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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, March 20, 2024
9:30 a.m.
State Capitol, Conference Room 229 and via Videoconference**

**On the following measure:
H.B. 2394, H.D. 1, Proposed S.D. 1, RELATING TO INSURANCE**

Chair Keohokalole and Members of the Committee:

My name is Gordon Ito, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports the Proposed S.D. 1 of this administration bill.

The purpose of this Proposed S.D. 1 is to amend various provisions of title 24, HRS, to update and improve existing provisions; define "dormant captive insurance company" and set out a procedure to apply for the certificate of dormancy; add the term "doing business as" to "trade name" statutory references; clarify continuing education provider filing requirements; clarify reinsurance intermediary-manager filing requirements; amend the surety bond threshold requirement for third-party administrators and clarify the audited financial statements requirements; and amend the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies.

Section 1 of this bill will (1) clearly define what constitutes a dormant captive insurance company; (2) outline the process for a company's transition, as well as a renewal process; (3) outline the forgoing expectations of a company, as well as any prohibited acts; (4) outline a process for a company to surrender its certificate of dormancy; and (5) define penalties for non-compliance.

Currently, there is no standardized process for a captive insurance company to transition to a dormant status in Hawaii. Under current practices, a dormant captive insurance company must obtain approval from the Insurance Division to be dormant, and if approved, must comply with modified filing requirements. A standardized process is necessary to establish a uniform, efficient, and transparent system.

Section 2 will clarify that "trade name" also means the name individuals and business entities are doing business as, thereby allowing applicants and licensees to add or maintain trade names on licenses.

This will help to facilitate the Insurance Division's transition to an electronic licensing platform and to avoid potential confusion for individuals and businesses submitting their electronic applications and renewals via the National Association of Insurance Commissioners (NAIC) State Based Systems and National Insurance Producer Registry.

Section 3 will make clear that exam content and questions are not required to be approved or filed with the division and are to be made available upon request of the commissioner.

Currently, continuing education (CE) providers are required to only submit the licensing self-study course to the Insurance Division; however, CE providers are also submitting exam questions, which may create a false impression that the division is also approving exam content/questions.

Sections 4, 5 and 6 will delete the surety bond and Errors and Omissions (E&O) policy filing requirements in section 431:9B-102(c)(1) and (2), insert the surety bond and E&O policy filing requirements in section 431:9B-108, and make conforming amendments to section 431:9B-106.

Currently, the duties addressing surety bond requirement and E&O policy filings for reinsurance intermediary-managers (RIMs) are organized under HRS 431:9B-102(c)(1) and (2). HRS 431:9B-102 addresses licensure, while HRS 431:9B-108 addresses the duties of reinsurers utilizing the services of RIMs. Thus, HRS 431:9B-102(c)(1) and (2) are better placed in HRS 431:9B-108 as RIMs have the authority to bind or manage all or part of the assumed reinsurance business of a reinsurer and act as an agent for the reinsurer.

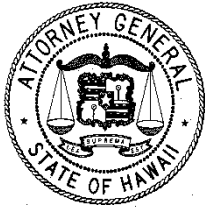
Sections 7 and 8 will ensure adequate consumer protection and promote transparency of Third-Party Administrators operating in the State of Hawaii by increasing the surety bond threshold requirement for third party administrators in section 431:9J-103 to \$300,000 from the third year of licensure filing and clarifying the audited financial statements requirement in section 431:9J-112.

Currently, administrators seeking a license need only file with the commissioner and maintain a surety bond of at least \$100,000. Additionally, no requirement exists to file an audited financial statement reflecting proof of the requisite surety bond amount along with the annual report.

Section 9 will amend the definitions of “controlled unaffiliated business” and “participant” in section 431:19-101.

This clarification is necessary to the definition of a “controlled unaffiliated business” in section 431:19-101 to make clear that this term applies to sponsored captive insurance companies that are subject to part III of article 19, chapter 431.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this Proposed S.D. 1.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2394, H.D. 1, PROPOSED S.D. 1, RELATING TO INSURANCE.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, March 20, 2024 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Andrew I. Kim or Bryan C. Yee, Deputy Attorneys General

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

The amendments in this proposed draft, H.B. 2394, H.D. 1, Proposed S.D. 1, appear to be based on S.B. 3081, S.D. 1, and, if adopted, would entirely replace the contents of H.B. 2394, H.D. 1.

The purpose of H.B. 2394, H.D. 1, is to adopt revisions that were made to the National Association of Insurance Commissioners ("NAIC") Model #440, Insurance Holding Company System Regulatory Act. To align with NAIC's model act, this measure amends various sections of article 11 of the Insurance Code,¹ which regulate insurance company holding systems. Specifically, this measure: (1) defines "group capital calculation instructions," "liquidity stress test framework," and "scope criteria"; (2) establishes group capital calculation filing requirements and liquidity stress test reporting; (3) updates the standards for insurance holding company transactions; and (4) revises provisions that would address the confidentiality of information.

Proposed S.D. 1, on the other hand, amends other articles in the Insurance Code—specifically, sections contained in article 19, captive insurance companies; article 2, administration of insurance laws; article 9A, producer licensing; article 9B, reinsurance intermediary; and article 9J, third party administrators. The amendments

¹ The Insurance Code is found under title 24, chapter 431, of the Hawaii Revised Statutes (HRS).

include: (1) defining “dormant captive insurance company” and setting out a procedure to apply for the certificate of dormancy; (2) adding the term “doing business as” to “trade name” statutory references; (3) clarifying continuing education provider filing requirements; (4) clarifying reinsurance intermediary-manager filing requirements; (5) amending the surety bond threshold requirement for third party administrators and clarifying the audited financial statements requirements; and (6) amending the definitions of “controlled unaffiliated business” and “participant” as applied to captive insurance companies.

The amendments to the bill in Proposed S.D. 1, if adopted, could implicate *League of Women Voters of Honolulu v. State*, 150 Hawai‘i 182, 205, 499 P.3d 382, 405 (2021), in which the Hawai‘i Supreme Court held that the constitutional requirement that a bill must pass three readings in each house “begin[s] anew after a non-germane amendment changes the object or subject of a bill so that it is no longer related to the original bill as introduced.” Although there is little guidance to explain what kinds of changes are to be considered constitutionally non-germane, in this case, while both H.D. 1 and Proposed S.D. 1 amend the Insurance Code, a court could conclude that the Proposed S.D. 1 amendments transform the purpose of the bill.

If the bill is amended to resemble Proposed S.D. 1, the Department recommends scheduling additional readings in each house of the Legislature to best safeguard its validity.

Thank you for the opportunity to testify.