



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2539, H.D. 1, RELATING TO INSURANCE.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Wednesday, February 17, 2016                      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Bryan Yee, Supervising Deputy Attorney General  
Daniel K. Jacob, Deputy Attorney General

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Chair McKelvey and Members of the Committee:

The Department of the Attorney General provides comments regarding legal concerns that this bill might be preempted by the federal Employee Retirement Income Security Act (ERISA).

The purpose of this bill is to authorize employers to establish health savings accounts in conjunction with group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and Health Maintenance Organization plans.

We believe this bill might be subject to an ERISA preemption challenge. ERISA is a comprehensive federal legislative scheme that regulates the administration of private employee benefit and pension plans and establishes standards relating to the administration of these plans. In enacting ERISA, Congress included a sweeping preemption provision that provides in relevant part, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C.A. § 1144(a).<sup>1</sup> This bill relates to an employee benefit

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<sup>1</sup> The subsection, in full, provides as follows:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

plan because it mandates that, when an employer offers health care coverage with a health savings account, on the election of the employee, the employer shall administer the plan in specific manners, including but not limited to: requiring employers to contribute annual amounts, providing declarations of understanding from the insurer to the employees, and immediately removing any employees and dependents from the program if the employer knows the program is not in compliance with the law. Accordingly, this bill's attempt to regulate employer provided benefit plans likely subjects it to ERISA's preemption.

Although exemptions from ERISA's expansive preemption exist, we cannot conclude that this bill falls within any of them. Of these exemptions, the insurance savings clause is most noteworthy for the purpose of this discussion. The insurance savings clause found within ERISA permits states to regulate the business of insurance, regardless of its direct or indirect effect on employer benefit plans. 29 U.S.C. § 1144(b)(2)(A). In order to be deemed a law that regulates insurance and be saved from preemption, the law "must satisfy two requirements. First, the state law must be specifically directed toward entities engaged in insurance. Second, the state law must substantially affect the risk pooling arrangement between the insurer and the insured." *Kentucky Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329, 342 (2003). The proposals in this bill, although embedded in the insurance code, are not specifically directed towards entities engaged in insurance. As discussed above, this bill, in multiple sections, mandates that an employer administer an employee benefit plan in specific manners. Accordingly, this bill is not specifically directed at entities engaged in insurance and fails the first requirement. Therefore, it may not be saved from ERISA preemption under the insurance savings clause.

Additionally, although Hawaii's Prepaid Health Care Act (PHCA) relates to an employee benefit plan, it is not preempted because Congress amended ERISA to exempt Hawaii's PHCA from preemption. The exemption, however, is narrow and applies only to the PHCA as it existed on September 2, 1974, and not to amendments to the PHCA "to the extent it provides for more than the effective administration" of the PHCA. 29 U.S.C.A. § 1144(b)(5)(B)(ii).<sup>2</sup> This bill may

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<sup>2</sup> 29 U.S.C.A. § 1144(b)(5)(B)(ii) provides as follows:

Nothing in subparagraph (A) shall be construed to exempt from subsection (a) of this section -

fall outside of that exemption because it creates an alternative to comply with Hawaii's PHCA, and, therefore, appears to provide for more than the effective administration of the PHCA.

For the foregoing reasons we respectfully request that, in its current form, this bill be held.

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(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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CATHERINE P. AWAKUNI COLÓN  
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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016

Wednesday, February 17, 2016  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2539, H.D. 1 – RELATING TO INSURANCE.**

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”).

The purpose of this bill is to establish optional health savings account programs for employees who are part of, or will be part of, their respective employers’ group policies. The Department submits the following comments.

Currently, high deductible health insurance policies associated with tax-preferred savings accounts are available in the market. These accounts are not all the same and vary by their purposes and how they are set up but essentially operate in the same manner: by having monies in savings accounts available to policyholders to pay for their out-of-pocket health care costs.

