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TO THE HOUSE COMMITTEE ON INTRASTATE COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Wednesday, February 8, 2017
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 1421 – RELATING TO INSURANCE.

TO THE HONORABLE TAKASHI OHNO, 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 offers the following comments on this measure.

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 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 we are 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 limit homeowners’ access to third-party assistance, and 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.

**HOUSE COMMITTEE
ON
INTRASTATE COMMERCE**

February 8, 2017

House Bill 1421 Relating to Insurance

Chair Ohno, Vice Chair Choy, and members of the House Committee on Intrastate 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 Relating to Insurance. State Farm opposes this measure.

Although well-intended, State Farm believes that this bill might create confusion in the appraisal process as well as the definitions in the current statute.

1. **Appraiser; Umpire.** The first part of the bill defines “insurance appraiser” and “insurance umpire.” State Farm believes that this is unnecessary, and that these definitions might inadvertently create conflict with the long-standing appraisal process in Hawaii. They really do no more than restate the definitions for appraisers and umpires that are in most policies.

The bill defines “appraiser” as someone “that is appointed by either the insured or the insurer as may be further defined in a policy's appraisal clause and who is competent and well-versed in the insurance code.” An “umpire” is someone “appointed by both insurance appraisers per an insurance policy, who shall be competent and well-versed in the insurance code and who shall serve as the neutral individual bound by the disclosure requirements as set forth in section 658A-12.” Neither of these definitions is really necessary.

Either the insured or the insurer can request an appraisal when they disagree on the amount of a property loss at issue in a claim. The usual process calls for the insured and the insurer to each appoint an appraiser—someone who is knowledgeable about the values for the property being considered. The two appraisers, one selected by the insured and the other by the insurer, then agree on a competent umpire. Each appraiser then submits what they believe is the value of the loss. If they are unable to agree, they submit their differences to the umpire. An agreement by any two of the three sets the amount of the loss, which the insurer then pays to the insured. Significantly, knowledge of the Insurance Code is generally not important; what is important is that the appraisers and the umpire be knowledgeable about the subject matter being appraised.

2. **Adjuster; Public Adjuster.** HRS 431:9-105 clearly defines two types of insurance adjusters, both of which are independent contractors or employees of independent contractors that operate on behalf of either an insurer or an insured. Those that represent only the insured are further defined as “public adjusters.” All of these individuals are required to be properly licensed under HRS 431:9-201.

Following the “public adjuster” definition in the bill is language describing what is **not** a public adjuster, but unfortunately, it contains functions that a public adjuster clearly does. Subsection (3)(1) and (2) state that a public adjuster does not include an unlicensed individual that does any of the following:

(1) A person, contractor, consultant, or third party entity, who, for a fee or other compensation or benefit, adjusts or estimates or acts as a third party for an insurer or for the insured involving an insurance claim; or

(2) Any person, contractor, consultant, or third party entity, who, for a fee or other compensation or benefit, acts as an intermediary, negotiator, or agent between a policyholder, claimant, or beneficiary and an insurer in any manner.

The highlighted activities are exactly what a public adjuster does. Unfortunately, this language takes a clearly worded statute and injects unneeded ambiguity. It is also unclear what a “third party” is and the term is undefined. This ambiguity might inadvertently create a class of unlicensed and unregulated public adjusters that would take advantage of consumers.

The bill seems to be attempting to distinguish between adjusters—both public and those working for insurers—and appraisers and umpires. But, there is no need to do that. Appraisers and umpires are not adjusters; appraisers are selected by insureds and insurers almost as subject matter experts to help in the evaluation of claims. The appraisal process then employs umpires if the two appraisers do not agree. This system works well, and there is no need for change.

For the reasons stated above, State Farm urges the Committee hold and defer this bill.

Thank you for the opportunity to present this testimony.



ROOFING CONTRACTORS ASSOCIATION OF HAWAII

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February 8, 2017

Testimony To: House Committee on Intrastate Commerce
Representative Takashi Ohno, Chair

Presented By: Tim Lyons, CAE
Executive Director

Subject: H.B. 1421 - RELATING TO INSURANCE.

Chair Ohno and Members of the Committee:

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

Thank you.

TESTIMONY OF MARIE WEITE

COMMITTEE ON INTRASTATE COMMERCE
Representative Takashi Ohno, Chair
Representative Isaac W. Choy, Vice Chair

Wednesday, February 8, 2017
9:00 a.m.

HB 1421

Chair Ohno, Vice Chair Choy, and members of the Committee on Intrastate 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.

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 – “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. 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”: “[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.”

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

Thank you for the opportunity to testify.



Advocacy. Leadership. Results.

To: The Honorable Takashi Ohno, Chair
The Honorable Isaac W. Choy, Vice Chair
House Committee on Intrastate Commerce

From: Mark Sektnan, Vice President

Re: **HB 1421 – Relating to Insurance**
PCI Position: Concerns, Requesting Amendment

Date: Wednesday, February 8, 2017
9:00 AM; Conference room 429

Aloha Chair Ohno, Vice Chair Choy and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) has **concerns** regarding HB 1421 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 member companies are concerned that the bill could be interpreted to prevent out of state adjusters from being allowed to come to Hawaii to adjust hurricane claims. As you know, insurance companies often bring in qualified adjusters from other parts of the country to handle claims after natural disasters such as hurricanes, floods and wildfires.

In August 2016, Insurance Commissioner Ito issued a declaration regarding assistance of nonresident unlicensed independent adjusters for Hurricanes Madeline and Lester. In his declaration, the Insurance Commissioner noted that he had "decided to allow nonresident unlicensed independent adjusters to operate in the State temporarily to help handle the amount of work generated by Hurricanes Madeline and Lester that may exceed the islands' current capacity." The news release issued further stated, "The Insurance Commissioner wants to ensure that adjusters and insurance companies can and will timely respond to homeowners' needs."

PCI asks the committee to amend the bill to ensure that out of state adjusters will be allowed to continue assisting the residents of Hawaii in coping with hurricanes and other natural disasters. Thank you for your consideration of this request.