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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committees on Commerce and Consumer Protection
and

Public Safety and Military Affairs

Wednesday, February 5, 2025

9:30 a.m.

State Capitol, Conference Room 229 and via Videoconference

On the following measure:
S.B. 1136, RELATING TO INSURANCE

Chair Keohokalole, Chair Elefante, and Members of the Committee:

My name is Jerry Bump, and I am the Acting 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 establish ratemaking regulations for insurers who base their rates on a policyholder or applicant's wildfire risk; amend the definition of "prospective loss costs" to incorporate catastrophe modeling instead of historical aggregate losses; prohibit insurers from basing certain insurance rates on past loss experience within or outside the State; require insurers to provide a list of items that may be covered under a homeowners insurance policy issued or renewed on or after January 1, 2026, as additional living expenses when a claim for additional living expenses is made; if a loss relating to a state of emergency occurs, require coverage for additional living expenses for a period of not less than 24 months from the loss,

subject to other policy provisions; require that coverage for additional living expenses not limit a policyholder's right to recovery if the insured home is made uninhabitable by a covered peril and allow an insurer to provide a reasonable alternative remedy that addresses the property condition that precludes reasonable habitation of the insured premises; require additional living expenses coverage for at least 2 weeks for certain losses incurred if a state of emergency is accompanied by an order of civil authority restricting access to the home; beginning on January 1, 2026, require each newly issued or renewed homeowners insurance policy that covers a property within the State to provide for the replacement cost value of the insured property; and amend the determination of over insurance under section 431:10E-102, Hawaii Revised Statutes.

We understand the intent of addressing concerns that have arisen in the aftermath of the Maui wildfires. However, Part I of this bill is not necessary as Hawaii Revised Statutes (HRS) chapter 431, article 14 already provides for property insurance rate regulation.

Part II of this bill would remove historical loss data from ratemaking. Historical loss information is fundamental to rate review and approval. This bill would remove information that is critical for an accurate and adequate rate process. Catastrophic modeling is a tool for ratemaking but does not replace the need for historical loss information.

Part III of this bill mandates that insurers provide policyholders additional living expense (ALE) coverage for at least twenty-four months to restore their homes to safe, sanitary, and habitable conditions. Additionally, insurers must give policyholders opportunities to extend the period by six months for good cause. The Department acknowledges that these extensions may alleviate the impact of a difficult situation. However, mandated additional coverage and significant extensions of ALE will likely result in higher premiums, may influence property insurers' decisions to remain in Hawai'i, may discourage new insurers from entering Hawai'i, and ultimately may make it more difficult for property owners to obtain insurance.

Thank you for the opportunity to testify.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Senator Brandon J.C. Elefante, Chair
Senator Glenn Wakai, Vice Chair

Wednesday February 5, 2025
9:30 a.m.

SB 1136

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, and Chair Elefante, Vice Chair Wakai, and members of the Committee on Public Safety and Military Affairs, my name is Alison Ueoka, President for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit association of property and casualty insurance companies licensed to do business in Hawaii. Members companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council (HIC) **opposes** this bill. This bill adds a new part to article 14 that contains many provisions that could adversely affect consumers by increasing costs and could cause additional pressure on insurers in Hawaii. This in turn may lead to marketplace retraction or exit.

Part I. Provisions and requirements for Wildfire risk models. This part is premature as there are currently no wildfire models in use. Although bills passed last session that establish wildfire models, until such time a model is accepted by insurers and reinsurers, this part should not be implemented as a Hawaii wildfire model eventually may be developed that could make the bill's provisions inapplicable or unworkable.

Part II. Ratemaking, all lines of insurance. This part prohibits the use of historical aggregate losses in or out of the state and allows only prospective loss experience and catastrophe modeling for ratemaking of all property and casualty insurance premiums.

There are several problems with this as an approach to pricing insurance. Catastrophe modeling is inadequate to price most risks paid for under property and casualty insurance policies. There are no Hawaii wildfire catastrophe models, yet our community is now tragically aware of that risk. There are also no “catastrophe models” available to predict water damage, theft, slip-and-fall, workplace injuries, and all other frequent loss occurrences.

