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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Consumer Protection and Commerce
Thursday, March 20, 2025
2:00 p.m.
State Capitol, Conference Room 329 and via Videoconference

On the following measure:
H.R. 79

Chair Matayoshi and Members of the Committee:

My name is Jerry Bump, and I am the Acting Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this resolution.

The purpose of this bill is to request the Insurance Commissioner to conduct a study of alternative insurance models that may provide viable solutions for condominium associations and condominium unit owners in the State.

The final scoping of the project would be material to the estimated time and cost. Given the openness of the potential alternatives, the costs include legal counsel to verify prevailing legislation and limit liability, government and regulatory experts in compliance, access to captive and mutual fund expertise and management services, contracting and procurements to be able to price the various options including actuarial and reinsurance analytics. We are assuming the Legislature would be requesting a very thorough analysis with significant details about potential other models, multiple

examples from around the world on how risk is shared between public entities, private parties and citizens, and thoughts on execution. As such, a conservative estimate of the cost of such a study is \$1.5 million. We would require a general fund appropriation to cover the cost of the study.

Thank you for the opportunity to testify.

HR-79

Submitted on: 3/17/2025 4:47:43 PM

Testimony for CPC on 3/20/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elliot Miles	Individual	Support	Written Testimony Only

Comments:

I support. Will the results of this study be published somewhere, so everyone can read it?

HR-79

Submitted on: 3/19/2025 10:13:10 AM

Testimony for CPC on 3/20/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jeff Sadino	Individual	Support	Written Testimony Only

Comments:

Please pass these Resolutions.

**House of Representatives
The Thirty-Third Legislature
Committee on Consumer Protection & Commerce
Thursday, March 20, 2025
2:00 p.m.**

To: Representative Scot Z. Matayoshi, Chair
Re: HCR 85 / HR 79

Aloha Chair Scot Z. Matayoshi, Vice-Chair Cory M. Chun, and Members of the Committee,

Mahalo for the opportunity to testify in support of Resolutions HCR 85 and HR 79 and to provide these comments.

While the proposed study may ultimately expand the availability of condominium association insurances which may consequently alleviate costs for condominium owners and residents and remove barriers to financing, the study should go deeper and address the many causes of these insurance woes to have a durative effect.

Local insurance agents^{1,2} have long spoken about the “hardening market” in reference to what insurance companies called “legal system abuse” that contributes to “social inflation.”

“Triple-I defines Legal System Abuse as policyholder or plaintiff attorney practices which **increase costs and time to settle insurance claims**. While litigation is considered a policyholder’s last resort, **legal system abuse exploits litigation when a disputed claim could have been resolved without judicial intervention**. Legal system abuse contributes to higher costs for insurance operations and policyholder pricing.”³

“Social inflation refers to the increase in claim severity above what could be anticipated under the usual scope of economic inflation and claim trends.”⁴

Thus, tort reform should also be considered as essential to alleviating the insurance crisis. For condominium associations, suggestions are to offer disputants “mock trials” to provide insight into the potential outcomes of their disputes, to cap attorneys’ fees, and to reduce other legal fees and fines such as those reported in these investigative articles:

<https://www.civilbeat.org/2023/04/have-a-complaint-about-your-condo-you-may-get-slapped-with-paying-for-the-lawyers-who-fight-you/>
<https://www.civilbeat.org/2024/01/it-started-with-a-messy-front-porch-now-this-elderly-womans-condo-association-may-take-her-home/>

¹ <https://www.youtube.com/watch?v=8wOM10cgYS0&t=353s>

² ThinkTech “Condo Insider” program, “How Condo Disputes Can Increase Your Maintenance Fees,”

³ <https://www.iii.org/article/social-inflation-hard-to-measure-important-to-understand>

⁴ <https://www.travelers.com/resources/business-topics/insuring/4-factors-causing-social-inflation>

The states of Alabama, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Montana, Ohio, Texas, Utah, West Virginia, and Wisconsin enacted tort reform in 2023 and 2024. Perhaps it is Hawaii's turn to alleviate abuses in our legal system.

Attached to this document is a published commentary which further elaborates on these same concerns.

Mahalo for the opportunity to testify in support of HCR 85 and HR 79.

Emergency Proclamation On Condo Insurance Doesn't Solve The Problem

Addressing the underlying concerns would lessen the causes of increased costs and stabilize the market.

By [Lila Mower](#)
August 14, 2024 · 5 min read

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Cory Lum/Civil Beat/2022

This quote comes from *Deane Gardenhome Assn. v. Dentkas*, a 1993 California case: “All too often attorney fees become the tail that wags the dog in litigation.”

OPINION

It may also be said that attorney fees may be the tail that wags the dog in rising insurance costs. Natural catastrophic events are not the only causes of increased insurance costs.

The American Property Casualty Insurance Association and Reinsurance Association of American reported in their joint study of the origins and causes of increasing instability in the insurance markets that the “crisis in property insurance markets today frequently have little to do with Mother Nature.

Instead, man-made crises in the form of legal system abuse, claims fraud, and regulatory interference are the root causes of most market instability ... [L]itigious environments combine with rampant lawsuit inflation ... create a windfall for bad actors.”

