

**SB 1093**



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LAWRENCE M. REIFURTH  
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TO THE SENATE COMMITTEE ON HEALTH

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Wednesday, February 18, 2009  
3:15 p.m.

**TESTIMONY ON SENATE BILL NO. 1093 – RELATING TO HAWAII EMPLOYERS’  
MUTUAL INSURANCE COMPANY.**

TO THE HONORABLE DAVID IGE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes this bill.

The purpose of this bill is to amend Article 14A of the Insurance Code, Hawaii Revised Statutes (“HRS”) chapter 431, to allow the Hawaii Employers’ Mutual Insurance Company (“HEMIC”) to provide medical malpractice insurance coverage.

HEMIC is a domestic mutual insurer statutorily created to provide workers’ compensation insurance as expressly provided under state and federal law.

Hawaii statutes currently provide alternatives for physicians to operate their own pooling arrangements. Physicians and surgeons may form cooperative indemnity corporations under HRS chapter 435E and captive risk retention groups under HRS chapter 431:19.

Since sufficient alternatives already exist, this bill is unnecessary.

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that this bill be held.

**COMMITTEE ON HEALTH**Senator David Y. Ige, Chair  
Senator Josh Green, Vice Chair**Testimony Related to SB 1093**

Wednesday, February 18, 2009

3:15 P.M.

Conference Room 016

Chair Ige, Vice Chair Green, and Committee Members:

I am Bob Dove, CEO and President of Hawaii Employers' Mutual Insurance Company, Inc., HEMIC. Thank you for the opportunity of testifying in an attempt to find a mechanism for providing affordable medical malpractice coverage for Hawaii's physicians.

The consistent position of HEMIC Boards has been that, subject to specified parameters, our Board is always willing to do what it can to assist the State with problem lines of insurance. However, in its present form this legislation meets none of the parameters ordinarily requested by our Board.

Those parameters are -

- 1) that workers' compensation entity, Hawaii Employers' Mutual Insurance Company, Inc., be totally partitioned so that it is in no way damaged by the new venture.
- 2) that there is an appropriate initial funding mechanism for the new venture so the surplus/capital in which HEMIC policyholders have an interest is not diluted.
- 3) that the job to be accomplished is "doable".

Unfortunately, this bill is inconsistent with those parameters. It simply mandates that HEMIC write medical malpractice insurance. The bill contains no element or mechanism to create an expectation that results or premiums will improve. If HEMIC med mal rates are artificially constrained, the net result will be that HEMIC workers' compensation policyholders will subsidize doctors. If those rates are not artificially constrained, instead being based upon sound actuarial guidelines, HEMIC rates and results presumably will be similar to those of the traditional markets. However, in the process HEMIC policyholders would be damaged because, by mandating that HEMIC provide medical malpractice insurance, the bill would eliminate the federal tax exemption currently applicable to HEMIC. That exemption requires that the tax exempt entity be "exclusively" in the business of workers' compensation insurance and related services.

We know that it is not the intent of this legislation to damage HEMIC or to cause businesses insured by HEMIC to subsidize doctors. The committee is looking for a solution to high medical malpractice rates. HEMIC stands ready to work with the committee to find appropriate answers. However, we must oppose SB 1093 in its current form.

Thank you for your time and attention.



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February 18, 2009 @ 3:15 p.m. in Room 016

To: Senate Committee on Health  
Senator David Y. Ige, Chair  
Senator Josh Green, MD, Vice Chair

By: Hawaii Medical Association  
Gary A. Okamoto, MD, President  
Philip Hellreich, MD, Legislative Co-Chair  
Linda Rasmussen, MD, Legislative Co-Chair  
April Donahue, Executive Director  
Richard C. Botti, Government Affairs  
Lauren Zirbel, Government Affairs

Re: SB 1093 RELATING TO H. E. M. I. C.

Chairs & Committee Members:

Hawaii Medical Association believes in a competitive market place, and therefore has no objection to the addition of another malpractice insurance carrier, as long as each physician can elect to remain with his or her current insurer.