The Department supports the intent of having employers offering their employees opportunities to choose health savings account programs as alternatives to being part of group policies. We understand that employees’ lifestyles may dictate better matches with health savings account programs rather than enrolling in group plans and the

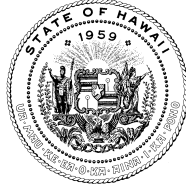
Department encourages policyholders becoming better familiarized with their healthcare needs and coverages.

We note that this bill requires employers contribute the entire annual amount to employees' health savings accounts prior to the first day of employees being covered and that unused funds in the accounts become the property of the respective employees at the end of the taxable year. Because of the fluidity of members in Hawai'i's workforce, situations may arise where employees' health savings accounts are filled at the beginning by employers only to see these same employees move on to other work opportunities before the year's conclusion. This potential situation, of employers not realizing the full value of their expended costs, may cause employers to rethink their offering of these health savings accounts to their employees.

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

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 17, 2016

To: The Honorable Angus L.K. McKelvey, Chair,  
The Honorable Justin H. Woodson, Vice Chair, and  
Members of the House Committee on Consumer Protection & Commerce

Date: Wednesday, February 17, 2016  
Time: 2:00 p.m.  
Place: Conference Room 325, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2539 HD 1 Relating to Insurance**

**I. OVERVIEW OF PROPOSED LEGISLATION**

This proposal permits employers to offer a high deductible health plan with a health savings account (HSA) in addition to group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and Health Maintenance Organization (HMO) plans. The proposal allows this option as long as the benefits provided in aggregate by the HSA program and the insurance coverage are equivalent and meet the requirements of chapter 393, Hawaii Revised Statutes (HRS)—Prepaid Health Care (PHC).

The department offers comments on this measure.

**II. CURRENT LAW**

Section 393-11, HRS, requires that an employer provide an eligible employee with health insurance by a PHC plan qualifying under section 393-7, HRS. The Prepaid Health Care Advisory Council reviews these plans and makes a recommendation to the Director of Labor and Industrial Relations for approval or disapproval.

**III. COMMENTS ON THE HOUSE BILL**

The department offers these comments concerning the proposal:

- The PHC (PHC) Act requires that all eligible employees are provided coverage by a PHC plan. The Act, however, does not require an employer to offer more than one approved plan to its employees. This measure requires an employer who offers a Health Savings Account (HSA) program to also offer a non-HSA plan, thereby adding a requirement to the PHC Act.
- As the PHC Act only requires an employer to offer one approved health plan, the department will be unable to demand that the employer offer a second, conventional, non-HSA PHC plan to cover employees who are ineligible for an HSA plan (e.g. Medicare enrollees, individuals claimed as a dependent on the prior year's taxes, individuals covered by another policy). If an employer drops its approved non-HSA plan, employees ineligible for an HSA plan will only be able to select the high deductible HSA program plan that would not be covered as an approved PHC plan.
- Allowing Employers to offer high deductible plans may adversely affect employees financially who select the currently approved PHC Act compliant plan. Under section 12-12-12, Hawaii Administrative Rules, an employer is only responsible for the cost of the least expensive plan. Any cost differential may be borne by the employee selecting the more expensive plan. As the cost of a high deductible plan is less than an approved PHC Act plan, the employee may be responsible for paying not only 1.5% of the employee's wage as permitted by current law, but also the difference in the cost of the two plans.
- The measure includes provisions that unused funds become the property of the HSA holder (employee) at the end of the year. Employer contributions to the HSA, however, are intended to be used by the employee to pay for qualified medical expenses. If the employee uses that money for non-medical purposes, the employee may face federal tax penalties (currently 20% and withdrawn money is taxable income) regardless of whether the funds are the property of the HSA holder.
- This bill may be subject to an ERISA challenge as it requires the employer to make contributions to the HSA.

**HB 2539 HD1  
RELATING TO INSURANCE**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 17, 2016**

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

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin (A&B) on HB 2539 HD1, “A BILL FOR AN ACT RELATING TO INSURANCE.” We support this bill.

