

SB 496

Testimony

Measure Title: RELATING TO INSURANCE.

Report Title: Uniform Electronic Transactions Act; Insurance and Insurance Policies; Electronic Notices and Documents

Description: Permits insurers to send electronic notices and documents relating to insurance and insurance policies. Requires an insurer to obtain the consent of a party prior to sending the party electronic notices and documents. Permits a party to withdraw consent for electronic notices and documents.

Companion:

Package: None

Current Referral: TEC, CPN

Introducer(s): BAKER, CHUN OAKLAND, ENGLISH, ESPERO, IHARA, Galuteria, Ige, Nishihara, Solomon, L. Thielen, Wakai

From: mailinglist@capitol.hawaii.gov
To: [TECTestimony](#)
Cc: garibaldi@hawaiiinsurerscouncil.org
Subject: Submitted testimony for SB496 on Jan 31, 2013 13:15PM
Date: Tuesday, January 29, 2013 11:42:03 AM
Attachments: [SB496 Testimony.doc](#)

SB496

Submitted on: 1/29/2013

Testimony for TEC on Jan 31, 2013 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Alison Powers	Hawaii Insurers Council	Support	Yes

Comments:

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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS
Senator Glenn Wakai, Chair
Senator Clarence K. Nishihara, Vice Chair

Thursday, January 31, 2013
1:15 p.m.

SB 496

Chair Wakai, Vice Chair Nishihara, 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.

From: mailinglist@capitol.hawaii.gov
To: [TECTestimony](#)
Cc: aty@awlaw.com
Subject: Submitted testimony for SB496 on Jan 31, 2013 13:15PM
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SB496

Submitted on: 1/29/2013

Testimony for TEC on Jan 31, 2013 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Rick Tsujimura	State Farm	Support	Yes

Comments:

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**SENATE COMMITTEE ON
TECHNOLOGY AND THE ARTS**

January 31, 2013

Senate Bill 496 Relating to Insurance

Chair Wakai and members of the Senate Committee on Technology and the Arts, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm supports the Senate Bill 496 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 Senate Bill 496.

Thank you for the opportunity to present this testimony.

From: mailinglist@capitol.hawaii.gov
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Cc: lynda.e.tobita@hawaii.gov
Subject: Submitted testimony for SB496 on Jan 31, 2013 13:15PM
Date: Tuesday, January 29, 2013 2:22:51 PM
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SB496

Submitted on: 1/29/2013

Testimony for TEC on Jan 31, 2013 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Kent	Commission to Promote Uniform Legislation	Oppose	Yes

Comments:

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**TESTIMONY OF THE
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**on S.B. NO. 496
RELATING TO INSURANCE.**

BEFORE THE SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS

DATE: Thursday, January 31, 2013, at 1:15 p.m.

LOCATION: Conference Room 414, State Capitol

PERSON(S) TESTIFYING: ELIZABETH KENT

Commission to Promote Uniform Legislation

Chair Wakai and Members of the Committee:

My name is Elizabeth Kent and I am one of Hawaii's Uniform Law Commissioners. The Uniform Law Commission (ULC) opposes this bill for several reasons.

This bill, if enacted would change the law to permit insurance companies to deliver notices electronically to their customers. Currently, chapter 489E of the Hawaii Revised Statutes, the Uniform Electronic Transactions Act (UETA), specifically excludes contracts of insurance from its scope.

One of the purposes of uniformity between the states is to promote commerce between the states. Forty-seven states, the District of Columbia and the US Virgin Islands have enacted UETA, which specifically excludes contracts of insurance from its scope. This alone underscores the dramatic change that enactment of S.B. No. 496 would bring about. Insurance laws and rights are very complicated and difficult for many members of the public to understand; it is not a far step to imagine the disruption and confusion for insurance owners who move from state to state.

For these reasons, and more, I respectfully request that the Committee hold this bill.