Since all of the current liability insurers are not-for-profit, physician-owned carriers, we do not believe that the addition of HEMIC as a new carrier will resolve our current liability crisis. The best cure for our liability and access to care crisis is the enactment of meaningful tort reform, and mandating HEMIC to offer medical liability insurance is not a substitute.

Thank you for the opportunity to provide this testimony.

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**From:** James Ferrier [jferrier@hawaii.rr.com]  
**Sent:** Monday, February 16, 2009 7:15 PM  
**To:** HTHTestimony  
**Subject:** tort reform

**Categories:** Green Category, Blue Category

I've practiced orthopedics on Maui since 1995. While I've never been sued the cost of malpractice insurance drives up the cost of medicine in this state limiting our ability to expand our care to the needy. While those injured through malpractice deserve compensation the system needs to be rebalanced.

James A. Ferrier  
Maui Orthopedist since 1995 and a 1994 graduate of the University of Hawaii Orthopedic residency

**LATE**

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) REGARDING S.B. NO. 1093**

February 18, 2009

To: Chairman David Ige and Members of the Senate Committee on Health:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding S.B. No. 1093.

HAJ favors some of the concepts which we feel is the intent of this bill. However, before setting out our general comments, our opinion is that medical malpractice insurance coverage should not be undertaken by HEMIC and could not be done without adverse consequences to the company and the worker compensation policy holders.

The legislature, on the other hand, should consider various alternative methods of insurance to cover physicians such as Risk Retention Groups (RRG). I have attached an article describing how RRGs are being utilized to provide lower cost insurance for medical malpractice coverage.

We have mentioned in prior testimony before this committee that if HMA feels that the medical malpractice insurance is too costly, then it should investigate other alternatives for their members such as captive insurance companies and RRGs.

Thank you for the opportunity to testify on this measure.

# Half Of RRGs Formed In 2008 Were For Physician Medical Malpractice

BY KAREN CUTTS

**I**S THERE A DOCTOR in the risk retention group house? Indeed, there are plenty, as half of all RRGs formed in 2008 were established to provide medical malpractice insurance for physicians.

As a result, physician-owned RRGs now comprise nearly 40 percent of the total number of such alternative risk-transfer facilities in the health care sector.

In fact, the number of physician RRGs has risen dramatically over the last seven years. During the 15 years prior to 2001, a total of only 20 RRGs were formed to insure physicians.

In 2002, with the onset of the last hard market, physicians turned to the Liability Risk Retention Act as commercial insurers raised their premiums to exorbitant levels or stopped writing liability coverage altogether. As a result, from 2002 to 2008, more than 70 RRGs formed to insure physicians.

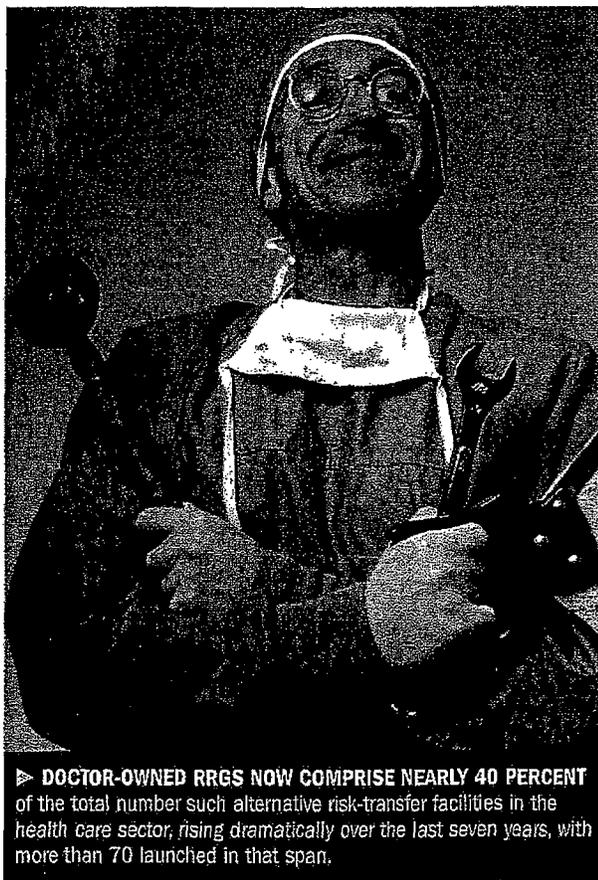
Surprisingly, even as the market turned soft in 2005, physicians continued to turn to RRGs to provide their medical malpractice insurance.

