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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, February 23, 2017  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1421, H.D. 1 – RELATING TO INSURANCE.**

TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

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

This bill adds two definitions, “insurance appraiser” and “insurance umpire,” to the Insurance Code. The Department is unsure as to the necessity of creating these two new classifications under the Insurance Code, as these terms are defined in insurance policies and not in the National Association of Insurance Commissioners’ (“NAIC”) model acts or laws. Both definitions require individuals to be “competent and well-versed in the insurance code,” and the Department is unclear as to the standards that are to be applied to reach those determinations.

This bill also proposes to amend the definition of “adjuster” to exclude salaried employees of adjusting corporations or associations owned or controlled by an insurer. Further, the term “unlicensed individual” on page 3, lines 8 to 9 is unclear, and redefining the term “public adjuster” may have the unintended consequence of expanding the universe of persons who may adjust policyholder claims without obtaining a public adjuster license.

The Department has not received any complaints on the way current definitions are applied and is unsure that changes to these definitions are required at this time.

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

## TESTIMONY OF MARIE WEITE

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Representative Angus L.K. McKelvey, Chair  
Representative Linda Ichiyama, Vice Chair

Wednesday, February 23, 2017  
2:00 p.m.

### **HB 1421, HD1**

Chair McKelvey, Vice Chair Ichiyama, and members of the Committee on Consumer Protection & Commerce, my name is Marie Weite, Assistant Vice President of Claims of First Insurance Company of Hawaii and the Law & Regulations Chair of the Hawaii Insurers Council. The 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 forty percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council **opposes** HB 1421, HD1.

With respect to Section 1 of the Bill, the Hawaii Insurers Council agrees that %consumer protection is extremely important to the State.+ However, the Hawaii Insurers Council disagrees with the inference in Section 1 that %the role of insurance adjusters under the insurance code+is not already adequately regulated in order to %protect the interests of the people of Hawaii.

The Hawaii Insurers Council opposes the part of Section 2 of the Bill that proposes to add two new definitions to Section 431:9-105, Hawaii Revised Statutes . %an insurance appraiser+and %an insurance umpire.+ Both definitions are unnecessary as they refer back to the wording of the policy. The definitions also require that the %an insurance appraiser+ and %an insurance umpire+be %competent and well-versed in the insurance code.+ However, this requirement is not attainable, practical or good public policy. The majority

of the insurance code is neither relevant nor within the understanding of even the most knowledgeable and seasoned insurance professional. Rather, depending upon the specific claim at issue, experience in the causes, assessment and valuation of the damage or loss, and potentially a host of other factors, are more important. For example, when the insurer and insured cannot agree upon the resolution of a claim for roof damage, knowledge of the insurance code is not relevant. Instead, experience in roof construction and repair, knowledge of prevailing costs of labor and materials in Hawaii, and an understanding of the valuation and loss settlement provisions of the policy at issue are much more desirable traits.

The Hawaii Insurers Council believes that a statute should not define the desirable characteristics of an ~~insurance appraiser~~ and ~~insurance umpire~~. Rather, the parties who select their respective appraiser, and the appraisers who select the umpire to resolve their differences, are in the best position to determine the qualifications they desire in their consultants.

The Hawaii Insurers Council opposes the proposal to amend the current definition of ~~adjuster~~ in Section 431:9-105, Hawaii Revised Statutes, by deleting the provision that an ~~adjuster~~: ~~do~~es not include an individual who is . . . [a] salaried employee of an adjusting corporation or an association owned or controlled by an insurer. (Page 2, lines 18-20 of the Bill.) Under present law, employees of adjusting corporations and an association owned or controlled by an insurer do not need to be separately licensed by the State as ~~adjusters~~ because they work under the license and supervision of their employer. A new requirement that all employees of adjusting corporations or an association owned or controlled by an insurer be separately licensed ~~adjusters~~ would lead to negative consequences: a reduction in staffing of adjusting corporations as many experienced and knowledgeable adjusting personnel would no longer be authorized to adjust claims, the resulting delays in claim processing, and, ultimately, prejudice to the interests of insureds and claimants.