The purpose of this bill is to facilitate the establishment of health savings account programs in Hawaii.

We understand that Health Savings Account Programs consist of high deductible health plans with a Health Savings Account approved pursuant to HRS Chapter 393. These programs generally allow employers and employees to fund a Health Savings Account to finance current or future out of pocket health costs. Contributions to Health Savings Accounts are tax advantaged, with all distributions from the account tax free. Funds are property of the employee as soon as the funds are placed into the Health Savings Account and any unused employer and/or employee funds remain in the account for the life of the enrolled employee.

We support this bill as we believe that it will provide an additional health insurance option for both employers and employees. The tax advantaged deposits and



expenditures from the Health Savings Account for medical expenses are envisioned to be an attractive benefit for employees. In addition, the personal control that one would have in expending funds from this account may also be a desirable alternative to other health plans.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.



**HB 2539 HD1  
RELATING TO INSURANCE**

**DR. CHARLES KELLEY  
CHAIR OF THE BOARD OF DIRECTORS  
OUTRIGGER ENTERPRISES, INC.**

February 17, 2016

Chair McKelvey and Members of the House of Representatives Committee on Consumer Protection & Commerce:

Aloha. I am Dr. Charles Kelley, submitting this testimony in strong support of HB 2539 HD1, which facilitates the establishment health savings accounts in Hawaii.

I testify as Chair of the Board of Directors of Outrigger Enterprises, Inc. Our locally founded, owned and operated hospitality company currently employs almost 2,200 hosts throughout Hawai'i and spends over \$20 million every year on medical, dental and vision benefits for them and their families. We are proud to offer our employees outstanding health care insurance coverage which substantially exceeds the minimum employer requirements under the Prepaid Health Care Act.

I also testify as a medical doctor who practiced internal and occupational medicine in Hawai'i for over a decade before joining Outrigger. I know firsthand from my practice that there is great diversity throughout Hawaii's workforce in health care needs, delivery and financial circumstance.

In both capacities I have long supported health savings accounts for the basic reason that I believe strongly Hawaii citizens including employees and their families should have greater options in how they save and pay for their health care needs to match the diversity in their own circumstances. I also believe strongly that better mechanisms are needed to assist Hawaii's workers to save in their working years to pay for health care needs in retirement that are not covered by Medicare or Medicaid.

As I talk with Outrigger's employees, I encounter many who, after twenty, thirty or more years of employment are clearly ready to retire. And I ask them: "Why don't you retire now if you're ready and enjoy your retirement years?" A common response to my question is: "I need to continue my medical insurance, which I cannot afford on my own."

What a shame. If those employees had been in an employer supported and subsidized HAS plan for even a portion of their working years, many of them would have built up an account balance large enough to pay for their health needs in retirement.

The employer-based insurance programs that we have today are a “use it or lose it” system. In other words, the employer pays the insurance premium and if the employee does not use those funds for health care costs, they “lose it” at the end of the year. Nothing accumulates.

On the other hand, an HSA combined with a High-Deductible Health Care Plan is a “use it if you need it, or save it if you don’t” plan. Individual tax-advantaged payroll deductions contributed to an HSA can accumulate over the years to provide a comfortable retirement nest egg. I believe employees should have this option if it works best for their own situations.

Our health care system is complicated and there are a lot of details to consider. The advantages of HSAs have proven themselves in other states and they will work here in Hawaii. They are not for every employee and we would like to offer our employees the choice of either one of the currently approved health care plans or a Health Savings Account combined with a High Deductible Health Care Plan. During our annual enrollment period we will educate our employees on the pros and cons of each type of plan and help them choose the option that makes the most sense for their personal situation. Both options offer the same protective coverage for catastrophic medical illness.

Health savings plans are not something new. They have been around for a long time elsewhere in our country, have proven advantageous for many employees, and, whether or not employees choose them, they like having the choice. Because they also encourage greater individual decision making toward preventive healthcare and treatment options, they offer a valuable contribution to our overall nationwide effort to control rising health care costs for employers and employees alike.