Most of the RRGs formed in 2008 to insure physicians have arisen from existing groups of doctors. While some of the RRGs will insure physicians in only one state, others plan to expand to multiple states.

Under the provisions of the LRRRA, RRGs domiciled in one state can operate



Karen Cutts is editor and publisher of the Risk Retention Reporter in Pasadena, Calif. Visit [www.rtr.com](http://www.rtr.com) for information on risk retention groups and purchasing groups.



▶ DOCTOR-OWNED RRGs NOW COMPRISE NEARLY 40 PERCENT of the total number such alternative risk-transfer facilities in the health care sector, rising dramatically over the last seven years, with more than 70 launched in that span.

in other states, upon filing a registration application notifying nondomiciliary states of their intent to do so.

Of the nine RRGs formed in 2008 to insure physicians, four will provide medical malpractice coverage for physicians in New York, where the medical malpractice market continues to be in crisis. The state's residual carrier, the Medical Malpractice Insurance Pool, is running a total deficit of about \$1.9 billion.

The motivation for physicians to form RRGs stems from a desire to control their own programs and achieve rate stability over the long term. Many doctors have learned this is not possible with traditional insurers, which in soft markets reduce rates, and in hard markets raise them—sometimes to unaffordable levels.

Another motivating factor is when doctors learn, typically through feasibility studies, that their loss experience does not warrant the rates they have been paying to traditional insurers. Insurers often lump them together with high-risk specialties, which means they are, in effect, subsidizing higher risk doctors. ■

## DEMOCRAT GAINS

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ment plan participants are likely to sue over whether plan fiduciaries made prudent investments in light of the subprime mortgage crisis.

The lesson to draw from 2008 is that the private plaintiffs' bar and government enforcement attorneys are apt to

be equally, if not even more aggressive in 2009 in bringing class-action and collective action litigation against employers.

In other words, identifying, addressing and remediating class-action vulnerabilities deserve to be placed at the top of corporate counsels' and risk managers' priorities lists for 2009. ■

▶ Gerald L. Maatman Jr. is a partner with Seyfarth Shaw LLP in Chicago.



**Property Casualty Insurers  
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

**LATE**

**To:** The Honorable David Y. Ige, Chair  
Senate Committee on Health

**From:** Samuel Sorich, Vice President

**Re:** **SB 1093 – Hawaii Employers' Mutual Insurance Company**  
**PCI Position: Oppose**

**Date:** Wednesday, February 18, 2009  
3:15 p.m.; Conference Room 016

Aloha Chairman Ige and Committee Members,

The Property Casualty Insurers Association of America (PCI) is opposed SB 1093 because the bill would force the Hawaii Employers' Mutual Insurance Company (HEMIC) to undertake a line of insurance in which the company has no experience or expertise.

SB 1093 would authorize HEMIC to provide medical malpractice insurance to licensed physicians. HEMIC was established by statute to provide workers compensation insurance and is currently carrying out that charge. Both workers compensation and medical malpractice are specialized lines of insurance. The skills of a workers compensation insurer are not readily transferable to medical malpractice insurance. Claims management and underwriting are completely different for the two lines of insurance. Unlike medical malpractice, workers compensation claims do not involve tort liability; workers compensation is a no-fault system. Underwriting and rating of workers compensation risks involve processes that are unique to workers compensation and have little applicability to liability lines of insurance such as medical malpractice.

Moreover, HEMIC, as a mutual insurance company, is composed of member businesses who obtain insurance through HEMIC with the understanding that the company engages only in workers compensation insurance. It would be a disservice to these businesses to expose them to the risks associated with medical malpractice.

SB 1093 is the wrong response to whatever medical malpractice insurance availability issues may exist. PCI requests the Committee to vote No on SB 1093.