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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Friday, April 1, 2016
1:00 p.m.

Agenda #2

TESTIMONY ON SENATE BILL NO. 2853, S.D. 2 – RELATING TO INSURANCE.

TO THE HONORABLE SYLVIA LUKE, 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 strongly supports this Administration bill.

The purposes of this bill are to: (1) add a new article to chapter 431, Hawaii Revised Statutes (“HRS”), to require certain insurers and insurance groups to maintain a risk management framework, to regularly perform an own risk and solvency assessment (“ORSA”), and to annually file an ORSA summary report; (2) amend § 431:19-115(b), HRS, to cite §§ 431:3-409, 431:3-411, and 431:3-412, HRS, as being applicable to risk retention captive insurance companies, as required for accreditation by the National Association of Insurance Commissioners (“NAIC”); and (3) amend § 431K-1, HRS, to include the definitions “board of directors” and “director,” and amend § 431K-2, HRS, to include new corporate governance language from the NAIC Model Risk Retention Act for accreditation purposes.

SECTION 1 of the bill adopts the NAIC’s Risk Management and ORSA Model Act, which stems from the NAIC’s Solvency Modernization Initiative (“SMI”). The SMI is

a critical self-examination to update the United States insurance solvency regulation framework and to review international developments regarding insurance supervision, banking supervision, and international accounting standards and their use in national insurance regulation.

In 2011, the NAIC Group Solvency Issues (E) Working Group determined that the enterprise risk management and ORSA requirements were appropriate and beneficial for inclusion in the United States solvency framework. The ORSA would give state insurance regulators access to information that would improve their understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefiting solvency regulation. In addition, the ORSA would provide a group-level perspective on risk and capital.

The NAIC is requiring that all states adopt its Risk Management and ORSA Model Act by January 1, 2018, to maintain accreditation with the NAIC. Accordingly, the Department proposes adopting this bill to retain accreditation and enable adoption of the Hawaii Administrative Rules in a timely manner before the 2018 deadline.

SECTION 2 of the bill amends § 431:19-115(b), HRS, to apply supplemental provisions, rules, and exceptions for risk-based capital, as well as severability and notice provisions, to risk retention captive insurance companies for NAIC accreditation purposes.

SECTIONS 3 and 4 of the bill amend §§ 431K-1 and 431K-2, HRS, to adopt the NAIC's Model Risk Retention Act for NAIC accreditation purposes. The NAIC has required that all states licensing captive risk retention groups adopt its model act by January 1, 2017.

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

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF SB 2853, SD 2, RELATING TO INSURANCE

April 1, 2016

Via e mail: capitol.hawaii.gov/submittestimony.aspx

Honorable Representative Sylvia Luke, Chair
Honorable Representative Scott Y. Nishimoto, Vice Chair
Committee on Finance
State House of Representatives
Hawaii State Capitol, Conference Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chair Nishimoto and Committee Members:

Thank you for the opportunity to testify in support of SB 2853, SD 2, relating to Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred sixteen (216) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 88% of the annuity considerations in this State.

The National Association of Insurance Commissioners (NAIC) approved the NAIC Risk Management and Own Risk and Solvency Assessment (“ORSA”) Model Act on September 12, 2012. The ORSA Model Act outlines the information that regulators will review when evaluating insurers’ risk management practices and solvency positions. The Model requirements enable regulators to assess current and likely future solvency – through a self-assessment and certain disclosures of all reasonably foreseeable and relevant material risks. An insurer that is subject to the ORSA requirement is expected to have a risk management framework, to regularly assess the adequacy of that risk management framework and the insurer’s current prospective solvency position, to internally document the process and results, and to provide an annual high-level summary report to the state’s regulator.

SB 2853, SD 2, adopts the ORSA Model Act.

As of October 23, 2015, thirty-three states have adopted ORSA.

Generally, ACLI supports uniform national legislation. SB 2853, SD 2, would create uniformity between other states’ laws and Hawaii law with regard to risk management practices and

solvency positions. Further, Adoption of ORSA will enable the State of Hawaii to retain its accreditation with the NAIC.