Finally, Section 2 of the Bill proposes significant changes to the definition of ~~public adjuster~~ in Section 431:9-105, Hawaii Revised Statutes. This amendment is not needed because the current definition of ~~public adjuster~~ is clear and complete, and no justification for the proposal has been shown.

Under the current statute, a ~~public adjuster~~ already must be a licensed ~~adjuster~~. See Hawaii Revised Statutes § 431:9-105 (a ~~public adjuster~~ means, in part, ~~an adjuster~~) and § 431:9-201(a) (~~no~~ person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be an adjuster . . . unless so licensed by this State). Therefore, the language of the proposed amendment, at page 3, lines 8-19 of the Bill, that a ~~public adjuster~~ does not include an unlicensed individual . . . , followed by a convoluted explanation of those ~~unlicensed~~ individuals, adds nothing of substance, but only ambiguity and confusion, to the existing definition of ~~public adjuster~~.

Therefore, the Hawaii Insurers Council opposes HB 1421, HD1 in its entirety and requests that it be held.

Thank you for the opportunity to testify.

Hawaii State Legislature  
House Committee on Consumer Protection and Commerce

February 20, 2017

*Filed via electronic testimony submission system*

**RE: HB 1421, Insurance Code; Adjusters - NAMIC's Written Testimony in OPPOSITION**

Dear Representative Angus L.K. McKelvey, Chair; Representative Linda Ichiyama, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 23, 2017, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

NAMIC appreciates the bill sponsor's desire to make sure that there are clear definitions as to who may hold themselves out to insurance consumers as a "public adjuster", "insurance appraiser" and "insurance umpire". However, NAMIC is concerned that this well-intended legislation may actually confuse consumers by making them think that the new definitions change the well-established definitions of who may be an "insurance appraiser" and an "insurance umpire".

NAMIC believes that these revised definitions are unnecessary, because the proposed revisions merely reference back to the definition of an "insurance appraiser" and "insurance umpire" in the insurance policy. Therefore, the proposed revisions to the definition add nothing of value to the current definitions, but might inadvertently mislead consumers into believing that there has been a fundamental change in the law.

Additionally, NAMIC is concerned about the added provision that the “insurance umpire” and “insurance appraiser” be “well-versed in the insurance code”. This requirement is unnecessary, because the vast majority of the insurance code is totally irrelevant to the professional services provided by an “insurance appraiser” or “insurance umpire”, who only need experience and expertise on issues pertaining to the insurance claims process, causation of damages, home construction and repair standards, knowledge of prevailing costs of labor and materials, and valuation and claims loss settlement. Requiring these professionals to be “well-versed in the insurance code” is likely to disqualify many talented and competent professionals from these activities; thereby, creating claims adjusting delays and unnecessary conflicts with the long-standing appraisal and umpire process in Hawaii to the detriment of insurance consumers.

NAMIC is also concerned about the proposed revision to the definition of a “public adjuster”. The proposed amendment is unnecessary, because the current definition of “public adjuster” is unambiguous in that it requires the “public adjuster” be a *licensed* adjuster.

Hawaii Revised Statutes § 431:9 -105 states that a “[p]ublic adjuster” means, in part, “an adjuster” and § 431:9 - 201(a) states that “[n]o person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be an adjuster . . . unless so *licensed* by this State.” [Emphasis added]. Therefore, the proposed revision to the definition would only create ambiguity as to who may act as a “public adjuster”.

If anything, the proposed legislation will adversely impact consumer protection, by increasing the class of professionals who may become “public adjusters”, even though they may lack the claims adjusting experience and expertise necessary to competently represent the consumer. Moreover, the bill would create a situation where contractors and other professionals would have an opportunity to “hard-sell” the insurance consumer into retaining them to be both the repair contractor and the “public adjuster” on the project. This would not be consumer-friendly or promote consumer-protection.

So the real public policy question here is if the bill is intended to provide insurance consumers with meaningful protection from being bullied, coerced, or misled into retaining the services of a “public adjuster” or from hiring unqualified professionals or contractors with a conflict of interest in the project from being able to hold themselves out as “public adjusters”, how is this bill beneficial to consumers?

**For the aforementioned reasons, PLEASE VOTE NO on HB 1421, because the proposed legislation is in reality anti-consumer protection.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC’s written testimony.

