for insurance coverage;

Execution of policies;

Delivery of policies;

Notice of cancellation or non-renewal;

Assignment of policies

Article 10A, Chapter 431 Health Insurance

Cancellation non-renewal reinstatement of coverage

Notice of right to return the policy – free examination of policy

Article 10C, Chapter 431 Motorvehicle Insurance

Notice of replacement of insurance by a subsidiary or affiliate of insurer

Notice of cancellation or non-renewal

Disclosure of personal injury protection limits and payments

Article 10D, Chapter 431 Life Insurance and Annuities

Disclosure requirements of insurers and producers

Disclosure and reporting when replacing life insurance with a new policy

Article 10H, Chapter 431 Long Term Care Insurance

Disclosure of right to return policy free look at policy

Report of long term care benefits

Notice of unintentional lapse

Notice of lapse or termination for non-payment of premium

Standard format and outline of coverage

Chapter 431C, Life Settlements

Disclosures to Owners

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



Property Casualty Insurers
Association of America

Advocacy. Leadership. Results.

To: The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection & Commerce

From: Mark Sektnan, Vice President

Re: **HB 127 – Relating to Insurance**
PCI Position: Strongly Support

Date: Wednesday, January 30, 2013
2:00 p.m., Conference Room 325

Aloha Chair McKelvey and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) strongly supports HB 127, legislation allowing insurers, with the consent of their policyholders, electronically deliver policies and notices related to their insurance coverage. This legislation grants insurers the authority to respond to changing consumer preference for electronic communication over traditional mail services.

In today's day and age consumers and conducting more and more business online, everything from shopping to banking to paying bills. This applies to the business of insurance as well, as policyholders are increasingly opting to receive policyholder documents from their insurer electronically via email. There are questions, however, about what insurers are allowed to electronically deliver to policyholders who consent to such delivery.

Generally speaking, the federal Electronic Signature in Global and National Commerce Act (ESIGN) and state Uniform Electronic Transactions Act (UETA) laws allow businesses and consumers to conduct such business online, so long as both parties consent and certain disclosure language is provided to the consumer. However, insurance is highly regulated and governed by laws with detailed specifications about when and how certain notices must be provided. There is a question as to whether or not insurers may electronically deliver all legally required documents to consumers who consent to receive those documents electronically, starting with, for example, insurance identification cards.

HB 127 definitely resolves this question by affirmatively stating insurers may electronically delivery any and all documents that a policyholder has affirmatively consented to receive in an electronic format. Under this legislation, policyholders who wish to receive all communication from their insurer electronically may elect to do so while those who do not will continue to receive physical copies. This legislation is a win-win for both insurers and consumers.

For all of the foregoing reasons, PCI asks the committee to pass this bill.



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

Wednesday, January 30, 2013
2:00 p.m.

HB 127

Chair McKelvey, Vice Chair Kawakami, and members of the Committee, my name is Alison Powers, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is 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.

Hawaii Insurers Council presents comments on this bill. We support the concept of electronic documents and are currently working with the author of the bill and hope to achieve agreed upon language.

Thank you for this opportunity to testify.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

January 30, 2013

House Bill 127 Relating to Insurance

Chair McKelvey and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm supports the House Bill 127 Relating to Insurance.

Hawaii, Idaho, Nevada, and Oregon have all adopted the model Uniform Electronic Transaction Act (UETA), but as noted, those laws include provisions that would subordinate the UETA to other laws that require specific (non-electronic) forms of communication or delivery of documents. This bill is intended to overcome that aspect of the more general UETA, as to specific insurance related laws.

The bill allows the use of electronic notices and documents in lieu of current requirements for the sending of insurance notices and documents. In order to send electronic notices and documents to another party the insurer must obtain the consent of the other party as provided in this bill and as otherwise currently provided under state and federal laws. The bill also provides for the withdrawal of consent by the other party to receive notices or documents by electronic means.

Increasingly, consumers are showing preferences for electronic access to their records in lieu of receiving paper mailings. While many state insurance laws require certain information or documents to be provided to an insured or other party “in writing,” two existing laws confer on electronic records and signatures the same status as paper records and ink signatures, so long as a consumer voluntarily “opts in” to the electronic transaction: the federal Electronic Signatures in Global and National Commerce Act (ESIGN, 15 USC §7001), passed in 2000, and the model Uniform Electronic Transactions Act (UETA). Forty seven states, including Hawaii, have passed laws of similar effect.

ESIGN and UETA both include four basic pillars:

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- If a law requires a record to be in writing, an electronic record satisfies the law.
- If a law requires a signature, an electronic signature satisfies the law. UETA §7, ESIGN §7001(a).

Both ESIGN and UETA broadly apply to electronic records and electronic signatures related to transactions, and ESIGN specifically states that its provisions apply to insurance, providing that “it is the specific intent of Congress that this title [I] [the general rule of validity]

and title II [provisions relating to transferable records] apply to the business of insurance.”
ESIGN §7001(i).

While ESIGN and UETA allow electronic delivery for most documents required to be delivered to insurance consumers by law or regulations, UETA includes a provision that has had a chilling effect on electronic delivery if a state law or regulation specifically requires an alternative method of delivery (“If a law other than this [Act] requires a record... (ii) to be sent, communicated or transmitted by a specific method, ...the record must be sent, communicated or transmitted by the method specified in the other law.” UETA 8(b)(2)). Certain state laws or regulations related to insurance specify written notice which were authored before the advent of electronic communications, and therefore, the obstacles to electronic delivery that they create may be unintentional.

For reasons outlined above, recognizing that many Hawaii residents would prefer to conduct business using electronic communications and should have the opportunity to “opt in” to that means of communications with their insurers, we would appreciate your favorable consideration of HouseBill 127.

Thank you for the opportunity to present this testimony.