From: mailinglist@capitol.hawaii.gov
To: [TECTestimony](#)
Cc: toyofuku@hiadvocates.com
Subject: Submitted testimony for SB496 on Jan 31, 2013 13:15PM
Date: Wednesday, January 30, 2013 12:50:04 PM
Attachments: [SB 496 Electronic Insurance Document Transmission OPPOSE TEC.doc](#)

SB496

Submitted on: 1/30/2013

Testimony for TEC on Jan 31, 2013 13:15PM in Conference Room 414

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Toyofuku	Hawaii Association for Justice	Oppose	Yes

Comments:

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 496**

DATE: Thursday, January 31, 2013

TIME: 1:15 pm

To: Chairman Glenn Wakai and Members of the Senate Committee on Technology and
the Arts:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 496, Relating to
Insurance.

The purpose of this measure is to permit electronic transmission of insurance
documents to consumers in lieu of other (sometimes statutorily mandated) forms of
delivery. Electronic transmission of documents between businesses is common today and
will become more commonplace in consumer transactions in the future. At the present,
however, there are practical issues in the consumer context that require resolution before
elimination of other delivery methods currently required or used for important insurance
documents.

In the consumer context, there is an increasing use of electronic means for the
transmission of documents. Consumers routinely shop on the internet, receive monthly
billings and send photos to friends. Documents sent as part of internet sales transactions
are received at or soon after the transaction. Monthly statements come at regularly
scheduled times so consumers are expecting them, recognize them and realize if they
have missed them. Most other documents have minor consequences if overlooked, such
as a late fee or interest.

Overlooking insurance documents can have catastrophic consequences. It can mean the complete loss of coverage and personal disaster if one loses health insurance and suffers a terminal injury, dies without life insurance leaving a spouse and young children, or one causes an accident is sued and then discovers there is no coverage. Why is this different from getting your MasterCard billing by email? Because consumers expect to receive their MasterCard billing monthly they are alert to its receipt, spot it easily amongst the spam and other email they receive, and because they are expecting it are more likely to realize they have overlooked it. If they miss it, the penalty is relatively inconsequential compared to losing insurance coverage.

With the proliferation of spam there are several dangers. First, it can be very difficult for consumers to distinguish “real” email from spam. Second, if they are not expecting an insurance notice or document (most notices are not expected) they are likely to overlook it or pass it temporarily for viewing later at a more convenient time. Third, once businesses have your email, they tend to barrage you with an assortment of messages thereby creating the expectation of unimportant messages and solicitations. Fourth, many people are using spam filter programs to keep spam from appearing on their screens. Email from insurance companies can easily be considered spam by such programs and blocked from normal viewing.

With the growing sophistication of spyware, malware and other infectious programs, many people routinely change email addresses to escape those programs. There is no automatic forwarding of email as there is for postal mail forwarding for residence address changes. Consumers must notify others of their new email addresses.

It is easy to overlook an insurance company especially where email communications are irregular.

Some people use email sparingly and do not check their email regularly. These people may not see notices in time when short deadlines are involved. Others, particularly those who use the same email address for both business and personal email can get a very high volume of email daily. Because sending email is free and regular mail involves the cost of paper, printing and postage, people tend to get much less regular mail so important mail (like insurance notices) are less likely to be overlooked. It is very easy to miss email that looks like spam when it is buried in dozens of other similar appearing emails.

There are no standards for insurance email covering such important things as the name of the sender and subject of the email. For example, will the email sender be shown as XYZ Insurance Company or Customer Services or Mr. John Doe, Vice President? Will it come from XYZ agency or the name of an agent (whose name may or may not be familiar)? Will the subject line convey the seriousness of the matter or appear benign to the consumer?

There are no protections for consumers who do not actually receive notices or to address the many situations discussed above. Consumer protections for these types of practical issues should be resolved before abandoning the protections currently afforded by mail delivery, especially for certified or registered mail.

For these reasons, HAJ opposes this measure and asks that this bill be held.

Thank you for the opportunity to testify on this measure. Please feel free to contact me should there be any questions.