

LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION
& COMMERCE AND JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, February 9, 2009
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1074 – RELATING TO INSURANCE.

TO THE HONORABLE ROBERT HERKES AND JON RIKI KARAMATSU, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”). Thank you for hearing this bill. The Department strongly supports this
Administration bill and requests additional amendments.

The purpose of this bill is to update the Insurance Code, Hawaii Revised Statutes
(“HRS”) chapter 431, by:

- (1) Including in HRS §§ 26-9(o) and 431:2-215(a) an express reference to the
drivers education fund underwriters fee in HRS § 431:10G-107;
- (2) Adding in HRS § 431:3-302.5(c) the reference to rules governing audited
financial statements;
- (3) Amending HRS §§ 431:6-317 and 431:6-322 to clarify the allowable
investments in common stocks, common trust funds, mutual funds, and
exchange traded funds;
- (4) Including in HRS § 431:7-206 a time limit for claiming the retaliatory tax
credit;

- (5) Clarifying in HRS § 431:8-310(b) that surplus lines brokers licenses are issued to licensed producers with property or casualty lines of authority or to property and casualty coverages sold for personal use;
- (6) Allowing under HRS § 431:9A-222.5 a limited adjuster license for crop insurance claims;
- (7) Amending HRS §431:9A-124(b) regarding the number of continuing education credit hours required for insurance producer license renewal; and
- (8) Clarifying in HRS § 431:10C-408(a) that the assigned claims program applies to those with no applicable motor vehicle insurance.

The clean-up of these provisions is necessary so that Hawaii is uniform with the best practices in insurance regulation.

HRS §§ 26-9(o) and 431:2-215(a) currently refer to the drivers education fund underwriters fee in HRS § 431:10C-115 for motor vehicle insurance policies, but do not refer to the drivers education fund underwriters fee in HRS § 431:10G-107 for motorcycle and motor scooter insurance policies. Both fees should be referenced in these sections.

HRS § 431:3-302.5(c) currently requires insurers to prepare annual audited financial statements according to annual statement instructions and accounting practices and procedures manuals of the National Association of Insurance Commissioners (“NAIC”). The NAIC will be removing these provisions from the annual statement instructions and require state insurance regulators to expressly adopt these provisions by January 1, 2010, either by statute or rule, as a condition for NAIC accreditation. The Commissioner is currently proceeding to adopt these provisions in the administrative rules. Thus, the statutory reference to NAIC annual statement instructions will be outdated upon adoption of the rules.

HRS §§ 431:6-317 and 431:6-322 allow insurers to meet their capital and reserve requirements in HRS § 431:6-201 with investments in common stocks, common trust funds, mutual funds, and exchange traded funds, subject to certain limitations. After meeting the requirements in HRS § 431:6-201, insurers may invest any of their funds in

these securities. The investment statutes in Article 6 were amended last session to provide greater flexibility to insurers. These amendments are made for clarification purposes.

HRS § 431:7-206 allows a domestic insurer to claim credit for retaliatory taxes against the premium tax. This amendment provides a deadline for claiming the credit similar to that imposed for the regulatory oversight tax credit in HRS § 431:7-207(d).

HRS § 431:8-310(b) provides for the issuance of a surplus lines broker license to anyone with an insurance producer license and HRS § 431:9A-124(b) addresses the number of credit hours required for insurance producer license renewal. These provisions of the bill adopt the recommendations of the Uniformity Subgroup of the NAIC Producer Licensing Working Group to attain uniformity and reciprocity with other states to:

- (1) Expressly limit the issuance of the surplus lines broker license to property and casualty insurance producers;
- (2) Revise the number of continuing education credit hours required as a prerequisite for license renewal for insurance producers; and
- (3) Include ethics training in the continuing education requirement.

All states have agreed to reciprocity in insurance producer licensing.

Accordingly, many states already have adopted the NAIC's recommendations.

Achieving nationwide uniformity in insurance licensing will make insurance regulation less burdensome and complicated for insurers, producers, and regulators, and this in turn will benefit the public. This proposal is an important step in achieving that goal.

HRS § 431:9-222.5 currently provides for the issuance of a workers' compensation limited lines adjuster's license, but does not provide for other types of limited licenses. There is a certain need for adjusters to assess crop insurance losses. This section expands limited lines adjuster's licenses to include crop adjusters.