Let’s move forward and make them possible here in Hawai’i. At Outrigger we are dedicated to working with you, the administration and the community to fashion legislation that achieves that goal in a way that is fully consistent with the commitments we have made to each other under the Prepaid Health Care Act.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 17, 2016

The Honorable Angus L. K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
House Committee on Consumer Protection and Commerce

Re: HB 2539, HD1 – Relating to Insurance

Dear Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2539, HD1, which establishes health savings accounts in conjunction with health insurance plans. While HMSA supports the intent of this Bill, we have concerns with this draft and offer an amendment.

Health savings accounts (HSAs) are authorized under federal law and afford employees and their families, who also have a high-deductible health plan, a tax-advantaged medical savings account. The HSA is not subject to federal income tax at the time of deposit, and it is portable – unspent balances continue to accumulate over time and follow the employee, should the employee change jobs. The monies in an HSA only may be used for qualified medical expenses.

While HMSA is appreciative and supportive of the concept of an HSA, we are concerned that HB 2539, HD1, provides for the health plan to serve as the primary custodian or trustee of the HSA. We believe that responsibility more appropriately would lie with a financial institution that is more accustomed to managing trust accounts. Such an institution more readily and expeditiously could accommodate the trust account provisions of this legislation.

Additionally, we believe that the Department of Labor and Industrial Relations is the more appropriate and better positioned entity to certify an employer's compliance with the limitations of the HSA program

Attached herewith we respectfully offer for the Committee's consideration a proposed HB 2539, HD2 that addresses the concerns we raise.

Thank you for allowing us to testify on HB 2539, HD1. Your consideration of our concerns and our proposed amendment is appreciated.

Sincerely,

Jennifer Diesman  
Vice President, Government Relations

Attachment



February 17, 2016

The Honorable Angus L. K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair  
House Committee on Consumer Protection and Commerce

Re: HB 2539, HD1 – Relating to Insurance

Dear Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

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Health savings accounts (HSAs) are authorized under federal law and afford employees and their families, who also have a high-deductible health plan, a tax-advantaged medical savings account. The HSA is not subject to federal income tax at the time of deposit, and it is portable – unspent balances continue to accumulate over time and follow the employee, should the employee change jobs. The monies in an HSA only may be used for qualified medical expenses.

While HMSA is appreciative and supportive of the concept of an HSA, we are concerned that HB 2539, HD1, provides for the health plan to serve as the primary custodian or trustee of the HSA. We believe that responsibility more appropriately would lie with a financial institution that is more accustomed to managing trust accounts. Such an institution more readily and expeditiously could accommodate the trust account provisions of this legislation.

Additionally, we believe that the Department of Labor and Industrial Relations is the more appropriate and better positioned entity to certify an employer's compliance with the limitations of the HSA program

Attached herewith we respectfully offer for the Committee's consideration a proposed HB 2539, HD2 that addresses the concerns we raise.

Thank you for allowing us to testify on HB 2539, HD1. Your consideration of our concerns and our proposed amendment is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "JDiesman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jennifer Diesman  
Vice President, Government Relations

Attachment

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to facilitate the  
2 establishment of health savings accounts in Hawaii and allow the  
3 labor force to receive contributions to health savings  
4 accounts. The intent is that contributions to health savings  
5 accounts be used to pay or reimburse qualifying medical expenses,  
6 and that the contributions receive favorable tax treatment by  
7 allowing the contributions to be accumulated over the years or  
8 distributed on a tax-free basis.

9 SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended  
10 by adding a new section to article 10A to be appropriately  
11 designated and to read as follows:

12 "§431:10A- Health savings account program; limitations;  
13 definitions. (a) Each group accident and health or sickness  
14 insurance policy issued or renewed in this State after July 1,  
15 2016, may include an option for a group health savings program.

