

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING SCR 137**

March 23, 2018
9:00 a.m.
Room 229

LATE

To: Chair Rosalyn H. Baker and Members of the Senate Committee on Commerce ,
Consumer Protection and Health:

My name is Nahelani Webster and I am presenting this testimony on behalf of the
HAJ regarding SCR 137. HAJ offers the following comments.

The resolution is broadly titled to call for modernization of the Hawaii Insurance
Code with respect to property & casualty (P&C) and life insurance laws. The resolution
appears to highlight “technological innovations” such as the internet and smartphones.
Whether the proponents seek a broad top to bottom review of the Insurance Code or a
more focused examination of aspects affected by “technological innovations,” is not
clear.

With respect to a comprehensive review and overhaul of the code, we offer two
comments. First, the code has not been a static document. Many changes – some major
and some minor – have been made to the code since the time it was first enacted in 1987.
This committee reviews dozens of changes each legislative session and has amended the
code annually. Hence, it is not accurate to view or portray the code as out-of-date simply
because it was initially promulgated in 1987. It is, and has been, evolving to address the
needs of a changing world. Second, a truly comprehensive review of the insurance code
is a massive undertaking. HAJ participated in the working group, which drafted the 1987
code and recognizes that a comprehensive review may not be the best use of division
resources given the division’s priorities. In addition, there have been no significant

problems identified with applying the uniformly applicable requirements to new and innovative technologies that would warrant the need for a comprehensive review at this time.

Representatives from P&C insurers, health insurers, HAJ, Commissioner Gordon Ito and his staff met last week to discuss legislation related to updating insurance code provisions implicated in advancing technology. It was a good discussion of the challenges facing insurance regulators when deciding how fast or slow to proceed in encouraging, adopting and implementing regulatory changes related to technology. A few states have taken an aggressive position that regulators need to be on the cutting edge of technology or be left behind, while many states and the federal government have approached the issue more conservatively taking a look before you leap approach. One is not right and the other wrong. Both approaches have sound reasons that merit consideration. Some deference should be given to the commissioner to determine the scope and timing for his division given his judgment and available resources.

As to the application of advancing technology to highly regulated financial industries (of which insurance is a sub-group) there is a concern that being at the cutting edge is not necessarily best due to the difficulties in adequately regulating emerging technology to protect consumers. Regulators have neither the expertise nor resources to effectively regulate emerging technological platforms. Current examples include misuse of consumer data by the largest technology giants, surreptitious manipulation of America's government by foreign governments using highly sophisticated technology, data breaches of on-line financial services involving the largest banks in the country, and estimates that perhaps half of cyber financial transactions involving cryptocurrency are

related to criminal activity. It is one thing to be at the cutting edge for ordering pizza on your iPhone; but may be quite another when the safety and stability of an important financial industry is involved. Look before you leap might be the more prudent approach until regulators can gain a better understanding of current (and future) hacking threats and prevention, as well as controlling unauthorized use of information as has apparently been happening on a widespread basis with cyber technology.

HAI appreciates the opportunity to be a part of this important discussion and inclusion in the proposed working group should these resolutions be adopted and implemented.

Thank you for the opportunity to testify and for listening to our concerns and comments. Please feel free to contact me should there be any questions.