HRS § 431:10C-408 provides for the assigned claims program to cover claims where no other applicable motor vehicle insurance coverage applies. Act 14, Session Laws of Hawaii 2001, added language to HRS § 431:10C-408(a) that broadened the scope and cost of the assigned claims program beyond its original intent. The motor

vehicle insurance law in HRS § 431:10C-301(b) mandates that all drivers obtain minimum levels of coverage: \$20,000 per person with \$40,000 per accident in liability coverage for bodily injury, \$10,000 in property damage, and \$10,000 per person in personal injury protection benefits. At the insured's option, an insured may decline uninsured motorist ("UM") coverage. Since liability insurance is mandated, including a reference to liability insurance in HRS § 431:10C-408(a) is redundant. Public policy is not served by allowing insureds who have declined UM coverage to file claims through the assigned claims program because it provides a disincentive for insureds to add this optional coverage, despite its relatively low cost.

In addition, the Department requests additional amendments relating to rate filings that are intended to improve administrative efficiency and reduce costs for insurers.

On March 1, 2008, Hawaii will join other states in accepting all filings in all lines in the NAIC's System for Electronic Rate and Form Filing ("SERFF").

SERFF enables companies to send and states to receive, comment on, and approve or reject insurance industry rate and form filings, and payments. It offers a technological solution to address rate and form filing and approval process and offers a decentralized point-to-point, web-based electronic filing system. SERFF facilitates communication, management, analysis and electronic storage of documents and supporting information. It is designed to improve the efficiency of the rate and form filing and approval process and to reduce the time and cost involved in making regulatory filings. It also provides up-to-date filing requirements when they are needed.

Since Hawaii will be accepting electronic rate filings and payments for all lines of insurance, it will be unnecessary for insurers to be required to make printed form filings in their initial filings.

Thus, the Department respectfully requests amendments to HRS §§ 431:14-104(a), (b) and 431:14-105 such that page 14, line 19, reads as follows:

SECTION 11. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating plan, every other rating rule, and every modification of any of the foregoing that it proposes to use; provided that filings with regard to specific inland marine risks, which by general custom of the business are not written according to manual rate or rating plans, and bail bonds, subject to section 804-62, shall not be required pursuant to this subsection.

Every filing shall:

- ~~[(1) Consist of two printed copies and one copy filed by electronic, telephonic, or optical means;~~
- ~~(2)](1) State its proposed effective date;~~
- ~~[(3)](2) Indicate the character and extent of the coverage contemplated; [and]~~
- ~~[(4)](3) Include a report on investment income[-]; and~~
- (4) Be accompanied by a \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(b) An insurer shall submit to the commissioner:

- (1) An electronic version of the filing. The commissioner may request a printed version of the electronic filing to be also submitted; or
- (2) Two printed versions of the filing.

~~[(b) Each filing shall be accompanied by a \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.]”~~

SECTION 12. Section 431:14-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:14-105 Policy revisions that alter coverage.** (a) Any policy revisions that alter coverage in any manner shall be filed with the commissioner~~[-, consist of two printed copies and one copy by electronic, telephonic, or optical means,]~~ and include an analysis of the impact of each revision on rates.

(b) A filing shall consist of either:

- (1) An electronic version of the filing. The commissioner may request a printed version of the electronic filing to be also submitted; or
- (2) Two printed versions of the filing.

(c) After review by the commissioner, the commissioner shall determine whether a rate filing for the policy revision must be submitted in accordance with section 431:14-104.”

We thank the Committees for the opportunity to present testimony on this measure and respectfully request the issuance of an H.D. 1 with the additional amendments noted above.



HIIA

Hawaii Independent Insurance Agents Association

March 12, 2008

To: Representative Robert N. Herkes, Chair
Committee on Consumer Protection & Commerce &
Representative Jon Riki Karamatsu, Chair
Committee on Judiciary

From: Hawaii Independent Insurance Agents Association

Re: HB1074 Relating to Insurance – Updates references in Insurance Code
Hearing: Monday, February 9, 2009 2:00 pm Conference Room 325

The Hawaii Independent Insurance Agents **supports** HB 1074 with the following amendment to section 431:9A-124 dealing with Continuing Education. We believe our Continuing Education proposal below will still continue to achieve uniformity and reciprocity as recommended by the National Association of Insurance Commissioners.

Our recommended alternative to the addition of Ethics to Continuing Education is as follows:

Single Line of Authority

21 credit hours in line of authority
3 credit hours in insurance laws, insurance rules or ethics training
24 total credit hours

Dual Line of Authority –

10 credit hours relating to Life & Health topic
11 credit hours relating to Property & Casualty topic
3 credit hours in insurance laws, insurance rules or ethics training
24 total credit hours

Ethics will not be a separate requirement but will be one of three options.

HIIA is a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. We would like to thank both committees for the opportunity to testify.

Testimony of Robert Toyofuku
On behalf of Hawaii Association for Justice
In OPPOSITION to
H.B. No. 1074

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Opposition to H.B. No. 1074.

Section 10 of this bill proposes a substantive change to the assigned risks program of the JUP (joint underwriting plan).

