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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 7, 2024
9:40 a.m.
State Capitol, Conference Room 229 and via Videoconference

On the following measure:
S.B. 3229, 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 opposes this bill.

The purpose of this bill is to require the Insurance Commissioner to establish a program to investigate complaints, respond to inquiries, and bring enforcement actions against insurers; require the Insurance Commissioner to provide to an insurer a description of any complaint against the insurer that the Commissioner has received and has deemed to be justified; authorizes the Insurance Commissioner to receive complaints and inquiries, investigate complaints, prosecute insurers, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims and alleged misconduct by insurers; require the Insurance Commissioner to notify a complainant of the receipt of the complaint within ten working days of receipt, notify the complainant of the final action taken on that complaint within thirty days of the

final action, and include a complaint handling evaluation form that clearly and concisely seeks an evaluation of the Insurance Division's performance in handling the complainant's grievance; require the Insurance Commissioner to disseminate certain information and provide certain notices, and make letter and legal opinions public; define extraordinary circumstances; require the Department of Commerce and Consumer Protection to post certain information on its website; and establish a working group to identify, assess, and recommend certain risk transfer market mechanisms.

We feel that this bill is unnecessary. The issues addressed by this bill are already provided for in the Insurance Code. Creating an additional layer of provisions to cover these issues may lead to confusion and interpretation issues. The Insurance Commissioner already has broad authority to conduct investigations under Hawaii Revised Statutes (HRS) § 431:1-201 and investigations are regularly conducted by the Division's investigators. Further, the Insurance Commissioner already has broad authority to enforce the Insurance Code under HRS § 431:2-201(b) and HRS § 431:2-203. The Division's Compliance and Enforcement Branch, in addition to conducting investigations, regularly responds to consumer inquiries. The Insurance Commissioner produces an annual report to the Legislature pursuant to HRS § 431:2-211, which is available on the Insurance Division website. Unfair methods of competition and unfair and deceptive acts are subject to the Insurance Commissioner's jurisdiction under HRS chapter 431, article 13.

We respectfully point out additional concerns:

1. P. 4, line 6, refers to "complaint mediation[.]" We do not provide a forum for dispute mediation. This would complicate our role as a regulator.
2. P. 4, lines 11-15, describes "criteria to determine which violations should be pursued[.]" We currently pursue viable violations of laws under our jurisdiction, creating a list may hinder enforcement by creating additional guidelines that may become restrictive.
3. P. 6, line 1, describes "public release of a complaint[.]" This conflicts with HRS § 431:2-209, which treats complaints as confidential. Exposing

- complaints to the public may impact consumers' willingness to file complaints and efforts to investigate the insurance industry.
4. P. 11, line 14 to p. 12, line 11, imposes additional requirements for rulemaking. We currently comply with HRS chapter 91 with respect to rulemaking, these provisions will make rule making cumbersome and add uncertainty as to the sufficiency of rulemaking procedures.
 5. P. 12, line 12 to p. 13, line 3, refers to "letter or legal opinion[s] signed by the commissioner[.]" We do not render individualized legal opinions in response to inquiries. Rendering individualized advice on insurance laws is not appropriate given our regulatory duties. This language will create confusion and suggest that we would render such advice. General issues regarding laws under our jurisdiction are addressed through publicly available memoranda distributed on our website.
 6. P. 13, line 4 to p. 14, line 10 describes "extraordinary circumstances" in settlement agreements. This language and its application to settlements is vague and may complicate settlements.
 7. P. 15, line 20 to p17, line 20 describes publication of information on the Department's website, including market conduct examination reports.
 8. P. 18, line 1 to p. 20, line 7 describes a working group addressing investment in natural infrastructure. Assessing natural infrastructure is beyond the Insurance Division's expertise. As such, the Insurance Commissioner is not the appropriate person to convene this working group. Additionally, it is not clear why the bill codifies the convening of this working group in the Insurance Code.

Finally, with respect to our ongoing regulatory efforts in the fiscal year 2023, conducted ***pursuant to our existing statutory authority***:

1. Our Compliance and Enforcement Branch assisted in recovering \$254,962.46 from insurers and agents, received 638 complaints, and was involved in 7 enforcement actions resulting in a total of \$12,500.00 in fines;

