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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committees on Ways and Means
and
Judiciary
Wednesday, February 19, 2025
10:16 a.m.
State Capitol, Conference Room 211 and via videoconference

On the following measure:
S.B. 804, S.D. 1, RELATING TO INSURANCE FOR HAWAII CONDOMINIUM PROPERTIES

WRITTEN TESTIMONY ONLY

Chair Dela Cruz, Chair Rhoads, 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 bill.

The purpose of this bill is to require property insurers to offer discounts on a condominium association's annual insurance premium if the association adopts specific risk mitigation upgrades or develops comprehensive disaster response plans; require property insurers of condominiums to base premium increases on actuarial justifications that reflect actual risk reduction resulting from upgraded fire safety improvements installed in conjunction with a building fire and life safety evaluation; require property insurers of condominiums to justify premium increases above ten per cent; and require property insurers of condominiums to publicly report premium increases each year.

The property insurance market for condominium associations across the country, including Hawaii, currently faces significant challenges which include high premiums or affordability, insufficient coverage, and non-renewals due to the unique risk posed by condominium buildings and their communities. This trend has impacted, and will likely continue to impact, the ability to develop new housing, particularly affordable housing in some areas. Correspondingly, condominium associations in Hawaii have increased their dependence on surplus lines insurers to provide coverage for master policies because insurers in the admitted market (admitted insurers) have been unable to appropriately meet the demand.

Currently, as few as three admitted insurers are selectively writing master policy coverage for these properties. This pool has been limited for many years in Hawaii because the risk profile of many condominiums was likely affected by factors such as an aging infrastructure and deferred maintenance. As a result, many condominiums have become increasingly reliant on surplus lines insurers to cover multiple layers in their insurance plans. This shift began years ago and has continued, even though high premiums remain prevalent in the surplus lines market and reliance on this type of insurance also contributes to premium increases.

Surplus lines insurers are unlicensed carriers that operate outside the standard regulatory framework which governs insurers in the admitted market. Under Article 8, section 431 of the Hawaii Revised Statutes, they are permitted to provide coverage in Hawaii under specific conditions. They can assume higher-risk policies that traditional admitted insurers may avoid. Thus, in situations where admitted insurers may be unwilling or unable to write certain risks, surplus lines insurers address gaps in the market which provide policyholders with necessary supplemental coverage or a critical alternative. Surplus lines insurers are not subject to the same regulations as insurers in the admitted market, e.g., state-mandated rate approvals and participation in state guaranty funds, so they operate in a more relaxed regulatory framework.
Overregulating the surplus lines insurance market could have several negative

consequences. By design, surplus insurers operate with flexibility to cover unique, high-risk, or complex exposures that admitted carriers often avoid. Imposing excessive regulations, such as stringent rate approvals or coverage mandates, would limit this flexibility and discourage surplus carriers from participating in the market. This could leave policyholders without viable insurance options for high-risk properties, leading to coverage gaps and greater financial vulnerability. Additionally, increased regulatory burdens may stifle innovation in policy design and pricing, reducing the ability of these insurers to offer customized solutions tailored to specialized risks. Ultimately, overregulation could drive insurers out of state markets, undermining their essential role in maintaining a functional and competitive insurance ecosystem.

The trade-off for this flexibility is premium volatility. The surplus lines market tends to be reactive to market conditions. As reinsurance prices and inflationary pressures rise, it will likely drive-up premiums as well.

Additionally, policyholders may face challenges related to claim disputes or carrier solvency because surplus lines insurers are not regulated in the same way as admitted insurers. To mitigate these risks, surplus lines insurers have been required to meet minimum financial standards and are often vetted by licensed surplus lines brokers.

The proposed legislation which aims to make condominium master policies available and affordable may only affect the three admitted carriers. This could lead to the unintended consequence of these carriers withdrawing from the Hawaii market altogether, further exacerbating the problem.