Accordingly, ACLI supports SB 2853, SD 2, and requests that this Committee pass this measure into law.

Again, thank you for the opportunity to testify in support of SB 2853, SD 2.

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**TESTIMONY ON S.B. NO. 2853 SD2
RELATING TO INSURANCE**

HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Friday, April 1, 2016, 1:00 p.m.
Conference Room 308
State Capitol
415 South Beretania Street

To Representative Sylvia Luke, Chair; Representative Scott Y. Nishimoto, Vice Chair; and members of the House Committee on Finance:

My name is Gerald C. Yoshida, and I am submitting this testimony as the Chair of the Legislative Committee of the Hawai'i Captive Insurance Council (HCIC). I apologize in advance that I may not be able attend and testify at the hearing on this matter. The HCIC is a nonprofit corporation that is committed to promoting, developing, and maintaining a quality captive insurance industry in the State of Hawai'i. In partnership with the State of Hawai'i Insurance Division, the HCIC provides information and education on issues affecting captives, which includes risk retention captive insurance companies ("RRGs"), and assist the State of Hawai'i in promoting Hawai'i as a quality captive domicile on the local, national, and international level.

The comments herein relate to Part III of Senate Bill No. 2853, Senate Draft 2 (SB2853 SD2).

The HCIC supports Part III of SB2853 SD2, which adopts many of the provisions found in the latest iteration of National Association of Insurance Commissioner's (NAIC) Model Risk Retention Act ("Model Act"), however, in several areas the language of SB2853 SD2 departs from the Model Act. In the interests of consistency as well as the best interests of Hawaii's captive insurance program, we feel that these departures should be corrected, as noted below (all references are to paragraphs and sections in Part III of SB2853 SD2).

Paragraph (c)(2) of Section 4 of SB2853 SD2, as well as the corresponding section of the Model Act, are intended to address material service provider contracts, however, certain language in paragraph (c)(2) may be misconstrued to apply to all contracts. As such, we recommend that the first and second sentences of paragraph (c)(2) be amended to read as follows: "~~The~~ Such contract or its renewal requires approval of a majority of the risk retention group's independent directors~~-, and~~ ~~The~~ the board of directors has the right to terminate ~~a~~ the contract at any time for cause after providing adequate notice as defined in the terms of the contract."

There may be situations where it becomes necessary or prudent to immediately terminate a contract for cause, without prior notice. The provisions of the Model Act do not constrain, nor should SB2853 SD2 limit, the right of an RRG to immediately terminate a contract that is not a material service provider contract.

Paragraph (c)(3) of Section 4 of SB2853 SD2 requires that an RRG obtain prior written approval from the commissioner before entering into a material service provider contract. In comparison, the Model Act provides that the RRG shall not enter into such a contract unless the RRG has given the commissioner at least 30-days notice and the commissioner has not disapproved the proposed transaction within such time period. The latter is known as a deemed approval. The Hawaii Insurance Code has a “deemed” approval section [431:2-202.5], which was amended in 2011 to extend the deemed approval period from 30 days to 60 days.

We recommend that the words “or deemed” be inserted in Paragraph (c)(3) to read as follows:

“A risk retention group shall not enter into a material service provider contract without the prior written or deemed approval of the commissioner.” Allowing for deemed approval would be consistent with the Model Act, although it would be preferable if 30-day period for a deemed approval were also inserted into the language of the bill.

Paragraph (c)(8) of Section 4 of SB2853 SD2 requires an RRG’s captive manager, president, or CEO to promptly notify the Commissioner in writing of any known noncompliance with the governance standards set forth in Section 4 of the bill, some of which may be viewed as vague. Here, SB2853 SD2 makes a significant departure from the Model Act, which requires prompt notification to the Commissioner when the captive manager, president, or CEO becomes aware of any material non-compliance with the governance standards. Since adoption of the Model Act is ostensibly required for NAIC accreditation, the provisions of Part III of SB2853 SD2 should not materially depart from the provisions of the Model Act.

