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**TO THE SENATE COMMITTEES ON
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS
AND
TRANSPORTATION AND ENERGY**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Thursday, February 8, 2018
10:15 a.m.

**TESTIMONY ON SENATE BILL NO. 2432, RELATING TO MOTOR VEHICLE
INSURANCE.**

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR, THE HONORABLE
LORRAINE R. INOUE, CHAIR, AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2432, Relating to Motor Vehicle Insurance. My name is Gordon Ito, and I am the Insurance Commissioner for the Department’s Insurance Division. The Department opposes this bill and submits the following comments.

This bill would change personal injury protection (“PIP”) benefits from mandatory coverage under the motor vehicle insurance law to optional coverage for active duty military personnel stationed in Hawaii, including the National Guard, Coast Guard, and military reserve units. These military designees would either purchase or reject PIP coverage in writing. Once an insured opts out of PIP coverage, the insurer need not include another PIP offer with any renewal or replacement policy issued to that insured.

Hawaii Revised Statutes (“HRS”) sections 431:10C-301(a)(1) and 431:10C-304 require that every insurance policy covering a motor vehicle include PIP coverage for

accidental harm. Mandatory PIP coverage protects “[a]ny person, including the owner, operator, occupant, or user of the insured motor vehicle; [a]ny pedestrian (including a bicyclist);” and any moped user or operator who sustains “accidental harm as a result of the operation, maintenance, or use of the vehicle, [in] an amount equal to the [PIP] benefits as defined in section 431:10C-103.5(a) payable for expenses to that person as a result of the injury.” HRS section 431:10C-304(1).

Although insureds may not contract for less protection than the \$10,000 statutory minimum coverage, they may contract to obtain higher PIP limits and additional coverage to compensate the insured, the insured’s spouse, any dependents, or any occupants of the insured’s vehicle for damages not otherwise covered by PIP benefits. See HRS sections 431:10C-103.5(c) and 431:10C-302(a)(2). The insured may also obtain a reduced PIP premium rate by increasing the amount of his or her deductible. See HRS section 431:10C-302(a)(7).

The flexibility of coverage and payment options to help insureds secure and maintain mandatory PIP coverage attests to its important public policy of curtailing cost to individuals by spreading risk over a large pool.

Motor vehicle and PIP coverage typically provides broader coverage than health insurance, including protection for third parties.

The Department opposes this bill, as third parties may be left unprotected and would destabilize the no-fault rate structure by allowing one large group of Hawaii motorists to shed the PIP mandate at the expense of other Hawaii motorists.

Thank you for the opportunity to testify on this measure.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER ALASKA & HAWAII
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Senate Committee on Public Safety, Intergovernmental and Military Affairs
Senate Committee on Transportation and Energy
Room 225 State Capitol
Thursday, February 8, 2018 10:15 am

HB 1620 - RELATING TO Motor Vehicle Insurance.

Chair Nishihara, Chair Inouye and Members of the Committees:

My name is Timothy M. Dayton, General Manager of GEICO's Hawaii branch. GEICO is Hawaii's largest auto insurer. **GEICO opposes Senate Bill Number 2432.** The intent of SB2432 is good but the change would cause a number of problems and is unclear on how several important aspects of the current No Fault Law would work if this legislation becomes law. The first concern is conceptual. Hawaii's partial No Fault Law provides 1st party medical benefits of up to \$10,000 per person and correspondingly restricts tort recovery to allow recovery only for injuries that are serious (**§431:10C-306 Abolition of tort liability**). The partial No Fault Law has served Hawaii consumers well in balancing rights and benefits vs. the cost of motor vehicle insurance. The separate premium charge for PIP benefits is small and more than offset by the lower premiums charged for Bodily Injury Liability and Uninsured Motorists Coverages as a result of the partial abolition of tort liability. Currently, Hawaii has the 25th highest average auto insurance premium of the fifty states.

Further, GEICO has specific concerns with numerous issues which are not addressed.