The Department notes that encouraging improvements to the risk profile of aging condominium properties, modernizing infrastructure, enhancing safety measures, and mitigating disaster risks could make properties more attractive, and therefore improve their insurability, within the admitted market. Enhancing current alternative dispute resolution options for condominium associations and their members or creating more robust ones may help minimize the number of costly lawsuits. By addressing these issues which contribute to the scarcity of affordable coverage for condominium associations, such efforts might attract additional insurers to Hawaii’s admitted market.

In conclusion, while surplus lines insurers play a vital role in filling the gaps in Hawaii's property insurance market, their prevalence highlights a need to both stabilize and encourage competition among insurers in the admitted market. Prioritizing consumer protection and balancing market stability remain a priority that the Insurance Division intends to continuously work towards.

Thank you for the opportunity to testify.

WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA ʻOIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025

ON THE FOLLOWING MEASURE:
S.B. NO. 804, S.D. 1, RELATING TO INSURANCE FOR HAWAII CONDOMINIUM PROPERTIES.

BEFORE THE:
SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

DATE: Wednesday, February 19, 2025 **TIME:** 10:16 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Andrew I. Kim, Deputy Attorney General, at 808-586-1180)

Chairs Dela Cruz and Rhoads and Members of the Committees:

The Department of the Attorney General provides the following comments.

This bill (1) requires property insurers to offer discounts on a condominium association's annual insurance premium if the association adopts specific risk mitigation upgrades or develops comprehensive disaster response plans; (2) requires property insurers of condominiums to base premium increases on actuarial justifications that reflect actual risk reduction resulting from upgraded fire safety improvements installed in conjunction with a building fire and life safety evaluation; (3) requires property insurers of certain condominiums to justify premium increases above ten percent through independently verified data that the increases are necessary due to external factors; and (4) requires property insurers of condominiums to publicly report premium increases each year detailing and providing justification for such increases.

We recommend adding two new sections after section 5 to protect the bill against potential retroactive application and contractual impairment issues. Because this bill imposes premium adjustment requirements and possible penalties on property insurers, it may have potential retroactive effects on the rights and duties of insurers. The requirements under this bill may also affect existing contractual obligations between an insurer and insured, potentially conflicting with the Contract Clause of the United States

Constitution (U.S. Const. art. I, § 10, cl. 1.). To mitigate any possible issues, we recommend inserting the following wording after page 13, line 6:

> SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.
>
> SECTION 7. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or Article I, Section 10, of the United States Constitution.

The current sections 6 and 7 should then be renumbered accordingly. Thank you for the opportunity to provide comments.

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Hawai'i State Legislature
Senate Committee on Ways and Means
Senate Committee on Judiciary

February 17, 2025

Filed via electronic testimony submission system

RE: SB 804, SD1, Condominium Insurance Mandatory Discounts - 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 19, 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.

Although NAMIC's members appreciate the bill sponsors' laudable desire to improve the condominium master liability insurance market, we are concerned that the proposed legislation will have the *exact opposite effect* upon the health of the insurance marketplace and insurers' ability to write insurance.

The most foundational principle of property and casualty insurance is that rates must be actuarially sound and accurately matched to the risk exposure. Mandated discounts that do not strictly adhere to the concept of risk-based pricing are antithetical to a healthy insurance marketplace.

NAMIC respectfully offers the following comments in opposition to the proposed legislation:

1) The proposed legislation is unnecessary, because the Hawaii Division of Insurance (HID) has prior approval of rates oversight and broad regulatory authority to make sure that "rates are not excessive, inadequate or unfairly discriminatory", as required by law. *There is no evidence or data to support the contention that rates are not consistent with the strict regulatory mandates of the law.*

2) SB 804, SD1 is likely to have an adverse impact upon the availability of condominium master liability insurance in the marketplace. Currently there are only three insurers in the state who write this product-line. Insurers are in the business of competing for new insurance consumers, so when there is little business interest in a particular market it is a clear statement that the rate doesn't match the risk and insurers are avoiding the market because it could adversely impact their financial solvency and ability to honor their other insurance obligations to consumers. *Mandated discounts will only make this business equation that much more precarious for insurers.*

3) The proposed legislation would only apply to the admitted market, not the surplus lines market, which writes the majority of condominium master liability insurance coverage in the state, so the bill would

unfairly harm the competitive ability of the three admitted insurance writers, have no impact upon the majority of on-admitted insurance writers, and do little for the overall health of the marketplace.

