

# HB 1049, HD 2

**Measure Title:** RELATING TO INSURANCE.

**Report Title:** Insurance

**Description:** Updates the Insurance Code and related provisions. Effective July 1, 2030. (HB1049 HD2)

**Companion:** SB1276

**Package:** Gov

**Current Referral:** CPN, WAM

**Introducer(s):** SAY (BR)



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
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: 586-2850  
Fax Number: 586-2856  
www.hawaii.gov/dcca

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND  
CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Thursday, March 17, 2011  
10 a.m.

**TESTIMONY ON HOUSE BILL NO. 1049, H.D. 2 – RELATING TO INSURANCE.**

TO THE HONORABLE ROSALYN BAKER, 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, with requested amendments.

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

The H.D. 2 amended the deemer date in HRS § 431:2-202.5 from 30 days to 75 days, rather than repeal the statute; has a defective effective date of July 1, 2030 and made technical amendments. The companion measure, Senate Bill No. 1276, S.D. 2, was heard by the House Committee on Consumer Protection & Commerce on Monday.

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 § 431:2-202.5 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). These statutory time limits currently ensure that the Insurance Division will take timely action on pending matters.

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 § 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.

In section 11 of the bill, the reference in subsection (b)(16) to the \$20 or \$40 is not necessary and should be stricken, since applicants pay one fee for the criminal history record check and fingerprinting. The Department requests that the language for criminal history record check and fingerprinting in subsection (b)(16) on page 18, lines 19-22, and on page 23, line 21 to page 24, line 2, be consistent with the language in subsection (a)(17) on page 16, lines 7-9, and on page 21, lines 10-12, respectively.

In section 14 of the bill on page 26, the Department respectfully requests an effective date of July 1, 2011, rather than July 1, 2030.

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

AMERICAN COUNCIL OF LIFE INSURERS  
TESTIMONY COMMENTING ON HB 1049, HD 2, RELATING TO INSURANCE

March 17, 2011

Via e mail: [cpntestimony@capitol.hawaii.gov](mailto:cpntestimony@capitol.hawaii.gov)

Honorable Senator Rosalyn H. Baker, Chair  
Committee on Commerce and Consumer Protection  
State Senate  
Hawaii State Capital, Conference Room 229  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Baker and Committee Members:

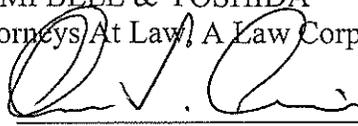
Thank you for the opportunity to comment on HB 1049, HD 2, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-nine (239) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 95% of the annuity considerations in this State.

Section 2 of HB 1049, HD 2 (at page 1, lines 12 through 17, and at page 1, lines 1 and 2) amends §431:2-202.5, HRS, entitled "Approval; when deemed effective." The proposed amendment would extend the time, from 30 to 75 days, in which the Insurance Division can grant or deny approval of a request for approval before it is automatically deemed to be approved. ACLI submits that a 75 day deemed approval period is too long. While ACLI has not undertake a conclusive survey, it is not aware that any other state has provided a "deemer" provision of this length, at least as respects filings by life insurers. ACLI, therefore, requests that the deemed approval period be reduced from 75 to 60 days.

Again, thank you for the opportunity to comment on this bill.

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

By: 

OREN T. CHIKAMOTO  
[otc@charhamilton.com](mailto:otc@charhamilton.com)

cc Joann Waiters, Esq.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 17, 2011

The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection

**Re: HB 1049 HD2 – Relating to Insurance**

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1049 HD2 which updates various sections of the insurance code. We would like to comment on Section 8 and offer support for the changes in Sections 10 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 8 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.

Sections 10 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 commented on Section 8 and provided support for Sections 10 and 12 revising the deposit amounts mutual benefit societies are required to provide to the Division. Thank you for the opportunity to provide testimony on HB 1049 HD2.

Sincerely,

Jennifer Diesman  
Vice President  
Government Relations