Respectfully,



Christian John Rataj, Esq.  
NAMIC Senior Director – State Affairs, Western Region



# ROOFING CONTRACTORS ASSOCIATION OF HAWAII

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February 23, 2017

Testimony To: House Committee on Consumer Protection & Commerce  
Representative Angus L.K. McKelvey, Chair

Presented By: Tim Lyons, CAE  
Executive Director

Subject: H.B. 1421, H.D. 1 - RELATING TO INSURANCE.

Chair McKelvey and Members of the Committee:

I am Tim Lyons, Executive Director of the Roofing Contractors Association of Hawaii and we support the intent of this bill.

This bill addresses a problem we have had for about the last three (3) years with "hail chasers" coming to the islands and posing as insurance adjuster experts to assist people with damage claims to their roofs. We have received reports of people paying 200%, 300% or 400% and more for their roofs but unfortunately they don't really care because it has all been paid for by their homeowner's insurance policy. They only had to pay the deductible. Somehow these "adjusters" have learned the ins and outs of the insurance claims system and we feel it has put a "black eye" on the entire residential roofing industry. Our reports include situations where homeowners have had three (3)



shingles on an entire roof damaged by a minor hail storm and had the entire roof replaced and the insurance company paid for it. We hope that H.B. 1421 would help clarify and allow for regulatory efforts in this area.

If the Insurance Commissioner feels they can address this problem under current statutes and rules then we are fine with that as long as action can be taken.

Thank you.

**HOUSE COMMITTEE  
ON  
CONSUMER PROTECTION & COMMERCE**

February 23, 2017

House Bill 1421, HD1 Relating to Insurance

Chair McKelvey, Vice Chair Ichiyama, and members of the House Committee on Consumer Protection and Commerce, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm respectfully offers the following comments about House Bill 1421, HD1 Relating to Insurance. State Farm continues to **oppose** House Bill 1421, HD1 as written.

We have reviewed the testimony of the advocates for the bill and we understand that the issue they wish to address is the appearance of “hail chasers” or as we refer to them “storm chasers”. Unfortunately, we do not think this legislation would address those concerns. In fact, it is likely to exacerbate the problem by allowing unlicensed, unregulated, and unqualified individuals to act as public adjusters. It would be better to consider the many other proposals to address this issue, including the 2015 proposal adopted by the National Conference of Insurance Legislators (NCOIL).

<http://ncoil.org/wp-content/uploads/2016/04/07232015StormChaserModelAct.pdf>

NCOIL stated:

“...[O]n July 19, [2015] NCOIL unanimously adopted the "Storm Chaser Consumer Protection Act," ***a model law intended to safeguard homeowners from individuals posing as legitimate roofing contractors.*** The proposed model takes aim at fraud that occurs after natural disasters and extends NCOIL's efforts to address consumer and insurance market catastrophe issues. (Emphasis added.)

"Storm chasing is an unfortunate consequence of hurricanes, tornados, floods, winter storms, and other natural events, and that means that state legislators are obligated to weigh in," Chairman Lehman said."

"It is shameful that some people take advantage of consumers who are truly in need and who trust in others to repair their homes and help them return to normal lives," Senator Rapert said.

"The NCOIL model's comprehensive provisions will prevent roofing companies from chasing after natural disasters, from traveling state-to-state in order to commit civil and criminal acts."

'In a letter sent prior to the Summer Meeting, Senator Golick urged lawmakers to support the proposed Storm Chaser Model, saying that roofing contractor fraud " . . . increases overall costs, takes business away from reputable contractors and ultimately drives up insurance costs. As a result, model legislation is needed to help protect consumers, the reputable roofing contractor industry and the insurance market from these unprincipled individuals."

“The Storm Chaser Consumer Protection Act requires various disclosures, including an approximate cost estimate of a contract. It also allows a consumer to cancel the contract if the consumer's insurer denies all or part of the claim and requires a contractor to return any payments or deposits that the consumer made to the contractor, except for cost of providing emergency services if the consumer cancels the contract.”

