



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Friday, February 7, 2025
9:50 a.m.
State Capitol, Conference Room 229 and via videoconference**

**On the following measure:
S.B. 1166, RELATING TO INSURANCE**

Chair Keohokalole 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 opposes the bill.

The purpose of this bill is to require that property and casualty insurance rates that incorporate historical or projected losses from fire or catastrophe hazards be conditioned on agreement by the insurer to file and litigate subrogation claims against responsible parties; require the Hawai'i Property Insurance Association (HPIA) to file and litigate subrogation claims against certain responsible parties for claims paid by the insurer for losses that are attributable to climate change; and require insurance rates to account for proceeds obtained by the Association through subrogation claims.

The Insurance Division appreciates the opportunity to provide comments in opposition to S.B. 1166 because of concerns regarding its potential to destabilize Hawaii's insurance market. A requirement that property and casualty insurers must

litigate subrogation claims as a condition precedent to incorporating historical or projected losses into rates will undermine the fundamental insurance principles which go to ensure availability of insurance coverage for Hawaii's residents.

Insurers possess a finite amount of financial resources. In the event insurers are required to litigate subrogation claims against large, potentially global entities (e.g. fossil fuel companies), their resources will likely be diverted. We note that subrogated recoveries are already utilized to offset the claims experience within an insurance program. Thus, effective subrogation will keep policyholder rates down. Forced subrogation will jeopardize the financial health of an insurer which leads to higher premiums and a reduced market availability for coverage.

Litigation can be costly, time-consuming, and unpredictable with no guarantee of a favorable outcome. Given these considerations, insurers generally pursue subrogation when the estimated cost of litigation is likely to be less than the subrogation award. Climate-related damages are often complex in nature, involving known and potentially unknown, unquantifiable variables, so insurers may face many challenges in their attempt to establish causation against a particular party. Insurers, as well as the HPIA and HHRF, should retain their ability to assess risk and decide how their limited resources will be allocated for litigation. Should the State mandate otherwise, an onerous burden would be placed upon them and potentially overwhelm their capacity to fulfil primary responsibilities.

Insurers will take costly mandates into account when assessing their long-term commitment to the Hawaii insurance market. If the burden appears too high, insurers may leave. A competitive and solvent insurance market is essential in maintaining adequate coverage and affordable rates for both residents and businesses alike.

We also note that the additional requirements on page 11, lines 18-19 and page 16, lines 7-9, would not be necessary because an insurer's paid claims have already adjusted for subrogation recoveries, to the extent there are any.

In summary, while the Division recognizes the legislature's intent to address the harmful effects of climate change, we believe this bill will inadvertently destabilize the

insurance market by placing undue legal and financial burdens on insurers and increase costs for policyholders.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 1166, RELATING TO INSURANCE.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Friday, February 7, 2025 **TIME:** 9:50 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Andrew I. Kim or Christopher J.I. Leong, Deputy Attorneys General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill (1) requires that property and casualty insurance rates that incorporate historical or projected losses from fire or catastrophe hazards be conditioned on agreement by the insurer to file and litigate subrogation claims against responsible parties; (2) requires the Hawaii Property Insurance Association (HPIA) to file and litigate subrogation claims against certain responsible parties for claims paid by the insurer for losses that are attributable to climate change; and (3) requires insurance rates to account for proceeds obtained by the HPIA through subrogation claims.

On page 17, lines 6-10, the HPIA is required to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses from climate change. This requirement could be subject to challenge under the First Amendment of the United States Constitution. See *X Corp. v. Bonta*, 116 F.4th 888, 900 (9th Cir. 2024) (under the First Amendment, no distinction between compelled speech and compelled silence). Under section 431:21-103, Hawaii Revised Statutes, HPIA is a non-profit unincorporated legal entity comprised of insurers as members of the association, and not a state agency. Accordingly, the requirement for HPIA to file and litigate subrogation claims against responsible parties for claims paid by the insurer for losses from climate change could be subject to challenge if it is construed as compelling a private entity to file suit, irrespective of its independent desire to do so.