Of equal importance is that the basis for prospective loss experience is historical loss experience. The trend in historical losses is one of the essential tools used by actuaries to project losses into the future. Law changes, regulatory changes, and change in the rate of the appropriate inflation metrics are also important tools. Insurers should be able to use past and prospective data and catastrophe modeling where available in ratemaking. The statutory purpose of achieving an adequate rate is to ensure insurers can pay claims promptly and fully. We believe the changes in this part inhibit insurers' ability to do so. More significantly, this type of legislation may in fact lead to insurers restricting new business and potentially leaving the state. Our market in Hawaii is small and fragile, particularly our property insurance market, due to issues with condominium buildings and the aftermath of the Lahaina tragedy.

Creating obstacles to achieving rate adequacy will be harmful to Hawaii consumers and businesses by reducing the availability of insurance. If there are fewer or no insurers in the admitted market to underwrite Hawaii's property and casualty insurance, including motor vehicle, property, general liability, and workers' compensation insurance coverage, available options in all likelihood will be more expensive and/or unregulated.

Part III. This part adds provisions for an additional living expenses (ALE) list to be provided to the insured, requires time extensions in a state of emergency, and mandates replacement cost in property policies. In new Section 431:10E-____(b), the bill mandates

certain extensions of time for ALE but leaves out a significant factor and that is the policy's dollar limit. Any extension of time needs to be subject to the insurance policy's limit for that coverage. If the policy has no dollar cap, the liability is greatly expanded, and premiums will reflect the exposure.

Subsection (c) requires ALE without limitations if the home is rendered uninhabitable. The bill does not specify who makes this determination and it should be the insurer or the insurer's representative. The bill also does not appear to limit subsection (c) to declared emergencies, nor does it appear to permit insurers to specify limits of insurance or periods of time. Accordingly, this subsection would be very expensive, may even be unaffordable to policyholders, and could discourage insurers from offering and policyholders from purchasing the coverage.

Subsection (d) requires ALE for civil authority restricting access to the home. The bill requires 2 weeks of ALE which is already in many property policies but adds new coverage of additional 2-week extensions with no end, based on "good cause." This creates an unlimited and unknown liability that could dramatically increase premiums. Subsection (d) also does not specify the civil authority coverage must be subject to the policy limit, which exacerbates cost.

The next new section relating to replacement cost mandates that the homeowners insurance policy provides for replacement cost instead of actual cash value coverage for what appears to be dwelling, other structures, and personal property. The provision makes no allowance for policy limits and therefore, if replacement cost were required for dwelling, other structures, and personal property, the cost of this insurance policy would be extremely high. It would also create a tremendous moral hazard of underinsurance if a homeowner could be assured of enhanced coverage for which they did not pay.

Section 5 of the bill amends the over-insurance part of law in section 431:10E-102 by adding the definition of "replacement cost value" and deleting the provision for actual cash value. This amendment should be deleted because it would conflict with section

431:10E-103 which already states exceptions to section 431:10E-102, such as replacement cost and law or ordinance requirements.

We believe this bill will adversely impact all property and casualty insurers, and ultimately all consumers, in the state and we ask that this bill be held.

Thank you for the opportunity to testify.

Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection
Senate Committee on Public Safety and Intergovernmental and Military Affairs

February 5, 2025

Filed via electronic testimony submission system

RE: SB 1136 - NAMIC's Testimony in Opposition

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 5, 2025, 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 support pragmatic, pro-consumer public policy reasonably designed to improve the availability and affordability of property insurance for consumers. Consequently, we support the bill sponsor's noble intentions. Unfortunately, SB 1136 may sound like a pro-consumer protection bill, but in practical reality it is an unnecessary, overly-broad and complex bill that is more likely to confuse consumers, lead to unnecessary insurance rate costs for consumers, deny policyholders of important consumer-choice as to what they need and want in their insurance products, and adversely impact insurers in their ability to match price to risk. NAMIC is concerned that the bill will have unintended consequences for the vast majority of insurance consumers in the State of Hawai'i.

NAMIC respectfully submits the following legal, public policy, and practical application concerns and questions to the committees for consideration:

1) Does the creation of unnecessary insurance rate cost-drivers benefit consumers who are struggling, in today's inflationary world, to pay for the necessities of their life?

The cost of the insurance product is the number one consideration for many consumers in their decision-making. The proposed legislation is loaded with new administrative burdens, consumer disclosure requirements, coverage mandates, impractical and unworkable underwriting restrictions, and fundamental changes to the insurance relationship that will likely lead to increased insurance costs and new financial challenges for insurance consumers. NAMIC questions whether these mandates which the consumer is not likely to read about highly complex risk modeling, wildfire risk scoring, and insurance underwriting practices is really the best approach.