“The Storm Chaser Model requires roofing contractors to maintain certain insurance coverages; establishes contractor prohibitions, penalties, and registration requirements; and allows certain exemptions. Among other provisions, the Model calls for registration fees to help fund its enforcement and includes a streamlined registration process for contractors who are registered in good standing in another state.”

<http://www.cftnews.com/index.php?cmd=article&id=10907>

Similar bills have been enacted in Alabama, Arizona, Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Nebraska, South Carolina, South Dakota, Tennessee, Texas and Wisconsin. We urge the committee to consider this alternative to the proposed bill.

Thank you for the opportunity to present this testimony.



**LATE**

To: The Honorable Angus L.K. McKelvey, Chair  
The Honorable Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection and Commerce

From: Mark Sektnan, Vice President

Re: **HB 1421 HD1 – Relating to Insurance**  
**PCI Position: OPPOSE**

Date: Thursday, February 23, 2017  
2:00 PM; Conference room 329

Aloha Chair McKelvey, Vice Chair Ichiyama and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is **opposed** to **HB 1421 HD1** which amends the definition of "adjuster" and "public adjuster" to clarify who may not be considered an adjuster or public adjuster. In Hawaii, PCI member companies write approximately 42.3 percent of all property casualty insurance written in Hawaii. PCI member companies write 44.7 percent of all personal automobile insurance, 65.3 percent of all commercial automobile insurance and 76.5 percent of the workers' compensation insurance in Hawaii.

PCI opposes the part of Section 2 of the Bill that proposes to add two new definitions to Section 431:9-105, Hawaii Revised Statutes – "insurance appraiser" and "insurance umpire." Both definitions are unnecessary as they refer back to the wording of the policy. The definitions also require that the "insurance appraiser" and "insurance umpire" be "competent and well-versed in the insurance code." However, this requirement is not attainable, practical or good public policy. Knowledge of the insurance code is neither relevant nor within the understanding of even the most knowledgeable and seasoned insurance professional. Rather, depending upon the specific claim at issue, experience in the causes, assessment and valuation of the damage or loss, and potentially a host of other factors, are more important. For example, when the insurer and insured cannot agree upon the resolution of a claim for roof damage, knowledge of the insurance code is not relevant. Instead, experience in roof construction and repair, knowledge of prevailing costs of labor and materials in Hawaii, and an understanding of the valuation and loss settlement provisions of the policy at issue are much more desirable traits.

PCI also believes that a statute should not define the desirable characteristics of an "insurance appraiser" and "insurance umpire." Rather, the parties who select their respective appraiser, and the appraisers who select the umpire to resolve their differences, are in the best position to determine the qualifications they desire in their consultants.

PCI opposes the proposal to amend the current definition of "adjuster" in Section 431:9-105, Hawaii Revised Statutes, by deleting the provision that an "adjuster": "[d]oes not include an individual who is . . . [a] salaried employee of an adjusting corporation or an association owned or controlled by an insurer." (Page 2, lines 18-20 of the Bill.) Under present law, employees of adjusting corporations and an association owned or controlled by an insurer do not need to be separately licensed by the State as "adjusters" because they work under the license and supervision of their employer. A new requirement that all employees of adjusting corporations or an association owned or controlled by an insurer be separately licensed "adjusters" would lead to negative consequences: a reduction in staffing of adjusting corporations as many experienced and knowledgeable adjusting personnel would no longer be authorized to adjust claims, the resulting delays in claim processing, and, ultimately, prejudice to the interests of insureds and claimants.

Finally, Section 2 of the Bill proposes significant changes to the definition of "public adjuster" in Section 431:9-105, Hawaii Revised Statutes. This amendment is not needed because the current definition of "public adjuster" is clear and complete, and no justification for the proposal has been shown.

Under the current statute, a "public adjuster" already must be a licensed "adjuster." *See* Hawaii Revised Statutes § 431:9-105 (a "[p]ublic adjuster" means, in part, "an adjuster") and § 431:9-201(a) ("[n]o person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be an adjuster . . . unless so licensed by this State"). Therefore, the language of the proposed amendment, at page 3, lines 8-19 of the Bill, that a "public adjuster" does not include an unlicensed individual . . .," followed by a convoluted explanation of those "unlicensed individuals," adds nothing of substance, but only ambiguity and confusion, to the existing definition of "public adjuster."

