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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, February 2, 2011
2 p.m.

TESTIMONY ON HOUSE BILL NO. 1049 – RELATING TO INSURANCE.

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, 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.

The purpose of this bill is to update the Insurance Code, Hawaii Revised Statutes
("HRS") chapter 431, and related provisions.

HRS § 431:2-105(a) currently allows the chief deputy insurance commissioner to
perform any act or duty "assigned" by the commissioner. Prior to 2000, this provision
allowed the chief deputy insurance commissioner to perform any act or duty "conferred"
upon the commissioner. There may be times where there will be no commissioner to
delegate duties to the chief deputy commissioner. Allowing the chief deputy

commissioner to perform all acts of the commissioner ensures the continuous operations of the insurance division.

HRS § 431:2-206(a) currently allows for service of legal process against an insurer upon the commissioner at a cost of \$12. The commissioner is required to send the complaint to the insurer's agent for service of process, pursuant to HRS § 431:2-206(c). This fee has remained unchanged since 1987. The fee increase to \$25 is intended to reflect the increased cost of mailing the complaint via certified mail to the insurer.

HRS § 431:9-204 governs applications for adjusters and independent bill reviewers. HRS § 431:9-204(b) currently allows partnerships and corporations to apply for these licenses. By definition in HRS § 431:9-105, adjusters and bill reviewers must be individuals. For consistency with section 431:9-105, HRS § 431:9-204 should be amended by deleting subsection (b).

HRS § 431:9C-101 currently defines the term "managing general agent" (MGA). To maintain consistency with the NAIC's Managing General Agents Model Act, the definition should be amended by specifying that an MGA who pays claims in excess of \$10,000 is subject to the provisions of Article 9C. This amendment is intended to conform Hawaii law to national standards, thus improving reciprocity with the other states and contributing to the Insurance Division's retention of NAIC accreditation.

HRS § 431:10H-228 governing long-term care insurance advertising is based upon the provision in the NAIC's Long-Term Care Insurance Model Regulation. The current language is vague and provides no guidance to the industry as to what standards the long term care advertisement is to be measured against. Clarifying that compliance is to be with the long-term care regulation will give greater certainty to the industry and streamline the process of review for the regulator.

HRS § 431:11-106(a)(5) currently requires a domestic insurer to notify the commissioner within 30 days of an investment in any person as defined in section 431:11-102, where the total investment by the insurance holding company in any one person exceeds 10% of the corporation's voting securities. This amendment clarifies

that the notification requirement applies where the total investment exceeds 10% of the person's voting securities or where the domestic insurer controls the person.

HRS § 431:14G-105 governs rate filings for health insurers. Currently, property and casualty insurance rate filings may be submitted by electronic means in accordance with the System for Electronic Rate and Form Filing (SERFF), pursuant to HRS § 431:14-104(a). Electronic filing of health insurance rate filing is required in conformity with reporting requirements under federal health care reform.

HRS § 431P-16(e) currently authorizes the Hawaii hurricane relief fund to levy a surcharge (not to exceed 7.5% per year) on property and casualty insurance premiums, when the board determines that moneys in the hurricane reserve trust fund will be insufficient to pay claims and obligations following a covered event. This amendment clarifies that the surcharge is nondiscretionary and ensures the financial solvency of the hurricane fund.

HRS § 432:1-306 currently requires a mutual benefit society to deposit with the commissioner an amount equal to one-half of the maximum benefit amount in its benefit fund, pursuant to HRS § 432:1-401. Small mutual benefit societies are having difficulty complying with the current deposit requirement. This bill redefines the deposit amount to be a percentage of minimum net worth as provided in HRS § 432:1-407(a)(2), setting minimum and maximum deposit requirements, and capping the deposit at a reasonable amount. Deposits by mutual benefit societies protect the public in the event of insolvency. Tying up unnecessarily large sums in deposits deprives the insurer of funds that could be used to defer premium increases. Making the deposit requirement relative to the size of the mutual benefit society is fairer and removes a barrier to entry for new mutual benefit societies, thus allowing for a more competitive market.

HRS § 431:7-101, governing insurance licensing fees, was amended by sections 4 and 5 of Act 59, Session Laws of Hawaii 2010 (Act 59). Revisions are needed to reflect changes in the law. First, Act 77, Session Laws of Hawaii 2009, amended HRS § 431:9-222.5 to provide for the licensing of limited crop insurance claims adjusters. Second, Act 177, Session Laws of Hawaii 2008, governing life settlement transactions, contained an automatic sunset date of June 15, 2010. Amendments to Act 59 are

required to clarify the applicable licensing fee for the claims adjuster's limited license and to delete the licensing fees pertaining to life settlement contract brokers and providers.