16 (b) An employer subject to chapter 393 may offer a health  
17 savings account program to employees in addition to the group  
18 accident and health or sickness insurance policy provided by an

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1 insurer. An employer offering a health savings account program is  
2 subject to the limitations in this subsection. The employer shall:

3 (1) Provide the program to employees only as an alternative  
4 option to a group accident and health or sickness  
5 insurance policy, in which both the program and the group  
6 accident and health or sickness insurance policy provide  
7 aggregate benefits that are determined pursuant to  
8 chapter 393 to be equivalent and meet section 393-7(a) or  
9 (b);

10 (2) Make an annual employer contribution to the health  
11 savings account of an employee enrolled in the program  
12 and upon enrollment of a new employee that enrolls in the  
13 program;

14 (3) Make an employer contribution of an amount equal to or  
15 greater than eighty per cent of the annual deductible of  
16 a high deductible health plan for self-only coverage and  
17 equal to or greater than eighty per cent of the annual  
18 deductible of a high deductible health plan for family  
19 coverage, with the total annual employer contribution not  
20 to exceed the maximum contribution amount pursuant to  
21 section 223 of the Internal Revenue Code of 1986;

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- 1        (4) Contribute the annual amount to the employee's health  
2            savings account prior to the first day the employee is  
3            covered by the program;
- 4        (5) Increase the contribution amount to an employee's health  
5            savings account if an employee's status changes from self  
6            only coverage to family coverage during program;
- 7        (6) Cooperate with the insurer Department of Labor and  
8            Industrial Relations as to proof of compliance with the  
9            limitations for offering a health savings account program  
10           to employees;
- 11       (7) Provide the declaration of understanding from the insurer  
12           with the program application;
- 13       (8) Provide the certification obtained from the insurer  
14           Department of Labor and Industrial Relations as to the  
15           employer's compliance with the limitations of the program  
16           to the insurer; and
- 17       (9) Immediately remove any employee and dependents, if any,  
18           from the program and place the employee and dependents,  
19           if any, in the group accident and health or sickness  
20           insurance policy if the employer knows the program is not  
21           in compliance with this section, by notifying the insurer  
22           immediately.



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1        (c) Every insurer that offers, sells, or renews a group  
2 accident and health or sickness insurance policy with an option for  
3 a health savings account program shall:

4        (1) Include the employer limitations in this section in any  
5 policy, contract, certificate, or agreement, regardless  
6 of form; and

7        (2) Encourage informed decisions by providing employers a  
8 one-page, double-sided declaration of understanding, to  
9 be included with any program application, that explains  
10 in plain and simple language certain terms of the  
11 program, including covered services, applicable  
12 deductibles, claims processing, and the effective use of  
13 the program for favorable tax treatment.

14 ~~(3) Retain the employer's certification as to compliance with~~  
15 ~~the limitations of the program for five years; and~~

16 ~~(4) Submit to the insurance commissioner, no later than June~~  
17 ~~30 of each calendar year, a state-wide basis report in~~  
18 ~~such form and detail as the insurance commissioner shall~~  
19 ~~prescribe, on the preceding calendar year stating the~~  
20 ~~participation rate, the total dollars contributed by~~  
21 ~~employers, the total dollars contributed by employees,~~

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1 and the disbursement of the deposits as a percentage of  
2 the deposits in the health savings accounts.

3 (d) Unused funds in a health savings account shall become the  
4 property of the health savings account holder at the end of a  
5 taxable year.

6 (e) Notwithstanding any provision of law to the contrary, the  
7 rights of an employee or dependent, if any, of a health savings  
8 account to hold or to receive moneys paid into or out of, the  
9 assets of, and the income of the health savings account:

10 (1) Shall be exempt from creditor process;

11 (2) Shall not be liable to attachment, garnishment, or other  
12 process; and

13 (3) Shall not be seized, taken, appropriated, or applied by  
14 any legal or equitable process or operation of law to pay  
15 any debt or liability of the employee or beneficiary of  
16 the account.

