

# SCR 159/SR116

# Testimony

**Measure Title:** REQUESTING THE INSURANCE COMMISSIONER TO CONVENE A WORKING GROUP TO EXPLORE THE USE OF ELECTRONIC TRANSMISSION OF INSURANCE NOTICES AND DOCUMENTS AND THE POTENTIAL INCREASE TO HAWAII'S MINIMUM LIABILITY COVERAGE FOR MOTOR VEHICLE INSURANCE.

**Report Title:** Insurance Commission; Working Group; Insurance Notices and Documents; Electronic Transmission; Minimum Liability Coverage

**Description:**

**Companion:**

**Package:** None

**Current Referral:** TEC/CPN, WAM

**Introducer(s):** BAKER, NISHIHARA, English, Galuteria, Shimabukuro, Solomon, Taniguchi

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [TECTestimony](#)  
**Cc:** [alelievr@dcca.hawaii.gov](mailto:alelievr@dcca.hawaii.gov)  
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**SCR159**

Submitted on: 3/25/2013

Testimony for TEC/CPN on Mar 27, 2013 09:45AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann Le Lievre	DCCA	Support	Yes

Comments:

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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](http://www.hawaii.gov/dcca)

KEALI I. S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON TECHNOLOGY AND THE ARTS AND  
COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Wednesday, March 27, 2013  
9:45 a.m.

**TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 159 AND SENATE  
RESOLUTION NO. 116 – REQUESTING THE INSURANCE COMMISSIONER TO  
CONVENE A WORKING GROUP TO EXPLORE THE USE OF ELECTRONIC  
TRANSMISSION OF INSURANCE NOTICES AND DOCUMENTS AND THE  
POTENTIAL INCREASE TO HAWAII'S MINIMUM LIABILITY COVERAGE FOR  
MOTOR VEHICLE INSURANCE.**

TO THE HONORABLE GLENN WAKAI AND ROSALYN H. BAKER, CHAIRS, AND  
MEMBERS OF THE JOINT COMMITTEE:

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

The purpose of these resolutions is to convene a working group that will report its  
findings and recommendations, including any proposed legislation, for: (1) the use of  
electronic transmission of insurance notices and documents; and (2) the potential  
increase to Hawaii's minimum liability coverage for motor vehicle insurance.

The Department is willing to convene this working group. The Department notes  
that the working group's findings and proposed resolutions relating to electronic notices  
and documents will need to consider, among other things, the practices adopted by the  
National Association of Insurance Commissioners and the Compact that was

established by Article 30, HRS chapter 431. Over the past several years, industry and regulators have sought uniformity in insurance contracts and the working group should endeavor to support this goal.

The effectiveness of a study of increased liability coverage may be limited if no financial resources are provided to retain the services of an actuary. Estimated costs of proposed insurance increases may require an actuary to quantify.

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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [TECTestimony](#)  
**Cc:** [aty@awlaw.com](mailto:aty@awlaw.com)  
**Subject:** Submitted testimony for SCR159 on Mar 27, 2013 09:45AM  
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**SCR159**

Submitted on: 3/25/2013

Testimony for TEC/CPN on Mar 27, 2013 09:45AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rick Tsujimura	State Farm	Support	Yes

Comments:

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**SENATE COMMITTEE ON  
TECHNOLOGY AND THE ARTS**

**AND**

**SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

March 27, 2013

SCR 159/ SR 116 Requesting the Insurance Commissioner to Convene a Working Group to Explore the Use of Electronic Transmission of Insurance Notices and Documents and the Potential Increase to Hawaii's Minimum Liability Coverage for Motor Vehicle Insurance

Chair Wakai, Chair Baker, members of the Senate Committee on Technology and the Arts, and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm has the following comments.

Hawaii, Idaho, Nevada, and Oregon have all adopted the model Uniform Electronic Transaction Act (UETA), but as noted, those laws include provisions that would subordinate the UETA to other laws that require specific (non-electronic) forms of communication or delivery of documents. This resolution requests the formation of a working group to overcome that aspect of the more general UETA, as to specific insurance related laws.