The law in its current form properly effectuates the purpose of the JUP assigned claims program to provide minimum liability protection to those injured by uninsured motorists who have no other applicable liability or uninsured motorist coverage. The law was amended to effectuate this purpose in 2001 with the support of the Insurance Division. A copy of Standing Committee Report No. 1125, issued by this committee, is attached.

The proposed amendment would reinstitute the very inequities that were corrected by the legislature in 2001. The amendment would disqualify those injured by uninsured motorists if there was any type of insurance applicable, even if the applicable insurance was only for medical coverage, by eliminating the words "liability or uninsured motorist" in Section (a)(1) and the word "such" in Section (a)(2). Section (a)(2) would require that "No insurance benefits applicable to the accidental harm can be identified." Thus if PIP (medical) coverage exists, the injured person would not be entitled to benefits even if there was no liability nor uninsured motorist benefits available.

This would result in no recovery whatsoever for many innocent victims of uninsured motorists. For example, an elderly person riding on a bus who owns no car would be disqualified if the bus is struck by an uninsured motorist because the bus provides PIP medical coverage but not uninsured motorist benefits. This is because there would be some type of insurance (PIP medical) applicable which would disqualify the elderly person under the proposed amendment to section (a)(2) which would require that there be "No insurance" applicable. This is why the current law specifically references "liability or uninsured motorist benefits" so as to avoid the inequity of disqualifying a person from receiving liability benefits because they are entitled to medical benefits. The person who does not own a car could not even purchase uninsured motorist benefits and would thus be left completely unprotected by the proposed amendment.

Others such as children could also be left unprotected. A child riding in a car with full legal coverage (PIP medical, property damage liability and bodily injury liability) would be disqualified under the proposed amendment to section (a)(2) which requires that there be no insurance, yet be left unprotected because there is no uninsured motorist benefits required by the motor vehicle insurance code. Many others would also

be unfairly disqualified - - indeed everyone who does not have access to uninsured motorist benefits would be left unprotected by the proposed amendment.

Uninsured motorist benefits would have to become a mandatory coverage in order to avoid the (perhaps unintended unfair results) of the proposed amendment. Although the owner of a car could purchase uninsured motorist benefits, that coverage is currently not required. And of course, those who do not own cars do not even have the opportunity to buy uninsured motorist benefits. Similarly, children, other family members and unrelated passengers in the car have no input in the decision to purchase uninsured motorist coverage and are by default bound by the decision of the owner. The proposed amendment does not adequately take their situations into account.

The alternative of requiring consumers to purchase optional UM (uninsured motorist benefits) does not reflect sound public policy because it discriminates against working class consumers who dutifully purchase the required coverages but can not afford optional coverages, while favoring the more affluent who can afford additional coverages. Our system of automobile insurance is premised on equal protection for everyone who purchases the required coverages. This principle is even more important in these difficult economic times when working class consumers are struggling to survive.

Automobile insurance companies on the other hand are overflowing with profits and enjoying the highest profits in the nation. The National Association of Insurance Commissioners (NAIC), in its latest report ranks Hawaii the most profitable market in the United States for the 11th year with a 20.4% return (triple the national average of 7.4%) for private passenger automobile liability insurance. Hawaii profits have been double to triple the national average for over a decade now. The current Report of the Hawaii Insurance Commissioner shows an annual gross profit for automobile insurance of \$421,673,807 in Hawaii. (Premiums less claims paid.) The cost of impact of this measure is insignificant in comparison.

Because the number of assigned claims that would be affected by the proposed amendment is relatively small, there would be no significant impact on insurance premiums to justify the drastic impact on those few who would be disqualified by the amendment. There is no compelling reason to change the statute that this legislature fixed in 2001, particularly when Hawaii consumers are struggling financially and insurance companies are reaping exorbitant profits.

Thank you for this opportunity to testify in Opposition to H.B. No. 1074.

* CLH has changed its name to conform to the name of its national organization the American Association for Justice.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON H.B. 1074, RELATING TO INSURANCE

February 9, 2009

Via E Mail: cpctestimony@capitol.hawaii.gov
Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
Representative Jon Riki Karamatsu, Chair
Committee on Judiciary
State House of Representatives
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes, Chair Karamatsu and Committee Members:

Thank you for the opportunity to comment on House Bill 1074, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred forty (340) member company's account for 94% of the life insurance premiums and 94% of the annuity considerations in the United States among legal reserve life insurance companies. ACLI member company assets account for 93% of legal reserve company total assets. Two hundred fifty-three (253) ACLI member companies currently do business in the State of Hawaii.

The short description of HB 1074 states that it "Updates references in [the] Insurance Code" (emphasis added).

In truth and in fact the Bill adds many substantive provisions in the Insurance Code affecting the business of insurance.