Aside from constitutional issues, the requirement for HPIA and private insurers to file and litigate subrogation claims against “responsible parties” for claims paid for losses from climate disasters or extreme weather attributable to climate change, is vague. There is no definition of “responsible parties,” and it is unclear who the “responsible parties” of climate disasters are. A law compelling HPIA to file subrogation claims against “responsible parties”, and requiring the filing of such subrogation claims as a condition for insurers to incorporate historical and projected losses from hazards in the setting of rates on page 11, lines 9-17, would likely not be enforceable. The requirement is also problematic because it is unclear to what extent HPIA or an insurer must “file and litigate subrogation claims.” To comply with the statute, HPIA and an insurer could file a subrogation action, decide it is not in their best interest to continue, and end the litigation.

Lastly, this bill’s requirement for subrogation appears to conflict with case law and statutory interpretation. See *Yukumoto v. Tawahara*, 140 Haw. 285, 296, 400 P.3d 486, 497 (2017) (holding that when sections 663-10 and 431:13-103(a)(10), HRS, apply, “reimbursement and subrogation for all insurance companies” is limited to a judicially managed lien-claim process). Under sections 663-10 and 431:13-103(a)(10), HRS, when a policyholder has entered into a settlement with or obtained a judgment against an alleged tortfeasor against which the insurer wishes to assert subrogation rights, a judicially managed lien-claim process is the exclusive avenue of relief.

Thank you for the opportunity to provide comments.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Friday, February 7, 2025
9:50 a.m.

SB 1166

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit association of property and casualty insurance companies licensed to do business in Hawaii. Members companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council submits **comments** on this bill.

While we strongly support the concept of an insurer's ability to subrogate claims including those impacted by climate change, this right of subrogation is at the discretion of the insurer. There are many individual business decisions that are considered in pursuing subrogation, for example, apportionment of fault, costs to litigate, and potential settlement options. Subrogation actions would be extremely costly and difficult to prove against any party allegedly responsible for climate disasters or for extreme weather attributable to climate change. In most if not all instances, the cost to litigate would far exceed the amount at issue in any property subrogation effort because, among other factors, attributing fault for climate change will be a battle of very expensive specialized experts in a scientific field with no real consensus. Mandating subrogation would actually have the unintended consequence of increasing premiums because insurer expenses in addition to losses are factored into rates. In short, the factors included in the decision to subrogate may change from case to case and therefore, it is best left to the discretion of the insurer.

This bill applies to all lines of property and casualty insurance, not only property claims and therefore if there is an adverse impact on an insurer's expenses, it would be reflected on consumers in Hawaii in the form of higher premiums.

We ask that this bill be amended to allow insurers to decide which cases to subrogate, to limit the scope of the bill to property claims.

Thank you for the opportunity to testify.

Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection

February 5, 2025

Filed via electronic testimony submission system

RE: SB 1166, Climate Change, subrogation and insurance rates - NAMIC's Testimony in Opposition

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 7, 2025, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

The National Association of Mutual Insurance Companies consists of nearly 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write approximately \$391 billion in annual premiums and represent 68 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance.

NAMIC appreciates the concerns policymakers have about the impact of climate change on environmental risks and how climate change impacts risk of loss exposure for insurers and their policyholders. NAMIC's members have been actively engaged in thoughtfully considering the new era of risk created by climate change. Insurers are using state of the art predictive models to assess risk to more comprehensively match rate to risk. However, we are concerned with the proposed legislation which would directly connect insurance company decisions about whether to pursue various legal subrogation actions to the insurance rate making and regulatory rate approval process.

The bill states:

The purpose of this Act is to:

- (1) Require property and casualty insurance rates that incorporate historical or projected losses from fire or catastrophe hazards to be conditioned on agreement by the insurer to file and litigate subrogation claims against responsible parties; and*
- (2) Require the Hawaii property insurance association to file and litigate subrogation claims against certain responsible parties for claims paid by the insurer for losses that are attributable to climate change [Emphasis added]*

NAMIC's members vigorously pursue subrogation against legally at-fault parties for damages they pay to their insurance policyholders pursuant to the insuring agreement. Insurers currently factor subrogation recoveries into their loss histories that are considered in rate setting. But the proposed legislation expressly "requires" legal subrogation actions and arguably "conditions" the rate review and approval process upon an

insurer agreeing to sue fossil fuel companies for subrogation, even if the insurer's legal experts believe that such litigation is legally untenable, financially impractical, and/or inconsistent with the legal and ethical duties of the insurer or lawyer representing the insurer in the legal action. Insurers, like all other businesses, need discretion as to who they pursue legal claims against. A multitude of legal, factual, financial and public policy considerations come into play in an insurer's decision as to whether to file a subrogation claim.