Increasingly, consumers are showing preferences for electronic access to their records in lieu of receiving paper mailings. While many state insurance laws require certain information or documents to be provided to an insured or other party "in writing," two existing laws confer on electronic records and signatures the same status as paper records and ink signatures, so long as a consumer voluntarily "opts in" to the electronic transaction: the federal Electronic Signatures in Global and National Commerce Act (ESIGN, 15 USC §7001), passed in 2000, and the model Uniform Electronic Transactions Act (UETA). Forty seven states, including Hawaii, have passed laws of similar effect.

ESIGN and UETA both include four basic pillars:

- A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- If a law requires a record to be in writing, an electronic record satisfies the law.
- If a law requires a signature, an electronic signature satisfies the law. UETA §7, ESIGN §7001(a).

Both ESIGN and UETA broadly apply to electronic records and electronic signatures related to transactions, and ESIGN specifically states that its provisions apply to insurance, providing that "it is the specific intent of Congress that this title [I] [the general rule of validity]

and title II [provisions relating to transferable records] apply to the business of insurance.”  
ESIGN §7001(i).

While ESIGN and UETA allow electronic delivery for most documents required to be delivered to insurance consumers by law or regulations, UETA includes a provision that has had a chilling effect on electronic delivery if a state law or regulation specifically requires an alternative method of delivery (“If a law other than this [Act] requires a record... (ii) to be sent, communicated or transmitted by a specific method, ...the record must be sent, communicated or transmitted by the method specified in the other law.” UETA 8(b)(2)). Certain state laws or regulations related to insurance specify written notice which were authored before the advent of electronic communications, and therefore, the obstacles to electronic delivery that they create may be unintentional.

For reasons outlined above, recognizing that many Hawaii residents would prefer to conduct business using electronic communications and should have the opportunity to “opt in” to that means of communications with their insurers, we support this portion of SCR 159/SR 116.

While State Farm supports that portion of the concurrent resolution which addresses electronic notices, and feels the resolution tries to do too much in one resolution and that the topics, electronic notification and financial responsibility limits should be separated into two resolutions.

The topic of increasing bodily injury liability limits has been a topic frequently raised, we suggest that all components of the current automobile insurance coverage also be considered, including the increase in personal injury protection and property damage coverage. The portion of the resolution addressing the increase in bodily injury coverage should include the judiciary and arbitrators who deal with automobile accidents, as well as insurers, attorneys. We also suggest that in doing this review the commissioner should address rules of evidence regarding the use of seatbelts in trials as this has a bearing on the amounts injured parties may be entitled to receive.

Thank you for the opportunity to present this testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [TECTestimony](#)  
**Cc:** [toyofuku@hiadvocates.com](mailto:toyofuku@hiadvocates.com)  
**Subject:** Submitted testimony for SCR159 on Mar 27, 2013 09:45AM  
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**SCR159**

Submitted on: 3/26/2013

Testimony for TEC/CPN on Mar 27, 2013 09:45AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bob Toyofuku	Hawaii Association for Justice	Oppose	Yes

Comments: Bob Toyofuku cannot attend the meeting but an associate will be there

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**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO SCR 159 / SR 116**

Date: Wednesday, March 27, 2013

Time: 9:45 am

To: Chairpersons Glenn Wakai and Rosalyn Baker and Members of the Senate  
Committee on Technology and the Arts and the Committee on Commerce and Consumer  
Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the  
Hawaii Association for Justice (HAJ) in OPPOSITION to SCR 159 / SR 116.

HAJ appreciates the intent of these resolutions to address important insurance  
issues affecting the public. As presently drafted, however, the working group consists of  
two neutral entities (the Commissioner and the Commission on Uniform Laws), and three  
insurance industry representatives.

With respect to automobile policy limits, the Commissioner has taken no position  
and all three proposed insurance representatives have opposed any increase in the limits.  
It would appear that the outcome would be all but preordained given the composition of  
the group.