2) Insurance consumers should have the right to make personal decisions about the coverages and protections they want and need.

SB 1136 includes mandates that deny consumer choice. For example, the proposed legislation would require “... *each newly issued or renewed homeowners’ insurance policy to provide for the replacement cost value of the insured property*”.

“Replacement cost” as opposed to “actual cash value” is undeniably more expensive for consumers and may not be necessary or desirable for a consumer’s personal tangible property. Consumers should have the choice to decide what they need, want and can afford to pay in insurance coverage protections, whether it be for their contents coverage or the rebuild of their house. Mandating coverage for increased cost in rebuilding a home resulting from “demand surge” after a wide-scale natural disaster event and increased costs for new building codes and local ordinances drive-up the cost of insurance for consumers. If a policyholder wants these additional coverage protections they are *currently available* for the consumer to purchase, if they choose.

From a public policy perspective, it is akin to mandating every driver on the road may only drive a motor vehicle that has every single state of the art safety feature for their protection, even if that means the person is financially forced out of the motor vehicle ownership market.

Consumers make decisions about how much of an insurance deductible they want as part of their personal risk of loss sharing with the insurer so as save premium money, why shouldn’t they also have the same right to decide how much coverage protection they are willing to personally accept in order to save on insurance premium?

3) The proposed legislation would require insurers to engage in anti-competitive, possibly even anti-trust protection related activities detriment to consumers.

SB 1136 states that:

Any risk model described in subsection (a) and any additional documentation requested by the insurance commissioner during the review of any applicable rate application, including any records, data, algorithms, computer programs, or any other information used in connection with the rating plan or wildfire risk model used by the insurer and provided to the insurance commissioner, shall be made available for public inspection, regardless of the source of the information or whether the insurer or the developer of the rating plan or wildfire risk model claims that the rating plan or wildfire risk model is confidential, proprietary, or a trade secret. (Emphasis Added)

This provision is concerning for many reasons. Most importantly, it is inconsistent with healthy pro-consumer market competition, which means that it is anti-consumer. Competition between competitors in a marketplace creates product options and differing price points for consumers to consider and benefit from. If insurers have to disclose their risk models to the public and waive confidentiality, proprietary intellectual property rights and trade secrets, the insurance market will end up with a “one-size fits all” type insurance product that would be detrimental to consumers.

Additionally, the proposed disclosure requirement could have a devastating impact upon the availability of insurance for consumers in the state. National insurers and national risk modelers, who spend millions of dollars developing proprietary intellectual property rights to assess risk, are not going to be willing or able to waive those legal protections nationally for a single state marketplace. Such an activity would be illogical and untenable as a financial business practice. Further, this proposed requirement would create legal liability exposure for insurers who may not have the legal right to disclose models they merely use pursuant to a contract with the developer of the risk model or wildfire risk score. Requiring insurers to violate legal contracts with third-party vendors is not good public policy and would not be beneficial to consumers who want and need insurers to use the best risk assessment tools available to match rate to risk.

4) SB 1136 is inconsistent with basic insurance risk of loss principles and would impose impractical and unworkable requirements on insurers to the detriment of consumers.

The proposed legislation is inconsistent with the very concept of risk-based pricing of property insurance. The basic principle of risk-based pricing is that as the risk goes up - the rate goes up ... and as the risk goes down - the rate goes down. Thus, the operative question is - does a single particular community-wide or individual homeowner mitigation activity *actually reduce* the risk of loss exposure for a homeowner? If the answer is no or the data is inconclusive, how can a rate be reduced and the rate still be actuarially sound?

The proposed legislation has some concerning provisions that are inconsistent with the leading research on wildfire risk mitigation (Please refer to Insurance Institute for Business and Home Safety materials and research) and would force insurers into making arbitrary, unsubstantiated, and improper risk mitigation valuation decisions (i.e. imposing an arbitrary rating discount for a particular mitigation activity that may not be consistent with wildfire risk science).

Specifically, SB 1136 states that an insurer must disclose to the consumer; thereby, arguably making it part of the insuring agreement:

The amount of premium reduction under the insurer's rating plan that is in effect at the time that the policyholder or applicant would realize as a result of performing each mitigation measure identified under paragraph (4). (Emphasis added)

This proposed requirement is not only an inaccurate over-simplification of the interactive relationship between all the various individual property owner risk mitigation activities and community-wide risk mitigation activities that each individually and collectively influence, interact with, and ultimately impact the evaluation of whether there is any actual wildfire risk mitigation for the community and property owner, but it is also dangerously misleading to consumers, who may then falsely believe that if they do one or two risk mitigation activities they have meaningfully reduced their wildfire risk exposure.