For example, if an uninsured driver with absolutely no financial resources causes an auto accident, the insurer may decide that legal subrogation does not make sense and would actually have an adverse impact upon rates because legal costs would be expended with no hope of a recovery of damages. This legal expense impacts the insurer's overall expenses that are directly considered in rate making. This legal discretion is essential to insurers, especially in cases where the legal cause of action is quite challenging and expensive based upon the statutes, case law and the facts of the case at issue.

Additionally, many states specifically allow a defendant to recover their attorney's fees and costs from a party that files a lawsuit where the law and/or facts do not reasonably support the legal claim. Further, the attorney asserting the case may also be exposed to ethical sanctions for asserting a case where the law and/or facts do not justify the filing of the lawsuit. Insurers need discretion as to when to assert a subrogation claim. The proposed legislation arguably imposes a duty upon insurers to sue fossil fuel companies and other companies associated with climate change as part of their insurance rate filing process.

SB 1166 would establish a concerning legal and public policy precedent of connecting regulatory approval of business practices to a duty to sue specifically designated parties who the legislature deems at-fault for societal problems. Insurance rate making needs to be strictly connected to analysis of risk of loss exposure rating variables that are evaluated by considering claims loss histories and predictive models.

For the aforementioned reasons, NAMIC is concerned about the proposed legislation and respectfully requests your **NO VOTE on SB 1166**.

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

WRITTEN TESTIMONY

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Friday, February 7, 2025

9:50 a.m.

SB 1166

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, thank you for the opportunity to provide written testimony. HPIA is a non-profit unincorporated association of property and casualty member insurance companies. Property and casualty insurers are automatically a member of the association as a condition of their authority to transact business in the state of Hawai'i. HPIA is a property FAIR plan also known as the market of last resort for property insurance in the state.

HPIA submits the following **comments** on this bill.

While HPIA strongly supports the principle that HPIA and all insurers should have the ability to subrogate their claims, including those affected by climate change, we believe that this right to pursue subrogation should remain within the discretion of the HPIA Board.

Each decision regarding subrogation involves a careful consideration of various business factors, which include the apportionment of fault, litigation costs, and potential settlement options. Subrogation is evaluated on a case by case basis and actions related to climate change or extreme weather events can be particularly challenging and extremely costly. In many cases, the expenses associated with litigation may far exceed the resources that HPIA has available and may even be much greater than the potential amount that is sought through subrogation itself. Additionally, since there appears to be a lack of consensus in the scientific field surrounding the issue of climate change, the retention of expensive climate change and other related legal expert witnesses would surely add to anticipated litigation costs.

We believe that mandating HPIA to pursue subrogation as relating to climate change claims would likely weaken HPIA's overall limited financial position. As HPIA charges rates that are higher than the standard market, mandating subrogation could result in the unintended consequence of increasing premiums for policyholders across the state. In addition to claim related losses, this mandate could also result in the increase in HPIA's expenses which are factored into premium rates.

Given these concerns, we ask that this bill be amended to allow HPIA the discretion to determine which claims to pursue for subrogation.

Thank you for the opportunity to testify.

LATE

LATE

Testimony in Support of SB 1166

The Center for Climate Integrity is a nonprofit organization that empowers communities and officials with tools and research to hold major oil and gas corporations accountable for deceiving the public about how their products fuel climate change. We submit this testimony in support of SB 1166, which would help stabilize Hawai'i's insurance market in the face of ever-costly damages from climate-fueled extreme weather events. Proposed amendments to the legislation will also create pathways for individuals, business owners, and insurers in Hawai'i to recover monetary losses from fossil fuel companies responsible for property damages that are driving up the cost of living across the state. Similar legislation is currently being considered in California¹, and many other states are grappling with how to rein in insurance costs and retain affordable insurance access.