HRS § 431:2-202.5 currently deems any approval required by law to be granted in 30 days after the filing of the request, where the commissioner fails to take any affirmative action within the 30-day period. The Insurance Code contains many provisions that impose specific time limits for approvals of various rate filings, including HRS §§ 431:10A-309 (61 days), 431:10B-108 (45 days), 431:14-104 (30 days), 431:14G-105 (60 days). Existing statutory time limits currently ensure that the insurance division will take timely action on pending matters.

HRS § 432:1-401 currently requires a mutual benefit society to maintain a benefit fund in a specified amount. Since the reference in HRS § 432:1-306 is amended to refer to HRS § 432:1-407(a)(2), this section should be repealed to eliminate any confusion.

The above represent efforts to streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce the cost of insurance regulation.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

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February 1, 2011

To: The Honorable Robert N. Herkes, Chair
Consumer Protection & Commerce Committee

From: Samuel Sorich, Vice President

Re: **HB 1049 – Relating to Insurance**
PCI Position: Oppose

Date: Wednesday, February 2, 2011
2:05 p.m.; Conference Room 325

Aloha Chair Herkes and Committee Members,

The Property Casualty Insurers Association of America (PCI) is opposed to HB 1049 because Section 11 of the bill would remove provisions which assure that regulatory action is taken on matters that are critical to insurance company operations.

Property/casualty insurance operations are strictly regulated in Hawaii. Actions affecting many aspects of insurer operations are subject to the insurance commissioner's approval before the actions may be executed.

HRS §431:2-202.5 provides that insurance matters which require the insurance commissioner's approval are deemed to be approved if the commissioner does not take any affirmative action to grant or deny the approval within thirty days of an insurer's request. Section 11 of HB 1049 would repeal HRS §431:2-202.5.

HRS §431:2-202.5 reflects good public policy. The statute compels the commissioner to carry out his or her regulatory duties in a timely matter; at the same time, the statute does not remove the commissioner's oversight of an insurer's action that is deemed approved by the statute. HRS §431:2-202.5 contributes to the health of the insurance market. The statute provides regulatory accountability and guards against unreasonable regulatory delays in processing filings for licenses, investment changes and other matters which help insurers compete in the Hawaii insurance market.

It is argued that HRS §431:2-202.5 is not needed because other statutes provide adequate "deemer" provisions. PCI disagrees. HRS §431:2-202.5 was included in SB 2293 which was enacted in 2000. The legislative history of the bill shows that the Legislature was convinced that there was a need for the enactment of the deemer provisions in HRS §431:2-202.5 even though other statutes then in place included deemer provisions.

PCI believes that HRS §431:2-202.5 should be preserved. Section 11 should be deleted from HB 1049. PCI would remove our opposition to HB 1049 if Section 11 is deleted.

HMSA



Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

February 2, 2011

The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 1049 – Relating to Insurance

Dear Chair Herkes, Vice Chair Yamane and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1049 which updates various sections of the insurance code. We would like to comment on Section 7, express concerns with Section 11 and offer support for the changes in Sections 9 and 12 of this measure. We take no position on the remainder of the bill.

Under federal legislation known as the Affordable Care Act (ACA), health plans will be required to comply with new rate filing requirements. HMSA has been working on the implementation of this provision with the Insurance Division. At this time, rate filings are submitted in paper format but in the future the ACA will require these filings be submitted electronically. We support the language in Section 7 of this measure which adds electronic filing as a method for filing rates but maintains the ability for plans to continue paper filings as well as the transition to electronic filing occurs.

The proposal to strike HRS 431:2-202.5 as outlined under Section 11 of this measure raises some concern. This statute deems that any approval, required by law, be granted by the Insurance Division 30 days after the filing of the request in the instance that the Insurance Commissioner fails to take action within those 30 days. It would seem prudent to allow this statute to remain intact for any instance within the Insurance Code which fails to specify a timeframe that the Commissioner must respond.

Sections 9 and 12 of this measure would redefine the minimum and maximum amounts a mutual benefit society would be required to deposit with the Insurance Division and would cap this at a reasonable amount. We agree with the Insurance Division's justification for this provision.

In summary, HMSA supports the current language of Section 7, has concerns with Section 11 to remove the 30 day timeframe for the Insurance Division to meet in the absence of other direction and supports Sections 9 and 12 revising the deposit amounts mutual benefit societies are required to provide to the Division. Thank you for the opportunity to provide comments on HB 1049.

Sincerely,

Mark K. Oto
Director
Government Relations