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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Friday, February 11, 2022
Via Videoconference

On the following measure:
S.B. 3079, RELATING TO INSURANCE

Chair Baker and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports this administration bill and respectfully requests an amendment to Section 4 and the effective date in Section 8.

The purpose of this bill is to amend various portions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions.

Currently, the limited lines producer license issued under HRS section 431:9A-107.5(a) does not cover other general travel insurance products such as trip interruption or cancellation, damages to accommodations or rental vehicles, emergency evacuations, or repatriation of remains. The absence of coverage creates potential confusion for consumers and gaps in product offerings for those with this license. Additionally, some insurance products covered under HRS section 431:9A-107.5(a) are outdated and obsolete. **Section 2** of this bill will cover the gaps in limited lines product offerings and remove existing products that are outdated and obsolete.

Dental insurers and dental service corporations are currently subject to Third Party Administrators (TPA) regulation codified in chapter 431, article 9J. Additionally, existing TPA regulation requires the TPA to obtain a $100,000 surety bond for licensure, which is a lower amount compared to surety bond requirements for other regulated insurance entities. Further, licensed TPAs are currently not required to include an audited financial statement in their annual report to the Insurance Commissioner. **Sections 3, 4, and 5** of this bill will: (1) amend the definition of "administrator" or "third party administrator" in HRS section 431:9J-101 to exclude dental insurers and dental service corporations; (2) increase the surety bond threshold amount to $300,000 from the third year in HRS section 431:9J-103; and (3) add audited financial statements as part of the required annual report filings in HRS section 431:9J-112. Excluding dental insurers and dental service corporations from the TPA regulation will address the drafting oversight from the previous legislative session. Other amendments will promote financial stability of these entities and increase consumer protection.

Under chapter 431, article 10D, part VII, insurance producers are not required to act in the best interest of the consumer when making annuity recommendations. Rather, the current standard for insurance producers making annuity recommendations is a suitability standard, which may not provide adequate consumer protection. In 2020, the NAIC adopted a revised Suitability in Annuity Transactions Model Regulation to address this issue. **Section 6** of this bill will amend HRS chapter 431, article 10D, part VII to adopt the NAIC's revised Suitability in Annuity Transactions Model Regulation, which requires producers to act in the best interest of the consumer when making a recommendation of an annuity and requires insurers to establish and maintain a system to supervise recommendations. These amendments will ensure that the insurance needs and financial objectives of consumers at the time of the annuity transactions are effectively considered.

The Department respectfully requests the following amendments:

Section 4, page 7, line 9, to read as follows: "<u>two years of licensure, and at least $300,000 from the third year of licensure,</u>" to clarify bond requirement amount corresponds with licensure as a TPA.

Section 4, page 7, line 17, to read: "(b) At the third annual report filing, and each subsequent annual report filing, the" as the proposed language incorrectly references the type of filing required in HRS section 431:9J-112.

Insert **new Section 7** as follows, with remaining sections renumbered.: "The Commissioner has authority to enforce provisions in Sections 2 and 5 until March 31, 2023." The discretion to require compliance with amendments in Sections 2 and 5 may be necessary in the event the electronic platform for online renewals and licensure must be modified, and also if there is insufficient time for TPAs to comply with the new audited financial filing requirement.

Section 8, page 42, lines 8 - 9: "This Act shall take effect [~~upon its approval; provided that section 1 shall take effect on December 31, 2022.~~] on July 1, 2022." An identified effective date will provide clarity to affected parties as to when amendments will be in effect.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill with the requested amendments.

February 11, 2022

TO: Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice-Chair
Members of the Commerce and Consumer Protection Committee

FR: Blake K. Oshiro, Esq., on behalf of
American International Group (AIG), Inc.

RE: TESTIMONY IN SUPPORT OF SENATE BILL (SB) 3079) **WITH REQUESTED AMENDMENTS**

Dear Chair Baker:

American Insurance Group, Inc. (AIG) supports SB3079, but requests your consideration to amend the bill by specifically delaying the effective date of Section 6 of the bill dealing with annuities by clarifying Section 6 shall take effect December 31, 2022. This would ensure that the industry has sufficient time to implement these systematic changes.

It is our understanding that the amendments proposed in the bill adopt the National Association of Insurance Commissioners (NAIC) revised Suitability in Annuity Transactions Model Regulation provisions, which require producers to act in the best interest of the consumer when making a recommendation of an annuity and insurers to establish and maintain a system to supervise recommendations. We support these changes.

REQUESTED AMENDMENT:

> SECTION 8. This Act shall take effect upon its approval; provided that the matters described in paragraphs (1), (2) and (3) of section 1 and section 6 shall take effect on December 31, 2022.

Thank you for your consideration and the opportunity to provide testimony.

NAIFA
HAWAII

Senate Committee on Commerce & Consumer Affairs
February 11, 2022 – 10:00 am

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

RE: SB 3079 – Relating to Insurance

Chair Baker, Vice Chair Chang, and members of the Committee, Cynthia Takenaka representing the National Association of Insurance and Financial Advisors ("NAIFA") Hawaii, an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuities, long term care and disability income insurance products.