Answers to the following questions are not clear in the Bill:

- What happens to an occupant of a vehicle that has rejected PIP if the injured person does not have access to military benefits or their own PIP?
- What happens to a pedestrian struck by a vehicle that has rejected PIP if the injured person does not have access to military benefits or their own PIP?
- What happens to a resident relative of the insured who rejects PIP if said relative is injured but is not a dependent and therefore ineligible for military benefits?
- What will happen to a non-PIP policy when the policyholder separates from military service?
- What if any requirements are there for the insurer to verify military service when issuing a non-PIP policy? Is the insurer or agent exempt from any liability or responsibility for incorrect or false information provided to obtain such a policy?
- Does the Bill convey a responsibility on the insurer to maintain the signed rejection for the life of the policy?
- **H.R.S. (§431:10C-306 (4))** enumerates eligibility for tort recovery based on medical services received of at least \$5,000; the H.R.S. (current and proposed) does not address how free treatment provided by the military fits into this equation?

Though well intended, the practical problems presented by the Bill more than offset the break envisioned for our military men and women.

GEICO appreciates the opportunity to present our testimony and your consideration of this testimony. We **respectfully urge the committees to hold Senate Bill 2432.**

Sincerely,



Timothy M. Dayton, CPCU

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**TESTIMONY OF ROBERT TOYOFUKU AND NAHELANI WEBSTER ON
BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN
OPPOSITION OF S.B. 2432**

Date: Thursday, February 8, 2018

Time: 10:15 a.m.

Room: 225

To: Chair Clarence K. Nishihara and Members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs and Chair Lorraine R. Inouye and Members of the Senate Committee on Transportation and Energy.

We are presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition of S.B. 2432 Relating to Motor Vehicle Insurance.

This bill changes personal injury protection (“PIP”) insurance coverage from being mandatory to being optional for those members in good standing of the National Guard, military reserve, or armed services, including the Coast Guard, and is assigned to a unit in the State.

PIP coverage provides basic medical coverage of \$10,000 for those injured in motor vehicle accidents. The purpose of PIP is to provide insurance coverage to everyone who may be injured regardless of fault, thus ensuring that there is universal medical coverage for all, including passengers in the vehicle, pedestrians and bicyclists struck by the vehicle, and others who borrow the vehicle. Although members of our armed services may be covered by federal health benefits, the lack of PIP coverage on a vehicle may leave passengers, pedestrians, bicyclists, and those who borrow the vehicle with no coverage.

Exempting certain individuals from purchasing PIP insurance for their vehicles leaves a gap in coverage for the public. It is bad public policy because PIP is meant to

LATE

provide a seamless safety net for all scenarios. For example, if a pedestrian is struck by a vehicle operated by a member of the Army who opted out of PIP coverage, the pedestrian would not receive insurance coverage. Similarly, a person who borrows the vehicle of the same member of the Army and is injured in a collision, that driver would not have PIP coverage. The same would be true for passengers who are normally covered by the PIP on the vehicle they are riding.

Anyone who does not have PIP coverage (other than an uninsured owner) is entitled to free PIP coverage from the Joint Underwriting Plan (JUP) assigned risks program. The costs of the JUP assigned risks program are ultimately borne by policyholders in general who will end up paying for the gap in PIP coverage that will be created by this measure. This bill will unfairly shift the cost of insurance to the rest of the driving public.

Although this measure is well intentioned to save service members the cost of basic PIP coverage, the unintended consequence of creating gaps in coverage and shifting the cost of insurance to others counsels against passage of this measure. HAJ requests that this measure be held.

Thank you for allowing us to testify regarding this measure. Please feel free to contact either of us should you have any questions or desire additional information.

TESTIMONY OF MICHAEL ONOFRIETTI

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence Nishihara, Chair

Senator Glenn Wakai, Vice Chair

COMMITTEE ON TRANSPORTATION AND ENERGY

Senator Lorraine Inouye, Chair

Senator Will Espero, Vice Chair

Thursday, February 8, 2018

10:15 a.m.