The Insurance Information Institute (also known as Triple-I) has also expressed their growing concern with “legal system abuse,” which they define as “policyholder or plaintiff attorney practices which increase costs and time to settle insurance claims.



Construction cranes in the Ward-Kakaako area. The state is struggling to address rising condominium insurance rates. (Cory Lum/Civil Beat/2022)

While litigation is considered a policyholder’s last resort, legal system abuse exploits litigation when a disputed claim could have been resolved without judicial intervention. Legal system abuse contributes to higher costs for insurance operations and policyholder pricing.”

Gov. Josh Green’s recent **emergency proclamation** that alleges to help Hawaii’s condominium associations and their owners access additional insurance coverages and cope with increased costs, is only a Band-Aid sheathing the underlying problems and fails to address the causes which catalyzed increases in insurance costs.

These underlying problems were addressed in a 2016 letter entitled, “Portending the Next Crisis/Bailout – Condo Associations,” that I wrote to the State’s Real Estate Commission, DCCA, RICO, legislators, media, various condominium coalitions, and the Honolulu Board of Realtors, that focused on systemic problems that needed to be resolved to reduce risks and increase protection for condo owners.

These resolutions would then have the additional and consequential effect of enabling insurance and lending industries to provide affordable products. In the mental backdrop of that letter were news of unwieldy assessments at Kahala Tower, Pearlridge Gardens and Tower, and other condos, the financial distress of those owners, and the citizens of the city of Aspen’s financial bailout of a Colorado condominium complex to repair deferred maintenance due to insufficient reserves.

The letter addressed a need for reliable expertise including the education of community association managers and the licensure of that industry to encourage accountability because most association directors are volunteers, not experts in association management or property integrity, and depend on management for guidance.

Without knowledgeable or expert management, many boards unwittingly failed to fulfill their fiduciary duties to the owners in their associations, resulting in deferred maintenance and underfunded reserves.

The letter suggested that the failure of government oversight over the association trade industry would culminate in the next real estate collapse as more and more owners have no option but to sell and may exacerbate the irresolvable homeless crisis.

Legal “System Abuse”

Also sought in that letter was the prevention of “the exploitation of justice,” or as the insurance industry calls it, “legal system abuse,” an unfortunate and recurring practice in too many condominium associations, a few of which [were reported in Civil Beat](#).

Earlier this year, Triple-I submitted their research to the New York Supreme Court and County Court asserting legal system abuse “siphons value from the claims and risk management ecosystem — away from policyholders, claimants, and insurers — and transfers it to attorneys” and impacts the cost of insurance.

States like Florida, Illinois, Indiana, Montana, and New Jersey have passed legislation to address and discourage legal system abuses such as lengthier litigation to the detriment of all involved except for the attorneys. The proponents of these consumer protective

measures sought to prohibit incentivizing litigants to initiate and prolong lawsuits as more and higher claims drive up insurance premium costs, reduce the availability of coverage, and lead to higher uninsured risks.

Swiss Re Institutes expressed their concern that legal system abuse “is an opaque bottom-up wealth transfer from consumers to sophisticated investors and law firms” and adds “there are also major concerns about predatory lending, especially in the lightly regulated consumer segment.”

Condo owners should not be overly optimistic about the governor’s emergency proclamation and Band-Aid solution but should demand robust regulatory reform implementation against legal system abuse and other systemic problems that we have identified in our many conversations with lawmakers.

The concerns addressed in that 2016 letter still exist today. They include creating a less costly alternative dispute resolution mechanism to mediation, arbitration, and litigation; caps on excessive legal fees; and prohibiting lawfare to quell owners’ right to participate in their associations’ governance, so that condominium associations and their owners survive this debacle and can thrive.

Addressing and resolving these concerns would lessen the human and preventable causes of increased insurance costs and stabilize the insurance market for all.

Community Voices aims to encourage broad discussion on many topics of community interest. It’s kind of a cross between Letters to the Editor and op-eds. This is your space to talk about important issues or interesting people who are making a difference in our world. Column lengths should be no more than 800 words and we need a photo of the author and a bio. We welcome video commentary and other multimedia formats. Send to news@civilbeat.org. The opinions and information expressed in Community Voices are solely those of the authors and not Civil Beat.

Read this next:



Neal Milner: There's More To Tim Walz Than Being 'Minnesota Nice'

By Neal Milner · August 15, 2024 · 7 min read

Local reporting when you need it most

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HR-79

Submitted on: 3/20/2025 9:25:47 AM

Testimony for CPC on 3/20/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gregory Misakian	Individual	Support	Remotely Via Zoom

Comments:

I support both HCR85 and HR79.

On March, 13, 2025 I participated in a discussion regarding the insurance crisis in Hawaii on Insights on PBS Hawaii. I'm an advocate for condominium owners and also have personal experience with extreme price increases at my condominium association.

While I believe this study will be helpful, what would me most helpful is for the Insurance Commission to have staff that is always addressing these issues and can act immediately to help resolve, and not wait for a legislative session and hearings, and then a study. I saw an estimate for this study of \$1.5M, which I think would fund at least one or two staff members for a number of years.

Gregroy Misakian