We are support SB 3079 as it relates Section 6 of the bill. NAIFA was an active participant in the NAIC committee deliberations. Its adoption aligns with the goal of a uniform and standardized sales process for producers across the country.

Chapter 431, Article 10D, Part VII, HRS – Suitability in Annuity Transactions is being amended to update the NAIC's Annuity Suitability Model that **establishes a best interest standard of care for annuity solicitations and sales**, which requires a producer, or insurer where no producer is involved, **to consider the consumer's needs and financial interests above their own**. It provides a clear definition of best interest and clearly defines the benchmarks producers must meet to satisfy their obligation to the client.

The benchmarks producers must meet to satisfy the obligation to the client are: care, disclosure, conflict of interest and documentation. The updated model sets enhanced continuing education requirements for annuities, including updated education material and coursework reflecting the best interest obligations and producer requirements. It also aligns well with its federal counterpart – SEC's Regulation Best Interest. Together, these two initiatives will significantly enhance protections for consumers across the country who seek guaranteed lifetime income in retirement through annuities.

The best interest standard works to ensure that consumers receive valuable information to help them make informed decisions when considering the purchase of an annuity. The best interest standard ensures that customer's interests are put first. It's intended to protect access to advice, choices in how to engage with advisors and to provide clear obligations with respect to disclosures, potential conflicts of interest and knowing the consumers' needs and objectives.

Nineteen states have adopted the updated model language with an additional twelve states currently in the process of adoption. There is widespread insurance industry support for the Best Interest Standard of Care in annuity transactions.

The American Council of Life Insurers have put forth an amendment in their testimony clarifying the completion date for the training course to July 1, 2023 on page 39, lines 1-19. We support their amendment.

Mahalo for allowing us to share our view in supporting SB 3079.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF SB 3079, RELATING TO INSURANCE

February 11, 2022

Honorable Senator Rosalyn H. Baker, Chair
Honorable Stanley Chang, Vice-Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capitol, Room 229 and Videoconference
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker, Vice-Chair Chang and Members of the Committee:

Our firm represents the American Council of Life Insurers ("ACLI"). ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States. Two hundred seventeen (217) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 97% of the annuity considerations in this State.

Thank you for the opportunity to testify in support of SB 3079, Relating to Insurance.

SB 3070 amends various provisions in Hawaii's Insurance Code set forth in Chapter 431, Hawaii Revised Statutes, including amendments to Article 10D, relating to Annuities, adopting the National Association of Insurance Commissioners (NAIC) revised Suitability in Annuity Transactions Model Regulation provisions, which require producers to act in the best interest of the consumer when making a recommendation of an annuity and insurers to establish and maintain a system to supervise recommendations.

ACLI supports these proposed amendments including those relating to Annuities, subject, however, to the requested revisions set forth below. Note: amended text is in red, including deletions of existing amended text in the original bill.

First, for purposes of clarity ACLI joins in the changes suggested by AIG in its testimony on the bill that Section 8 of the bill, on page 42, lines 8 and 9 be amended as follows:

> SECTION 8. This Act shall take effect upon its approval; provided that <u>the matters described in paragraphs (1), (2) and (3) of</u> section 1 <u>and section 6</u> shall take effect on December 31, 2022.

In addition, again for purposes of clarity, ACLI suggests that the provisions relating to the completion of producer training in the sale of annuities set forth in §431:10D-626, in section 6 of the bill, on page 39, at lines 1 through and including line 19, be amended as follows:

> §431:10D-626 [~~Insurance producer~~] Producer training. (a) [~~An insurance~~] A producer shall not solicit the sale of an annuity product unless the [~~insurance~~] producer has adequate knowledge of the product to recommend the annuity and the [~~insurance~~] producer is in compliance with the insurer's standards for product training. [~~An insurance~~] A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.
>
> (b) [~~Any insurance~~] A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the commissioner. A producer who is authorized to sell annuity products on or before ~~January 31, 2012~~ December 31, 2022, shall complete by ~~January 31, 2012~~ July 1, 2023, a one-time training course on annuity products meeting the requirements of subsection (d)~~,. A producer who has completed an annuity training course approved by the commissioner prior to July 1, 2022, shall, within six months after July 1, 2022,~~ by completing either:
>
> (1) A new four credit training course approved by the commissioner after December 31, 2022 ~~July 1, 2022~~; or
>
> (2) An additional one-credit training course approved by the commissioner and provided by an approved education provider on appropriate sales practices, replacement, and disclosure requirements under this part.
>
> (c) [~~An insurance~~] A producer who obtains a life or variable life and variable annuity products line of authority after ~~January 31, 2012~~ December 31, 2022, shall not engage in the sale of annuities until the insurance producer has completed training meeting the requirements of subsection (d).

Again, thank you for the opportunity to testify in support of SB 3079, relating to Insurance.

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