SB 2432

Chair Nishihara, Vice Chair Wakai, and members of the Committee on Public Safety, Intergovernmental, and Military Affairs, and Chair Inouye, Vice Chair Espero, and members of the Committee on Transportation and Energy, my name is Michael Onofrietti, Senior Vice President, Actuarial Services, Product Development & Management for Island Insurance and Chairman of the Auto Policy Committee for 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. This bill makes optional, Personal Injury Protection (PIP) benefits for any insured who is at the time of the issuance or renewal a member in good standing of the National Guard, military reserve, or armed services, including the Coast Guard, and is assigned to a unit in the State.

This bill may result in unintended consequences because although medical coverage for the insured who is on active military duty stationed in Hawaii may extend to their immediate family, these medical benefits will not extend to all others currently covered by PIP in the law.

PIP covers anyone in the vehicle as well as pedestrians, bicyclists, and moped operators. If these innocent victims cannot recover PIP benefits from the at-fault driver, and have no PIP benefits of their own, losses will come from the Joint Underwriting Plan (JUP). JUP losses are borne by *all who purchase motor vehicle insurance*.

For these reasons, we ask that you hold this bill. Thank you for the opportunity to testify.

Hawaii State Legislature
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Transportation and Energy

February 7, 2018

Filed via email to committees

RE: SB 2432, Motor Vehicle Insurance; Personal Injury Protection - NAMIC's Written Testimony IN OPPOSITION

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committees for the February 8, 2018, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

NAMIC appreciates the personal sacrifice that members of the military undertake to protect citizens of the State of Hawaii and our entire nation. We agree that certain benefits and privileges should be provided to these honorable service members to address their unique personal and professional life. However, we are concerned that this legislative proposal to exempt "active duty" military professionals from the state mandated auto insurance personal injury protection (PIP) coverage may actually be detrimental to the best interest of these individuals and their family members. Additionally, we have concerns about how this proposed legislation could adversely impact automobile insurance for all consumers.

Specifically, NAMIC has the following concerns:

- 1) NAMIC respects the supposition that "active duty" military professionals might have other comparable insurance coverage, so why should they also have PIP coverage? However, this argument exists for anybody that is employed with a governmental entity or has employer-paid health insurance. In effect, the proposed legislation would erode the PIP coverage requirement in a way that would abrogate the very purpose of PIP.
- 2) We are also concerned that the proposed legislative exemption from PIP for "active duty" military professionals could expose other citizens to an insurance coverage gap that could result in out of pocket medical expenses for these individuals. Specifically, military provided insurance coverage does not protect non-military individuals in the military professional's motor vehicle or third-party individuals outside the car (pedestrians and bicyclists). If the "active duty" military professional does not have PIP coverage, these individuals may not have any necessary medical insurance coverage protection.
- 3) NAMIC is concerned that the proposed legislation is rife with unintended adverse implications for the auto insurance system and other medical coverage insurance programs. SB 2432 could create problems for pre-paid health care (PPH) coverage. The bill could put the federal waiver for pre-paid health care in Hawaii at risk if PIP coverage law is changed, because PPH plans assume and are conditioned upon coverage being first paid by PIP before they begin to



pay for medical benefits. If the proposed legislation becomes law, there could be a medical insurance coverage gap and legal disputes as to who is required to pay the medical bills.

We are also concerned about how the proposed legislation will impact auto insurance rates for consumers. If one selected group of individuals is allowed to opt-out of the PIP insurance coverage requirement, that could adversely impact the rates for the remaining PIP coverage consumers. Moreover, it could also affect other auto insurance rates, because rates are based upon the totality of the risk of loss exposure and the availability of other insurance coverages for a claim. Further, since PIP is a no-fault coverage, SB 2432 could lead to more liability coverage disputes and litigation that are insurance rate cost-drivers for automobile liability insurance.

Additionally, the proposed legislation would require insurers and the Division of Insurance (DOI) to have to setup a new administrative protocol for handling PIP coverage requirements. Insurers and the DOI would need to establish a process for “rejecting coverage in writing”, record documentation and retention requirements, and a process for re-instituting the PIP coverage when the military professional is no longer on “active duty”. This will create new administrative and IT costs and burdens for insurers which will ultimately be insurance rate cost-drivers.

