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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Wednesday, March 27, 2013  
4 p.m.

**TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 112 AND HOUSE  
RESOLUTION NO. 83 – REQUESTING THE INSURANCE COMMISSIONER TO  
CONVENE A WORKING GROUP TO EXPLORE THE USE OF ELECTRONIC  
NOTICES AND DOCUMENTS FOR INSURANCE NOTICES AND DOCUMENTS.**

TO THE HONORABLE ANGUS 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 purpose of these resolutions is to convene a working group that will report its  
findings and recommendations, including any proposed legislation, for the use of  
electronic transmission of insurance notices and documents. These resolutions are  
similar to HCR 137 and HR 107.

The Department is willing to convene this working group. The Department notes  
that the working group's findings and proposed resolutions relating to electronic notices  
and documents will need to consider, among other things, the practices adopted by the  
National Association of Insurance Commissioners and the Compact that was  
established by Article 30, HRS chapter 431. Over the past several years, industry and

regulators have sought uniformity in insurance contracts and the working group should endeavor to support this goal.

The effectiveness of a study of increased liability coverage may be limited if no financial resources are provided to retain the services of an actuary. Estimated costs of proposed insurance increases may require an actuary to quantify.

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

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

March 27, 2013

HCR 112/ HR 83 Requesting the Insurance Commissioner to Convene a Working Group to  
Explore the Use of Electronic Notices and Documents for Insurance Notices and Documents

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 HCR 112 and HR 83.

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 resolution requests the formation of a working group to overcome that aspect of the more general UETA, as to specific insurance related laws.

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 House Concurrent Resolution 112 and House Resolution 83.

Thank you for the opportunity to present this testimony.