We recommend that paragraph (c)(8) of Section 4 of SB2853 SD2 be amended to conform with the corresponding provision of the Model Act by inserting the word “material” in the phrase therein as follows: “notify the commissioner in writing of any known material noncompliance with the governance standards”.

It should be noted that the importance of these suggested revisions relate not only to ensuring NAIC accreditation for Hawaii, but also to maintaining Hawaii’s position as a leading and competitive captive domicile. Hawaii cannot afford to be viewed as a jurisdiction that promulgates laws that are or may be construed as vague and overly burdensome, and which materially depart from model laws developed by the NAIC to encourage and ensure a standard set of regulatory requirements with respect to RRGs.

Thank you for this opportunity to submit comments.

Respectfully submitted:
Gerald C. Yoshida, Esq.
Chair, Legislative Committee
Hawai`i Captive Insurance Council
737 Bishop Street, Suite 2100
Honolulu, Hawai`i 96813
Ph: 524-3800

April 1, 2016

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
House Committee on Finance

Re: SB 2853, SD2 – Relating to Insurance

Dear Chair Luke, Vice Chair Nishimoto, and Committee Members:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2853, SD2, which would adopt the National Association of Insurance Commissioners' (NAIC) Risk Management and Own Risk Solvency Act (ORSA). In addition, the Bill provides for a corporate governance structure for Risk Retention Groups. HMSA supports the intent of this Bill.

The recent global financial crisis severely impacted the world financial system, including insurers. Regulators were forced to pay closer attention to the risks created by activities going on outside of those entities, as well as the reputational and contagion issues that could exist. State insurance regulators needed to be able to assess the financial condition of an insurer and its holding company. Last year, the NAIC adopted the ORSA model Act that would require insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process, and it will allow regulators to form an enhanced view of an insurer's ability to withstand financial stress.

Insurers would be required to regularly perform an ORSA and file a confidential ORSA Summary Report of the assessment with the Insurance Commissioner. Under ORSA, the issuer assesses the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. Insurers analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

The solvency of our members' investment in their healthcare is as critical as is our members' safety and wellbeing. We believe the ORSA model Act will help to ensure our members' investment is secured.

Thank you for allowing us to testify on SB 2853, SD2.

Sincerely,



Jennifer Diesman
Vice President, Government Relations



To: The Honorable Sylvia Luke, Chair
The Honorable Scott Nishimoto, Vice Chair
House Committee on Finance

From: Mark Sektnan, Vice President

Re: **SB 2853 SD2 – Relating to Insurance**
PCI Position: Support

Date: Friday, April 1, 2016
Conference Room 308; 1:00 PM; **Agenda #2**

Aloha Chair Luke, Vice Chair Nishimoto and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is pleased to support SB 2853 SD2 which would adopt the National Association of Insurance Commissioners (NAIC) Risk Management and Own Risk and Solvency Assessment Act (ORSA).

In Hawaii, PCI member companies write approximately 42.7 percent of all property casualty insurance written in Hawaii. PCI member companies write 44 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

ORSA requires insurers with annual premiums greater than \$500 million and insurance groups with annual premiums greater than \$1 billion to maintain a comprehensive risk management framework, appropriate to their size and complexity, to identify, assess, and manage material and relevant risks. Additionally, the qualifying insurer or insurance group must file a report annually with its lead state regulator detailing the material risks identified and the sufficiency of its capital to support the risks. The purpose of ORSA is to provide regulators with access to information to better understand the risks to which an insurer or insurance group is exposed. The adoption of ORSA is expected to become an NAIC accreditation standard.

During the lengthy process to develop this legislation at the NAIC, the Property Casualty Insurers Association and the insurance industry worked hard to ensure confidentiality protections for sensitive commercial information that insurers will be required to report. The bill maintains these important confidentiality protections. Adoption of this important model act will ensure that all insurers have a risk management framework in place and provide regulators with access to critical information needed to assess the risks insurers are exposed to.

For these reasons, PCI asks the committee to pass SB 2853 SD2.