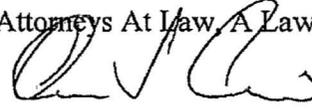
For example, Section 6 of the Bill establishes a limitations period of one year for an insurer to claim the retaliatory tax credit authorized under Section 431: 7-206, HRS.

Section 9 of the Bill establishes new continuing education requirements for an insurance producer to satisfy in order to maintain his or her license.

ACLI is in the process of reviewing House Bill 1074 with its member companies and may submit additional testimony on this bill in the future.

Again, thank you for the opportunity to comment on House Bill 1074.

CHAR HAMILTON
CAMPBELL & YOSHIDA
Attorneys At Law, A Law Corporation



Oren T. Chikamoto
737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 524-3800
Facsimile: (808) 523-1714
E mail: ochikamoto@chctlaw.com

TESTIMONY ON H.B. NO. 1074
RELATING TO INSURANCE

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

HOUSE COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Monday, February 9, 2009, 2:00 p.m.
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

My name is Gerald C. Yoshida, an attorney in the Honolulu law firm of Char Hamilton Campbell & Yoshida. Our firm provides legal services to a number of captive insurance companies currently licensed in the State of Hawai'i. I am also Chairman of the Legislative Committee of the Hawai'i Captive Insurance Council (HCIC), a trade organization of captive insurance companies and service providers who comprise and support Hawai'i's captive insurance industry.

We support Sections 4 and 5 of H.B. No. 1074. These sections clarify that insurers may meet their capital and reserve requirements in Hawaii Revised Statutes ("HRS") § 431:6-201 with investments in common stocks, common trust funds, mutual funds, and exchange traded funds, subject to certain limitations. After meeting HRS § 431:6-201 requirements, insurers may invest any of its funds in these securities.

Thank you for this opportunity to submit testimony on this measure.

Respectfully submitted:

Gerald C. Yoshida
Char Hamilton Campbell & Yoshida
737 Bishop Street, Suite 2100
Honolulu, Hawai'i 96813
Ph: 524-3800



ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS™

516 Kawaihae St., #E • Honolulu, Hawaii 96825
Ph.: (808) 394-3451 • Fax: (808) 395-4417
email: NAIFA-Hawaii@hawaii.rr.com

House Committee on Consumer Protection and Commerce
Representative Robert Herkes, Chair

House Committee on Judiciary
Representative Jon Riki Karamatsu, Chair

House Bill 1074 – Relating to Insurance

Hearing Date: Monday – February 9, 2009

Time: 2:00 pm

Chair Herkes and Chair Karamatsu and members of the Committees, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is an organization made up of life insurance agents and financial advisors across Hawaii.

We are limiting our comments to the continuing education credit hours on page 12 and 13, that will amend the number of continuing education credit hours required to maintain producer licenses.

This measure will increase the number of continuing education credit hours from 20 to 24 hours for those with only one line of authority – 18 hours relating to the line of authority for that license (i.e., life insurance license); a new part adding 3 hours of ethics training; and the current requirement of 3 hours of insurance laws and rules pertaining to that line of authority.

We propose the following amendments:

- Increase the 18 hours relating to line of authority to 21 hours;
- The required 3 hours of ethics training as stated in this measure, to **include** Hawaii laws and rules subject to the specific lines of authority;
- **Amend Page 13, lines 2 & 3 -- Section 431:9A-124(1):** [including] three credit hours relating to ethics training, and three credit hours relating to the insurance laws and insurance rules... **to read:**

...a combination of three credit hours relating to ethics training **and** relating to the insurance laws and insurance rules.

Page 2 – Consumer Protection & Commerce Committee
HB 1074 -- Relating to Insurance
Testimony of NAIFA Hawaii

For those with licenses in both life/accident/health and property casualty, the required credit hours will **decrease** from 30 to 24, whereby 10 hours will relate to life/accident/health; 11 hours will relate to property casualty; a new part adding 3 hours of ethics training; and current 2 hours of insurance laws and rules relating to the respective lines of authority.

We propose the following amendments:

- Delete the 2 hours of insurance laws and rules relating to life/accident/health and property and casualty on page 13, lines 10 to 13 and lines 15 to 18, respectively;
- **Amend (C) on page 13, line 19 to read:** A combination of three credit hours relating to ethics training and relating to insurance laws and rules...

Since the start of Hawaii's continuing education requirements in Hawaii, producers have been subject to Hawaii insurance laws and rules rather than ethics. Currently the CE ethics programs are categorized under the insurance laws and rules.

Many CE providers have adjusted their programs to accommodate our insurance laws and rules requirements. Having the Hawaii producers be required to have 3 hours of Hawaii insurance laws/rules and ethics training may be unique to Hawaii but both these areas are important components to the competency of insurance producers.

Mahalo for allowing us to share our views and we ask for your favorable consideration.

Cynthia Hayakawa
Executive Director