PCI respectfully requests that the committee hold this bill.



Hawaii Public Adjusters

*Insurance Claim Management Throughout the Pacific*

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**LATE**

To: Hon. Angus L. K. McKelvey, Chair  
And to the Committee on Consumer Protection & Commerce  
Hawaii State Capitol Rooms 329

February 22<sup>nd</sup>. 2017

Via email to: [cpctestimony@capitol.hawaii.gov](mailto:cpctestimony@capitol.hawaii.gov)

Re: **HB 1421 Testimony -SUPPORT -**

Dear CPC Committee Members,

My name is Robert Hugh Joslin and I am the President of Hawaii Public Adjusters Corp. Our family owned business is located at 2050 Main Street, in Wailuku, Hawai'i. Our firm is the only resident public adjusting firm with continuous Hawaii operations servicing our island communities. I have been licensed as a Public Adjuster by the State of Hawaii since October of 2002 pursuant to HRS Sections 431:9-201, 431:9-222 and 431:9-226. For most of my adult life, I've been involved in insurance and construction work. I have been active in Hawaii on commercial development projects dating back to 1984. In 2011, I became the first and only Hawaii resident to be designated as a Certified Professional Public Adjuster ("CPPA") from the Insurance Institute of America ("The Institute"). The Institute remains the sole certifier of distinguished insurance gradations such as the Chartered Property Casualty Underwriter ("CPCU"). I also hold a professional certification from the Wind Network as an Insurance Appraiser. I am also a certified UAIA Insurance appraiser.

As a Hawaii Public Adjuster, I submit to oversight from the State of Hawaii's Insurance Department and its Commissioner, Mr. Gordon Ito. As a Public Adjuster, I am barred from representing any insurance companies. I am, by design, a public advocate for the Hawaii policyholder. We exist for the use and benefit of your Hawaii policyholders. I have a firm duty under HRS 431:9-226 to investigate for, report to and adjust on behalf of insureds (only) as a Public Adjuster. Lisa Joslin (wife) and Ryan Joslin (son) are also active Hawaii PAs. Along with our fellow employees at Hawaii Public Adjusters, we make up the only active resident PA firm in this state. We are well-versed in nearly every facet of Hawaii's property insurance claim practices and related activities. We also have a more



global viewpoint in claim matters since we are not tied to any one carrier or a single claim department. That loftier vantage point brings us to the bill now before you.

The purpose of an insurance appraisal is to effectively, yet very modestly, provide for the level playing field between the insured and the insurer when it comes to a claim. It has historically been the simplest, easiest and most reasonable method to resolve the issue of damages relating to any property loss. All property policies contain an appraisal clause. When triggered, the policy's clausal language dictates the minimum means by which two competent party-appointed insurance appraisers (and if necessary, their selected umpire) are to settle the amount of a loss. There are, however, a host of problems that have developed over the last few years with that simple method to settle the amount of a claim. Most obvious is the scarcity of statutory definitions that exist in most other mainland state regulations.

This state lacks any regulations concerning illegitimate contractors posing as insurance consultants when it comes to property claims and appraisals. As it stands right now, any person is free to claim the title of Hawaii "insurance consultant", "insurance appraiser" or "insurance umpire" with total disregard for our HRS 431 insurance laws and regulations. This regulatory *void* has now seeded an unregulated cottage industry of amateurish sales representatives, illegal contractors and mainland consultants.

Please understand that you'll hear that there isn't any problem or any need for these clarifications in the statutes. Nothing could be further from the truth. There are many arbitrations, mediations and lawsuits currently taking place specifically dealing with this issue. Should this bill be opposed by other factions, then I ask that you consider the underlying reasoning for that resistance. HB 1421 will serve to address the existing unfair claim handling within this state. It will undeniably assist your Hawaii policyholders during their most vulnerable time.

As the elected guardians of the general public, you should welcome this bill and view it as a consumer protection measure for both the insured and insurer alike.

Respectfully,

*Robert Hugh Joslin*

Robert Hugh Joslin- CPPA  
Direct Line: 808-856-3043

CC: Wailuku House Representative- Hon. Joe Souki