Although this is a well-intended bill to help “active duty” military professionals, the proposed legislation is likely to create more problems than benefits for members of the military and their family, and is also replete with other adverse consequences for auto insurance consumers in the state. For the aforementioned reasons, NAMIC requests your **NO VOTE on SB 2432**.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region



Advocacy. Leadership. Results.

To: The Honorable Clarence K. Nishihara, Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Lorraine R. Inouye, Chair
The Honorable Will Espero, Vice Chair
Senate Committee on Transportation and Energy

From: Mark Sektnan, Vice President

Re: **SB 2432 – Relating to Motor Vehicle Insurance**
PCI Position: OPPOSE

Date: Thursday, February 8, 2018
10:15 a.m., Conference Room 225

Aloha Chairs Nishihara and Inouye, Vice Chairs Wakai and Espero and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) is **opposed** to SB 2432 which would change the personal injury protection benefits (PIP) under the motor vehicle insurance law from a required coverage to a required optional coverage for active duty military personnel stationed in the State. In Hawaii, PCI member companies write approximately 42.3 percent of all property casualty insurance written in Hawaii. PCI member companies write 44.7 percent of all personal automobile insurance, 65.3 percent of all commercial automobile insurance and 76.5 percent of the workers' compensation insurance in Hawaii.

Hawaii's no-fault system exempts individuals from the usual liability for causing body injury in a car collision. Under this system, the insurance covers the bodily injury of the insured and the insured's passengers caused by a car collision, regardless of which party would be liable under ordinary common law tort rules. In Hawaii, this system abolishes tort recovery for all but serious injury. SB 2432 could eliminate this protection for members of the military who choose not to purchase this type of coverage. The bill would also create confusion about how the system would work under this proposal when a person is injured due the negligence of another and does not have access to either PIP due to the proposed exemption or bodily injury liability for those injuries that are not significant enough qualify for a tort recovery. It is unclear what happens to a policy that has rejected PIP when the applicant no longer is in the military.

It is unclear what happens to occupants of a vehicle (that does not carry PIP) that are ineligible for military medical services. Same for a pedestrian who is struck by said vehicle.

The signature requirements for rejecting UM, UIM (in whole or in part) are very complicated due to various judicial interpretations that the option forms are difficult for many consumers to

follow and make an informed decision. This proposal will further complicate this problem. Insurers must retain signed rejections for the life of the policy. If an insurer cannot locate an option form when a collision occurs involving significant injury, the insurer must roll on any rejected coverage(s) and limits of coverage for free. If there is a change in policy status (such as co-insureds get divorced or the named insured changes due to death) the courts have new interpretations that insurers must follow or risk rolling on free coverage. It is unclear if and how tort liability would not be abolished under **§431:10C-306 Abolition of tort liability (4)** as there is no mention of medical treatment provided by Military Service in calculating the \$5,000 tort threshold.

Auto insurance in Hawaii is more affordable with the current partial no fault system than it would be if no fault was eliminated because the premium charge for PIP is less than what the increase would be to Bodily Injury and Uninsured Motorists Coverages without the partial exemption from tort recovery.

For these reasons, PCI asks the committees to **hold** SB 2432 in committee.



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GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 7, 2018

TO: Senator Clarence Nishihara
Chair, Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Lorraine Inouye
Chair, Committee on Transportation and Energy

Submitted Via Capitol Website

RE: **S.B. 2432 Relating to Motor Vehicle Insurance**
Hearing Date: Thursday, February 8th, 2018 at 10:15 a.m.
Conference Room: 225

Dear Chair Nishihara, Chair Inouye, and Members of the Committees:

We submit this testimony on behalf of USAA, a diversified financial services company. USAA is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii, the vast majority of which are military-based members.

USAA **submits comments** regarding S.B. 2432, which changes personal injury protection benefits under the motor vehicle insurance law from a required coverage to a required optional coverage for active duty military personnel stationed in the State.

As a company that predominately serves military members, USAA is very focused on how it can best serve its customers. We appreciate that the intent of this bill may be to help military members by giving them the opportunity to opt of PIP coverage. However, we are concerned that in practice, this bill would have unintended consequences and would ultimately negatively impact USAA's members.