NAMIC is also concerned about the provision in the bill that prohibits consideration of claims history, which is a long-standing and well-established part of risk of loss assessment, and arguably an inextricable part of modeling. NAMIC believes that insurance consumers deserve the benefit of a totality of factors consideration of their risk of loss exposure when insurers match rate to risk.

5) SB 1136 would impose costly, impractical and unworkable underwriting and consumer disclosure requirements that are far more likely to confuse consumers than educate them.

In effect, the proposed legislation would require insurers to become wildfire risk mitigation abatement experts. That is not and should not be the role of property insurers. There are professional organizations that specialize in this highly technical subject matter and offer comprehensive expertise on fire prevention and mitigation that homeowners can utilize to better protect their homes and family.

For the aforementioned reasons, NAMIC asks the Committee to hold SB 1136, and we welcome an opportunity to work with the bill sponsor and other interested stakeholders on practical legislation that will meet the sponsor's objectives, help facilitate meaningful informed consumer-choice in insurance coverages, and promote actuarially sound and cost-effective risk-based pricing.

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj".

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



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GOVERNMENT STRATEGIES
A LIMITED LIABILITY LAW PARTNERSHIP

LATE

DATE: February 3, 2025

TO: Senator Jarrett Keohokalole
Chair, Committee on Commerce and Consumer Protection

Senator Brandon J.C. Elefante
Chair, Committee on Public Safety and Military Affairs

FROM: Matt Tsujimura

RE: **S.B. 1136 – Relating to Insurance**
Hearing Date: Wednesday, February 5, 2025, at 9:30AM
Conference Room: 229

Dear Chair Keohokalole, Chair Elefante, and Members of the Joint Committees:

I am Matt Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers testimony **in opposition** to S.B. 1136 – Relating to Insurance.

State Farm supports effort by individual homeowners and communities to take actions to mitigate losses related to wildfires. We encourage the Legislature to look to entities like the Institute for Business & Home Safety for scientific data relating to individual mitigation efforts and Firewise USA to help define actions that can be taken by communities to reduce wildfire risk. Wildfire mitigation is about completing a series of mitigation measures on a property and in the community, and then maintaining the entire series of mitigation measures over time. One or two mitigation measures may not do much on their own, it is the entire series of mitigation measures that creates protection for the home and reduces the risk. Because data about wildfire mitigation can change over time, the efforts taken must be re-evaluated on a regular basis making it difficult to tie wildfire mitigation efforts to rating.

S.B. 1136, while well intended, adds new complexities to a fragile property insurance market. The transparency requirements, requirements relating to mitigation, and the mandates relating to wildfire risk models and wildfire risk score will have a significant impact on availability and affordability. Passing laws that place restrictions on insurers or require them to publicly disclose proprietary information may discourage insurers from entering the market and/or cause insurers to evaluate the types of products and services offered.

State Farm is also concerned about language in Part II of the bill that would restrict the use of historical data in ratemaking. Ratemaking is already prospective, with no attempts to recoup for past losses. However, historical loss experience is a foundation for projected losses. All prospective models or views of loss are based on past, historical data. S.B. 1136 would significantly impact the way insurers price risk.

Companies would not have a way to determine appropriate rates thereby impacting the products they offer in Hawaii.

Finally, S.B. 1136 will limit consumer choice while adding expense. Today, consumers choose between different insurers and select products based on individual needs and their financial situation. S.B. 1136 would eliminate choice by requiring all insurers to offer the same product. The proposed extension of additional living expense benefits following an emergency declaration and the requirement to provide “replacement cost benefits” are not unreasonable options. However, making the coverages mandatory will increase the cost of the policy, especially if these benefits must be provided without any consideration for the coverage limits.

State Farm is cognizant of the challenges the state faces as it continues to recover from the devastating wildfires in Lahaina. We understand the desire to identify solutions for consumers to reduce the risk of future wildfire losses while also working to ensure insurance products are readily available and affordable. However, State Farm is concerned the public policy proposals set forth in S.B. 1136 will limit consumer choice and result in increased insurance costs. For these reasons, State Farm asks the Committee to **hold S.B. 1136**.

Thank you for the opportunity to submit this testimony.