2. Our Health Insurance Branch received 109 complaints, of which: 39 involved claims appeals; 23 involved denial of coverage; 18 involved policy coverage; 14 involved reimbursement timeliness; 7 involved par/non-par coverage; 3 involved unfair marketing; 2 involved termination of coverage; 1 involved pharmacy benefit managers; 1 involved rate increases; and 1 involved obtaining health insurance; Complaints pursued by the Health Insurance Branch during this period saved consumers more than \$88,203; our Health Insurance Branch received 120 filings during, resulting in consumer savings of more than \$7,044,809; our Health Insurance Branch received 62 requests for external review, resulting in consumer savings of \$24,229; and
3. Our Rate and Policy Analysis Branch reviewed approximately 3,574 filings as follows:
 - Long-Term Care Insurance: Requests for premium increases for policies issued before 2008 continue to be large, but the current rate review process resulted in reducing those premium increases by approximately \$1.858 million;
 - Motor Vehicle Insurance: The Insurance Division has asked insurers to take a long-term view to reduce volatility in the rates; estimated savings as a result of rate review are \$17.6 million; and
 - Other Property Casualty Insurance: Rate filing review in other property & casualty lines of insurance resulted in an estimated savings of \$8.5 million.

Thank you for the opportunity to testify.



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Alison H. Ueoka
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TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Wednesday, February 7, 2024
9:40 a.m.

SB 3229

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Michael Tanoue, counsel for the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council (HIC) **opposes** proposed §431:2-A through §431:2-I of this bill. This bill adds nine new sections to Part II of article 2 regarding complaints. Hawaii's Insurance Code already includes a section on complaints in section 431:13-103. Furthermore, the Insurance Division's website has an area where a consumer may easily make a complaint using a fillable form and allows the attachment of photos and other supporting documents. This process has been in place for many years and is working well from HIC members' viewpoint as we believe that, when an HIC insurer is made aware of a complaint, it is required to and does respond timely. The commissioner has, in addition to current statute, the broad powers to address complaints by directly calling insurers whereby a prompt response is expected.

Finally, if any reports are made public, it is important to allow all appeals to be exhausted first.

HIC takes no position on proposed §431:2-J of the bill regarding a working group.

We ask that §431:2-A through §431:2-I of this bill be deleted. Thank you for the opportunity to testify.



HAWAII

Senate Committee on Commerce & Consumer Protection
February 7, 2024 -- 9:40 am

Senator Jarrett Keohokalole
Senator Carol Fukunaga

RE: SB 3229: Relating to Insurance

Chair Keohokalole, Vice Chair Fukunaga and members of the Committee, mahalo for this opportunity to allow NAIFA (National Association of Insurance and Financial Advisors) Hawaii to share our position on SB 3229. NAIFA Hawaii is made up of life insurance agents/producers and financial advisors across Hawaii who primarily market life insurance, annuity, long term care, and disability income insurance products.

We are opposed to SB 3229 that establishes a new regime for Hawaii's Insurance Division to handle complaints, inquiries and enforcement of insurers and producers (insurance agents).

Article 13 – Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance – 431:13, HRS, regulates unfair insurance trade practices. In 1945 Congress enacted insurance regulations and again with the Gramm-Leach-Bliley Act in 1999 (Financial Services Modernization Act). The NAIC (National Association of Insurance Commissioners) has established model regulation which Hawaii has adopted as Article 13.

Having an established process in place whereby the Insurance Commissioner can investigate and examine insurers and producers, hold hearings, determine remedies and penalties, public reporting, and a process that is in conformity across the country which provides for a reasonable regulatory framework for all stakeholders.

Mahalo for your consideration in holding this measure.

Cynthia Takenaka
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Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection

February 5, 2024

Filed via electronic testimony submission system

RE: SB 3229 - NAMIC's Testimony of concern

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 7, 2024, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

The National Association of Mutual Insurance Companies (NAMIC) membership includes nearly 1,500 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write approximately \$1.8 billion in annual premiums.

NAMIC and its members have a long-history of being committed to providing insurance consumers with quality consumer services, and strive to be fast, fair and friendly in addressing insurance claims and consumer concerns. However, we do have a few concerns with the proposed legislation and respectfully request that NAMIC be included in on-going discussion on SB 3229. Specifically, we are concerned that the proposed consumer complaint process is unnecessary and duplicative of the current consumer complaint investigation process in existence. We have not heard of any specific problems associated with how consumer complaints are currently be submitted, reviewed and handled. Consequently, we question whether the new proposed consumer complaint investigation process is a cost-effective use of regulator time and resources.

Additionally, NAMIC is concerned that the proposed legislation has a consumer complaint public access/disclosure provision. The public disclosure of personal information about individual consumers may cause the consumer to have reservations about sharing the information with the HID. The public access/disclosure provision might also result in administrative due process of law issues. The HID regulator will not be adjudicating consumer complaint and that the consumer complaint process does not supersede or replace any judicial processes, it is very important that the legal rights of the parties be preserved and safeguarded

For the aforementioned reasons, NAMIC asks that the bill be held in committee for further discussions between the bill sponsor and interested stakeholders.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region