4) SB 804, SD1 is unlikely to improve the availability of insurance coverage for the condominium marketplace, because mandates lead to insurance rate cost-drivers for all consumers. If a carrier is required to offer discounts to some consumers, and those discounts are not directly connected to a proven reduction in actual risk exposure, the insurer's overall financial risk hasn't been reduced so they will have to pass on the cost of that risk to other consumers. NAMIC is concerned that the proposed legislation will be counterproductive and detrimental to the condominium insurance marketplace. Additionally, we are concerned that the bill could adversely impact the three admitted insurers' ability to address the insurance needs of non-condominium insurance consumers. *Bad public policy decisions in regard to a single insurance product-line sold by an insurer has negative repercussions for the financial stability of the entire insurance business entity and its ability to address other insurance consumer needs.*

5) The proposed legislation would create a new and unnecessary regulatory expense and administrative burden for the HID. The insurance regulator's staff needs to be focused upon the current process of approving rates and forms in a timely manner as part of the prior approval of rates regulatory process. Delaying this process by requiring the HID to reallocate staff to address this annual reporting requirement would be harmful to the insurance marketplace and consumers who need timely rate approvals so that they can address their personal and professional insurance needs.

6) The proposed penalty of $10,000 per violation (the term "violation" is undefined) in SB 804, SD1 is excessive and arguably unconstitutional. It also creates a "shall" fine not "may" fine requirement that completely removes the discretion of the commissioner to consider the facts of the alleged violation. *How will an outrageous fine that denies insurers due process of law encourage and facilitate the growth of, an already unhealthy, insurance marketplace?*

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on SB 804, SD1, and avoid making a challenging insurance market situation … much worse.**

Thank you for your time and consideration.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

SB-804-SD-1
Submitted on: 2/15/2025 2:55:42 PM
Testimony for WAM on 2/19/2025 10:16:00 AM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

As a condo owner I support all bills which will help condos control insurance costs, justifies increases, takes into account risk mitigation measures, etc. I also believe you need a provision inserted that provides for renewal of policies or cancellation to be conveyed to the policy holders at least 60 days in advance.

SB-804-SD-1
Submitted on: 2/15/2025 8:22:22 AM
Testimony for WAM on 2/19/2025 10:16:00 AM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Support	Written Testimony Only

Comments:

Too many insurance companies are gouging the owners based on "what if" rather than actual facts.

LATE

SB-804-SD-1
Submitted on: 2/18/2025 10:18:22 AM
Testimony for WAM on 2/19/2025 10:16:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelene Tenno	Individual	Support	Written Testimony Only

Comments:

I support SB 804 as an owner of a condominium unit.

I am also on the board and the Education chair of Hawaii Council of Community Associations (HCCA).

Since the Marco Polo fire and the creation of the (RFSAC) Life Safety Evaluation matrix, we worked with the Honolulu Fire Department to create the Mobility Impaired list that can be emailed to the HFD specific email address. The list will help HFD of the needs of the building related to evacuations.

It has been a challenge to get this done with Condominium boards and it is also reflected in the HFD's 6 month report to the City Council.

AT my Condo, we knew the board and the Resident Manager would not provide the list, so we simply did it on our own and emailed it to the HFD email address provided.

Thank you for supporting all efforts for evacuation prepardness and allowing supportive testimony on SB 804.

Raelene Tenno

Condo Owner since 1990