The bill seeks to allow military members to opt out of PIP coverage, presumably if they already have an alternative type of medical coverage. However, the PIP that military members currently receive also covers other passengers in the car, pedestrians, bicyclists etc. If a military member was involved in an accident and his/her visiting family was also in the vehicle, the member who opted out might be covered by other medical insurance, but the family members in the car would not be covered.

As illustrated above, this bill will result in create a new pool of individuals that will not have PIP coverage available to them in the event of an accident. For the PIP system to work, it relies on the widespread availability of PIP to cover injuries, and to be applied

equitably across the entire population. Allowing one class of individuals to opt out will leave people an insurance gap for those involved in motor vehicle accidents, and may ultimately result in more legal disputes and higher premiums for everyone.

For these reasons, USAA is concerned about the implications of this measure and believes that more discussion about the issue is needed before moving the bill. Thank you for the opportunity to provide testimony.

**SENATE COMMITTEE ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

and

**SENATE COMMITTEE ON
TRANSPORTATION AND ENERGY**

February 8, 2018

Senate Bill 2432 Relating to Motor Vehicle Insurance

Chair Nishihara, Vice-Chair Wakai, and Chair Inouye and Vice-Chair Espero, and Members of the Committees:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm opposes Senate Bill 2432 Relating to Motor Vehicle Insurance:

SB 2432 would exempt active duty military personnel from the requirement to carry personal injury protection (PIP)/No-Fault coverage now mandated for all motor vehicle operators in Hawaii. This coverage is part of the “system of reparations for accidental harm and loss arising from motor vehicle accidents,” and was designed to “[c]ompensate these damages without regard to fault” and “[l]imit tort liability for these accidents.” See HRS 431:10C-102. Integral to the system is a requirement that all motor vehicle owners obtain and maintain the coverage required under Chapter 431:10C. This includes both PIP (limited No-Fault) and liability coverages. It is essential that these be seen to work together in the coverage scheme.

Hawaii has adopted a “limited no-fault” system designed to reduce the litigation costs associated with a complete tort system. Under the Hawaii plan, lesser injury cases are handled by allowing injured parties to make direct claims against their own insurers, or in the case of passengers in vehicles, pedestrians, or bicyclists, to present a claim with the insurer of an involved motor vehicle, to recover medical bills up to \$10,000 without having to prove fault. This eliminates the litigation expenses that would normally be associated with these claims. When working properly, this has a significant impact on insurance premiums for all the insured in Hawaii.

This bill would create an exception for military personnel. The apparent rationale is that these men and women have medical insurance through from the government, so they would not have a need to access PIP coverage if in a motor vehicle accident. Unfortunately, this does not take into account the entire motor vehicle insurance framework, and those potentially injured by a military member who would otherwise be entitled to PIP/No-Fault benefits. This does not address the following:

- Any passengers in the military personnel’s vehicle that are not in the military.
- Pedestrians and bicyclists and motorcyclists who might be injured in an accident with a military member.
- Passengers in other vehicles that do not have PIP benefits available because that vehicle is uninsured.

Coverage in those situations would then default to the pre-paid health insurer if the person has such coverage, and would thus cost-shift the costs of medical from auto to pre-paid health.

Any of the above claims would then fall into the “tort system,” which might require retaining lawyers on both sides and filing of a lawsuit to obtain basic medical treatment up to \$10,000, the very thing that this limited No-Fault/PIP system was designed to prevent. This would result in more litigation with resulting increased claims costs, and could impact insurance premiums for all other insureds. This could also impact the cost of pre-paid health plans, which assume medical bills from motor vehicle accidents will be covered by the PIP/No-Fault system.

For the above-reasons we ask that you hold this bill

Thank you for the opportunity to present this testimony.

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SB-2432

Submitted on: 2/7/2018 4:17:34 PM

Testimony for PSM on 2/8/2018 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

Civilian and military drivers shall be required to have drivers insurance. God forbids a military persons be in an accident who options not to have coverage. Does it also exempts the civilian who is the counterpart of the incident?