The inclusion of State Farm Insurance Company in the working group raises an  
unnecessary appearance of favoritism or bias because no other individual insurance  
company is included. State Farm is certainly a major automobile insurer, but it is not the  
largest in Hawaii, and is dwarfed by other non-auto insurers such as HMSA (that would  
be affected by the electronic notice portion of the working group). From a public policy

perspective, it may be preferable to allow individual insurers to attend working group sessions, but not single out any particular one for special treatment.

HAI requests that consideration be given to amending the composition of the working group to the following:

1. Insurance Commissioner
2. Commission to Promote Uniform Legislation
3. Richardson School of Law, (Hazel Beh, professor on torts and insurance)
4. Property Casualty Insurers Association of America
5. Hawaii Insurers Council
6. Hawaii Association for Justice

Thank you very much for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [TECTestimony](#)  
**Cc:** [garibaldi@hawaiiinsurerscouncil.org](mailto:garibaldi@hawaiiinsurerscouncil.org)  
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**SCR159**

Submitted on: 3/26/2013

Testimony for TEC/CPN on Mar 27, 2013 09:45AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alison Powers	Hawaii Insurers Council	Oppose	Yes

Comments:

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## TESTIMONY OF ALISON POWERS

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### SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS

Senator Glenn Wakai, Chair  
Senator Clarence K. Nishihara

### SENATE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair

March 27, 2013  
9:45 a.m.

### **SCR 159/SR 116**

Chair Wakai, Chair Baker, Vice Chair Nishihara, Vice Chair Galuteria and members of the Committee, my name is Alison Powers, Executive Director of the 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** SCR 159 and SR 116 because they both request the Insurance Commissioner to convene one working group to address two separate and distinct issues: one being the use of electronic transmission of insurance notices and documents, and the other being a potential increase to Hawaii's minimum bodily injury liability coverage including possible reforms to offset the premium increase.

We do not object to a working group to explore the use of electronic transmission of insurance notices and documents and support the language contained in HCR 112 and HR 83.

We also note that SB 495, SD 2, HD2 contains language for the Insurance Verification Working Group to address the impact of increasing minimum bodily injury liability coverage on the uninsured motorist population. We believe it is the more appropriate working group to address the issue since there may be a direct correlation between an increase in motor vehicle insurance premiums and an increase in uninsured motorists. Therefore, we ask that these Resolutions be held. Thank you for the opportunity to testify.

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**To:** [TECTestimony](#)  
**Cc:** [anakama@wik.com](mailto:anakama@wik.com)  
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**SCR159**

Submitted on: 3/25/2013

Testimony for TEC/CPN on Mar 27, 2013 09:45AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Allison	Property Casualty Insurers Association of America	Support	Yes

Comments:

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Property Casualty Insurers  
Association of America

Advocacy. Leadership. Results.

To: The Honorable Senator Glenn Wakai, Chair  
Senate Committee on Technology and the Arts

The Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection

From: Mark Sektnan, Vice President

Re: **SCR 159/SR 116 - Working group on electronic notices and increase in minimum limits**  
**PCI Position: Support**

Date: Wednesday, March 27, 2013  
9:45 a.m., Conference Room 229

Aloha Chairs Wakai and Baker and Members of the Committees:

The Property Casualty Insurers Association of America (PCI) is pleased to support Senate Concurrent Resolution 159 which would request the Insurance Commissioner to convene a working group to explore the use of electronic transmission of insurance notices and documents and the potential increase to Hawaii's minimum liability coverage for motor vehicle insurance.

PCI is a national trade association consisting of more than 1,000 member insurance companies of all sizes and types. In Hawaii, PCI members write \$721 million of premium (\$336.6 million – personal lines and \$384.1 million – commercial lines), about 35 percent of the state's general insurance market. In Hawaii, PCI members also represent 44.1 percent of the personal auto market. More than 220 PCI members provide insurance to Hawaii's individuals and businesses. Among this group, seven PCI members are headquartered in Hawaii.

PCI appreciates the opportunity to be a member of the proposed working group and brings both national resources and a local perspective to the issues which will be addressed by the working group. Currently, PCI is a member of the SB 495 working group looking at creating a system of on-line verification for motor vehicle insurance.

For these reasons, we urge the committee to pass this resolution.