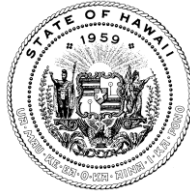


# SB2095

Measure Title: RELATING TO DRONE OPERATOR LIABILITY INSURANCE.  
Report Title: Drones; Liability Insurance  
Description: Requires drone operators to carry liability insurance.  
Companion:  
Package: None  
Current Referral: CPH, WAM  
Introducer(s): NISHIHARA, BAKER, ESPERO, Kahele, Kidani



**DAVID Y. IGE**  
GOVERNOR  
  
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**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION**

**TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

**THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2016**

**WEDNESDAY, FEBRUARY 10, 2016  
9:30 A.M.**

**WRITTEN TESTIMONY ON SENATE BILL NO. 2095, RELATING TO DRONE  
OPERATOR LIABILITY INSURANCE.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND TO THE HONORABLE MICHELLE N. KIDANI, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

The Department of Commerce and Consumer Affairs (“DCCA”), Office of Consumer Protection (“OCP”) offers comments on this Bill, Relating to Drone Operator Liability Insurance. My name is Stephen Levins and I am the Executive Director of the OCP.

Senate Bill No. 2095 amends Hawaii Revised Statutes (“HRS”) Chapter 489J, Miscellaneous Business Provisions, by adding a new section that requires persons who “own, operate, or control a drone” to have a liability insurance policy for the drone for an

as-of-yet unspecified amount. Failure to have insurance constitutes an unfair or deceptive practice under HRS § 480-2.

The OCP takes no position on the necessity for drone liability insurance, but has reservations about the Bill to the extent that it deems failing to have drone liability insurance to be unfair or deceptive under HRS § 480-2. Under Hawaii law, the penalty provisions enforcing Chapter 480 are intended to protect consumers who have been injured by an unfair or deceptive trade practice. Since owning, operating, or controlling a drone does not fit within this context, it would be inappropriate to reference the Chapter 480 penalty provisions in this Bill.

Thank you for the opportunity to offer comments on Senate Bill No. 2095.

Hawaii State Legislature  
Senate Committee on Commerce, Consumer Protection and Health  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

February 9, 2016

*Filed via electronic testimony submission system*

**RE: SB 2095, Drone Liability Insurance Requirement - NAMIC's Written Testimony in Opposition to Legislation**

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 10, 2016, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

Unmanned aerial vehicles ("UAV", also known as "UAS" or "drones") represent a new technology with many positive public welfare and consumer services applications for the insurance industry, business community, and governmental entities. Drones have also become a recreational phenomenon, where creativity in design and intended use has "flown past" the analysis of the legal and public policy issues created by this new technology.

The ability to insure for liability from both recreational and commercial UAV use is an important public policy issue that merits a comprehensive analysis of federal law, state contract and tort law, and insurance laws and regulations pertaining to the insuring agreement.

NAMIC urge legislators and regulators to consider the following issues pertaining to liability insurance when studying UAV legislation and regulations:

**1) *Liability insurers continue to collect data to adequately develop insurance rates for UAV coverage.*** Currently, there is little data as to the frequency and severity of claims for damages caused by UAV. Nor do we have any data on the rapidly changing construction features of drones, which are a factor in determining how dangerous they are to innocent bystanders and property. While insurers are quickly working to develop necessary insurance rating platforms and underwriting standards necessary to address liability exposures created by drone operation, NAMIC recommends that the state legislature avoid passing a mandatory insurance coverage requirement that could create a serious legal problem that may stifle the UAV marketplace, and create insurance coverage and legal liability confusion for insurance policyholders. Insurers need a better understanding of the full scope of UAV liability exposure before risk-based underwriting may be undertaken. Consequently, NAMIC believe that SB 2095 is premature, and could have unintended adverse consequences on the affordability and availability of homeowners' and commercial liability insurance in the state.

**2) *Until legal standards pertaining to appropriate use and liability for misuse of UAV are better defined, it will be difficult for insurance companies to evaluate and address policyholder insurance coverage needs.*** The legal system has not developed "legal standards of care" relating to the operation of UAV, so there is legal ambiguity as when someone is legally liable for an accident. For example, is a UAV operator liable for damages created when trying to avoid contact with another UAV or a moving vehicle? Who should be liable for an accident when a motor vehicle driver allegedly acts in response to a purported maneuver by a UAV? What about a UAV accident where there may have been interference from competing radio signals?

**3) *Federal Aviation Regulations may create conflicts between state and federal laws.*** As federal drone law and regulations evolve in numerous and overlapping arenas – Congress, Commerce Department, FAA, DHS, FTC, FCC, and NTIA, effective state legislative initiatives will require a more clear understanding of both the present and developing legal jurisdictional issues, and a better understanding of the legal relationship between state and federal law on the regulation of UAV. Conflicting and confusing legislation and regulations at multiple levels of government will adversely impede the development of a uniform body of law on responsible drone use.

In closing, NAMIC recommends that the Hawaii State Legislature wait to enact legislation until the Federal Aviation Administration (FAA) finalizes its rules, and until the National Telecommunications and Information Administration (NTIA) develops its regulatory guidelines. The FAA rules should be finalized in 2016, and since they may preempt certain provisions in state law addressing UAV operations and safety issues, it makes sense to postpone SB 2095 until next session. NAMIC also recommends that any legislation adopted by the Hawaii State Legislature should provide for legitimate business usage of UAV in accordance with FAA laws and rules.

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

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