For decades, the world's biggest oil and gas companies have internally known that the unabated use of their fossil fuel products could lead to, in the words of one Exxon scientist, "potentially catastrophic events."² Instead of disclosing these risks to the public, a growing body of evidence shows how the fossil fuel industry deliberately sought to discredit science, promote climate denial, and deceive the public and policymakers about the very real threats they knew the continued use of their products posed to our economy, ecosystems, and public health.³ Like tobacco and opioid companies, major oil companies lied about the harms of their products in order to protect their own profits.

Today, these same companies continue to deceive consumers through misleading advertisements that seek to portray their businesses as essential partners in solving climate change, even as they slash their trivial investments in renewable energy while continuing to increase fossil fuel production.⁴ Last year members of Congress told the U.S. Department of Justice that a years-long investigation found that companies including Exxon, Chevron, Shell, and BP "worked in concert to mislead the public, policymakers, and investors with public promises to reduce emissions and meaningfully contribute to the transition away from oil and gas, while privately seeking to lock in continued fossil fuel production for decades into the future."

State and local governments across the U.S. — including the City and County of Honolulu⁵ and the County of Maui⁶ — have turned to the courts to hold major fossil fuel companies

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB222

²

<https://insideclimatenews.org/news/22092015/exxon-confirmed-global-warming-consensus-in-1982-with-i-n-house-climate-models/>

³ <https://climateintegrity.org/evidence/climate-deception>

⁴ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>

⁵ <https://climateintegrity.org/lawsuits/case/honolulu-hi>

⁶ <https://climateintegrity.org/lawsuits/case/maui-county-hawaii>

accountable for this deception and make them pay for the damage it has caused. In their complaints, Honolulu and Maui point to the exorbitant costs that the named fossil fuel defendants' deceptive actions have imposed on their communities including damages to municipal infrastructure and increased costs for adaptation and resiliency efforts.

Hawai'i's residents, businesses, and insurers are suffering vast harms as a result of the fossil fuel industry's deception and pollution.⁷ The widespread destruction from the deadly 2023 Lahaina wildfire, for example, whose ferocity was intensified by global warming from fossil fuel pollution,⁸ was not limited to municipal infrastructure. As SB 1166 explains, insurance companies operating in Hawai'i have already paid out more than \$2,300,000,000 across more than ten thousand wildfire claims to fire victims, with another \$1,000,000,000 of additional insured losses yet to be paid. The mounting costs that the fossil fuel industry's deception and pollution has imposed, and will continue to impose, on property owners and insurers has led to increased rates of nonrenewals and now threatens the stability of the state's insurance market. Between 2018 and 2023, nonrenewal rates increased by 91% in the County of Kauai, 296% in the City and County of Honolulu, 184% in the County of Maui, and 70% in the County of Hawaii.⁹

The fossil fuel industry should be held accountable for these rate increases, not policy holders who did nothing to increase the climate risks that are creating the crisis in the insurance market. The people of Hawai'i deserve pathways to hold accountable the corporate actors whose decades-long dishonesty and deception has fueled this crisis. Before any more policyholders in Hawai'i lose insurance coverage, or are forced to pay more, rising insurance costs should be placed back on the entities whose business practices and deliberate decisions created the climate-fueled insurance crisis.

SB 1166 would make it easier for insurers operating in Hawai'i to recover losses attributable to climate change and extreme weather from deceptive fossil fuel companies instead of policyholders via increased rates. Proposed amendments to the bill will also establish a specific cause of action for residents, business owners, and others who have suffered monetary damages as a result of climate disasters fueled by corporate deception to recover their losses in court. By encouraging the HPIA to subrogate on behalf of policyholders in order to recover the losses they have experienced as a result of the fossil fuel industry's actions, this important legislation would also protect the stability of Hawai'i's insurance market and stop costly rate hikes for property owners who have no other insurance options.

We urge this committee to support SB 1166.

⁷ <https://climateintegrity.org/uploads/media/CCI-Hawaii-ImpactsAndCosts-2024.pdf>

⁸ <https://www.nytimes.com/2023/08/10/climate/hawaii-fires-climate-change.html>

⁹ <https://www.nytimes.com/interactive/2024/12/18/climate/insurance-nonrenewal-rates-policies-state-map.html>