17 (f) If this section or any provision of this section  
18 conflicts at any time with any federal law, then the federal law  
19 shall prevail and this section or the relevant provisions of this  
20 section shall become ineffective and invalid. The ineffectiveness  
21 or invalidity of this section or any of its provisions shall not  
22 affect any other provisions or applications of this section, which

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1 shall be given effect without the invalid provision or application,  
2 and to this end, the provisions of this section are severable.

3 (g) As used in this section, unless the context clearly  
4 requires otherwise:

5 "Family coverage" shall have the same meaning as defined in  
6 section 223 of the Internal Revenue Code of 1986.

7 "Health savings account" means a health savings account  
8 authorized under section 223 of the Internal Revenue Code of 1986.

9 "Health savings account program" or "program" means a high  
10 deductible health plan with a health savings account that has been  
11 approved pursuant to chapter 393 to be offered, sold, or renewed  
12 with an employer-sponsored plan to an employer subject to chapter  
13 393.

14 "High deductible health plan" shall have the same meaning as  
15 defined in section 223 of the Internal Revenue Code of 1986.

16 "Self only coverage" means coverage only for the employee and  
17 not for dependents."

18 SECTION 3. Chapter 432, Hawaii Revised Statutes, is amended  
19 by adding a new section to article 1 to be appropriately designated  
20 and to read as follows:

21 "§432:1- Health savings account program; limitations;

22 definitions. (a) Each group hospital and medical service plan

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1 contract issued or renewed in this State after July 1, 2016, may  
2 include an option for a group health savings program.

3 (b) An employer subject to chapter 393 may offer a health  
4 savings account program to employees in addition to the group  
5 hospital and medical service plan contract provided by a mutual  
6 benefit society. An employer offering a health savings account  
7 program is subject to the limitations in this subsection. The  
8 employer shall:

9 (1) Provide the program to employees only as an alternative  
10 option to a group hospital and medical service plan  
11 contract, in which both the program and the group  
12 hospital and medical service plan contract provide  
13 aggregate benefits that are determined pursuant to  
14 chapter 393 to be equivalent and meet section 393-7(a) or  
15 (b);

16 (2) Make an annual employer contribution to the health  
17 savings account of an employee enrolled in the program  
18 and upon enrollment of a new employee that enrolls in the  
19 program;

20 (3) Make an employer contribution of an amount equal to or  
21 greater than eighty per cent of the annual deductible of  
22 a high deductible health plan for self-only coverage and

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- 1           equal to or greater than eighty per cent of the annual  
2           deductible of a high deductible health plan for family  
3           coverage, with the total annual employer contribution not  
4           to exceed the maximum contribution amount pursuant to  
5           section 223 of the Internal Revenue Code of 1986;
- 6           (4) Contribute the annual amount to the employee's health  
7           savings account prior to the first day the employee is  
8           covered by the program;
- 9           (5) Increase the contribution amount to an employee's health  
10           savings account if an employee's status changes from self  
11           only coverage to family coverage during program;
- 12           (6) Cooperate with the ~~mutual benefit society~~ Department of  
13           Labor and Industrial Relations as to proof of compliance  
14           with the limitations for offering a health savings  
15           account program to employees;
- 16           (7) Provide the declaration of understanding from the mutual  
17           benefit society with the program application;
- 18           (8) Provide the one-page, double-sided declaration of  
19           understanding from the mutual benefit society with the  
20           program application;
- 21           (9) Provide the certification obtained from the ~~mutual~~  
22           ~~benefit society~~ Department of Labor and Industrial

# H.B. NO.

1           Relations as to the employer's compliance with the  
2           limitations of the program to the mutual benefit society;  
3           and

4           (10) Immediately remove any employee and dependents, if any,  
5           from the program and place the employee and dependents,  
6           if any, in the group hospital and medical service plan  
7           contract if the employer knows the program is not in  
8           compliance with this section, by notifying the mutual  
9           benefit society immediately.

