

wakai1 - Danille

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Cc: alelievr@dcca.hawaii.gov
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SB496

Submitted on: 1/31/2013

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

Submitted By	Organization	Testifier Position	Present at Hearing
Ann Le Lievre	DCCA	Oppose	No

Comments: Testimony for today's 1:15 pm hearing.

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LATE

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 SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

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

TESTIMONY ON SENATE BILL NO. 496 – RELATING TO INSURANCE.

TO THE HONORABLE GLENN WAKAI, 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 ESUGN. 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.