10           (c) Every mutual benefit society that offers, sells, or  
11 renews a group hospital and medical service plan contract with an  
12 option for a health savings account program shall:

13           (1) Include the employer limitations in this section in any  
14           policy, contract, certificate, or agreement, regardless  
15           of form; and

16           (2) Encourage informed decisions by providing employers a  
17           one-page, double-sided declaration of understanding, to  
18           be included with any program application, that explains  
19           in plain and simple language certain terms of the  
20           program, including covered services, applicable  
21           deductibles, claims processing, and the effective use of  
22           the program for favorable tax treatment.

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1 ~~—— (3) Retain the employer's certification as to compliance with~~  
2 ~~the limitations of the program for five years; and~~  
3 ~~—— (4) Submit to the insurance commissioner, no later than~~  
4 ~~June 30 of each calendar year, a state-wide basis report~~  
5 ~~in such form and detail as the insurance commissioner~~  
6 ~~shall prescribe, on the preceding calendar year stating~~  
7 ~~the participation rate, the total dollars contributed by~~  
8 ~~employers, the total dollars contributed by employees and~~  
9 ~~the disbursement of the deposits as a percentage of the~~  
10 ~~deposits in the health savings accounts.~~

11 (d) Unused funds in a health savings account shall become the  
12 property of the health savings account holder at the end of a  
13 taxable year.

14 (e) Notwithstanding any provision of law to the contrary, the  
15 rights of an employee or dependent, if any, of a health savings  
16 account to hold or to receive moneys paid into or out of, the  
17 assets of, and the income of the health savings account:

18 (1) Shall be exempt from creditor process;

19 (2) Shall not be liable to attachment, garnishment, or other  
20 process; and

21 (3) Shall not be seized, taken, appropriated, or applied by  
22 any legal or equitable process or operation of law to pay

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1           any debt or liability of the employee or beneficiary of  
2           the account.

3           (f) If this section or any provision of this section  
4           conflicts at any time with any federal law, then the federal law  
5           shall prevail and this section or the relevant provisions of this  
6           section shall become ineffective and invalid. The ineffectiveness  
7           or invalidity of this section or any of its provisions shall not  
8           affect any other provisions or applications of this section, which  
9           shall be given effect without the invalid provision or application,  
10          and to this end, the provisions of this section are severable.

11          (g) As used in this section, unless the context clearly  
12          requires otherwise:

13          "Family coverage" shall have the same meaning as defined in  
14          section 223 of the Internal Revenue Code of 1986.

15          "Health savings account" means a health savings account  
16          authorized under section 223 of the Internal Revenue Code of 1986.

17          "Health savings account program" or "program" means a high  
18          deductible health plan with a health savings account that has been  
19          approved pursuant to chapter 393 to be offered, sold, or renewed  
20          with an employer-sponsored plan to an employer subject to chapter  
21          393.



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1       "High deductible health plan" shall have the same meaning as  
2 defined in section 223 of the Internal Revenue Code of 1986.

3       "Self only coverage" means coverage only for the employee and  
4 not for dependents."

5       SECTION 4. Section 432D-23, Hawaii Revised Statutes, is  
6 amended to read as follows:

7       "**§432D-23 Required provisions and benefits.**

8 Notwithstanding any provision of law to the contrary, each policy,  
9 contract, plan, or agreement issued in the State after January 1,  
10 1995, by health maintenance organizations pursuant to this chapter,  
11 shall include benefits provided in sections 431:10-212, 431:10A-  
12 115, 431:10A-115.5, 431:10A-116, 431:10A-116.2, 431:10A-116.5,  
13 431:10A-116.6, 431:10A-119, 431:10A-120, 431:10A-121, 431:10A-122,  
14 431:10A-125, 431:10A-126, 431:10A-132, 431:10A-133, [~~and~~] 431:10A-  
15 140, 431:10A-     , and chapter 431M."

16       SECTION 5. Statutory material to be repealed is bracketed and  
17 stricken. New statutory material is underscored.

18       SECTION 6. Notwithstanding section 432D-23, Hawaii Revised  
19 Statutes, the group health savings account program to be provided  
20 by a health maintenance organization under section 4 of this Act  
21 shall apply to all group policies, contracts, plans, or agreements

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1 issued or renewed in the state by a health maintenance organization  
2 after July 1, 2016.

3 SECTION 7. This Act shall take effect on July 1, 2070.

4

5

INTRODUCED BY: \_\_\_\_\_



**Wednesday February 17, 2016**

**2:00 PM.**

**Capitol Rm. 325**

To: HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Angus McKelvey, Chair  
Rep. Justin Woodson, Vice Chair

From: Hawaii Medical Association  
Dr. Scott McCaffrey, MD, President  
Dr. Linda Rasmussen, MD, Legislative Co-Chair  
Dr. Ronald Keinitz, MD, Legislative Co-Chair  
Dr. Christopher Flanders, DO, Executive Director  
Lauren Zirbel, Community and Government Relations

Re: HB 2539 – RELATING TO INSURANCE

## **IN SUPPORT**

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association strongly supports HB2539. As a longtime supporter of Health Savings Accounts, the HMA feels this is an important step in strengthening the patient-physician relationship and allowing patients to establish a measure of control in the level and costs of their care.

Although HSAs typically have a high deductible, the component of allowing a pre-tax savings account offsets this expense. Medical care is covered by insurance after the deductible is satisfied, many times at 100%. The deductible is paid from this account. The savings are accessed through a debit account which the patient controls. This establishes a sense of fiscal responsibility on the part of patients. This vested interest stimulates patients to seek out lower cost providers and treatment regimens, creating a degree of medical cost transparency. Guidelines are set as to the items/services for which the funds may be legally used.

Thank you for the opportunity to provide this testimony.

### **OFFICERS**

**PRESIDENT – D. SCOTT McCAFFREY, MD, PRESIDENT ELECT – BERNARD ROBINSON, MD**  
**IMMEDIATE PAST PRESIDENT – ROBERT SLOAN, MD, SECRETARY - THOMAS KOSASA, MD,**  
**TREASURER – MICHAEL CHAMPION, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO**

The Twenty-Eighth Legislature  
Regular Session of 2016

THE SENATE

Committee on Consumer Protection & Commerce

Rep. Angus L.K. McKelvey, Chair

Rep. Justin H. Woodson, Vice Chair

State Capitol, Conference Room 325

Wednesday, February 17, 2016; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2539, HD1  
RELATING TO INSURANCE**

The ILWU Local 142 **opposes** H.B. 2539, HD1, which authorizes the establishment of health savings accounts in conjunction with group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and health maintenance organization plans in the State.

As we understand this bill, H.B. 2539, proposes to allow high-deductible health plans to be offered by employers, along with health savings accounts (HSA). On the face of it, the proposal appears to offer employees with options—and possibly a means to save on the cost of health care and even reap greater financial benefits. While this proposal may work well for a healthy employee who is not likely to need physician, hospital, surgical or other catastrophic medical care, a “creaming” effect will take place, leaving the employee who is not so healthy and needs more medical care relegated to a health plan that will be more costly because of adverse selection.

The impact on the prevalent plan under the Prepaid Health Care Act is also a consideration. The concept of the prevalent plan is based on identifying the plan with the greatest number of enrolled individuals. If fewer people enroll in the plan with better benefits, the standard will be eroded and the prevalent plan will be one with lesser benefits.

Furthermore, while high-deductible plans mean lower premiums, the unintended consequence is that fewer people will access health care services, resulting in greater costs when a person is finally forced to seek treatment. What could have meant lower-costing treatment for a condition detected early may mean catastrophic costs for delayed treatment due to a high deductible.

The ILWU urges that H.B. 2539, HD1 be **HELD**. Thank you for the opportunity to share our views and concerns.