

SB2854

Measure Title: RELATING TO INSURANCE.

Report Title:

Hawaii Mandatory Catastrophe Reserve Act; Catastrophe Insurance; Property Insurance; Premium Tax; Electronic Filing; Electronic Payments; Physician Assistant-delivered Services; Child Health Supervision; Accident and Health or Sickness; Claim Filer; Risk Retention; Captives; Mental Illness; Licensed Dietitians; Duty to Respond; Visual or Optometric Services Coverage; Licensed Physicians and Optome

Description:

Makes various updates to title 24, Hawaii Revised Statutes, including: requiring property insurers to establish catastrophe reserve funds; requiring an insurer seeking to discontinue writing property coverage to file an affidavit; requiring the Insurance Commissioner's authorization for insurers providing residential property coverage; requiring insurers to file their premium tax statements electronically and to pay electronically; applying consumer protections to short-term health policies with preexisting conditions provisions; including physician assistant-delivered services under coverage for child health supervision for accident and health or sickness policies and for mutual benefit societies; requiring an entity to notify a claim filer under certain conditions; prohibiting a risk retention group from being a sponsor of and allowing it to be a participant in a sponsored captive insurance company; providing mental illness benefits coverage to licensed dietitians; requiring an entity's duty to respond to the Insurance Commissioner during an investigation or examination; providing visual or optometric services coverage for licensed physicians and optometrists and surgical or emergency services coverage for dentists under health plans of mutual benefit societies; providing coverage for pharmacist-delivered contraceptive services; and making other housekeeping and conforming amendments.

Companion:

[HB2325](#)

Package:

Governor

Current Referral:

CPH, WAM

Introducer(s):

KOUCHI (Introduced by request of another party)



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
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CATHERINE P. AWAKUNI COLÓN
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DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 am

TESTIMONY ON SENATE BILL NO. 2854 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”). The Department strongly supports this Administration bill.

The Department believes the various provisions proposed in this bill will update
and improve Hawaii’s Insurance Code in a number of areas. Specifically, this measure
will do the following:

SECTION 1 of the bill adds a new article, to be known as the Hawaii Mandatory
Catastrophe Reserve Act, to chapter 431 and amends § 431:3-306.5(a). Hawaii
insureds pay annually for catastrophe coverage as part of their property insurance
premiums. However, catastrophes occur infrequently. This situation results in
significant underwriting gains for insurers during the years in which no catastrophe
occurs. Insurers should retain these underwriting gains in the event of future
catastrophic losses. The Hawaii mandatory catastrophe reserve, created by this article
and established by authorized property insurers that issue an insurance policy or
reinsurance contract covering losses resulting from a catastrophe for property risks

located or resident in this State, would be used to pay claims resulting from qualifying losses.

SECTION 2 of the bill adds a new part to article 10E of chapter 431 to apply part of § 431P-10(b) and § 431P-17 to property insurers.

SECTION 3 of the bill amends § 431:2D-107(g) to correct a sentence fragment error that was intended to comply with the National Conference of Insurance Legislators (“NCOIL”) Insurance Compliance Self-Evaluative Privilege Model Act.

SECTION 4 of the bill amends § 431:3-306.5 to require that an insurer’s Hawaii mandatory catastrophe reserve be made accessible to the Commissioner to verify that the insurer has the financial assets and ability to cover its hurricane insurance exposure.

SECTIONS 5 and 6 of the bill amend §§ 431:7-201(a) through (c) and 431:7-202(f) to reduce the administrative cost of processing the premium tax statement and checks that are due monthly. The premium tax collections would be deposited into the general fund faster and more efficiently.

SECTION 7 of the bill amends § 431:10-104 to benefit the public by requiring conspicuous disclosure of preexisting conditions provisions in short-term health policies.

SECTIONS 8 and 9 of the bill amend § 431:10A-206.5(a) and (e) to correct punctuation and add physician assistant-delivered services to maintain uniformity with section 431:10A-115.5.

SECTION 10 of the bill amends § 431:13-108(c) to make clear that the person filing a claim is entitled to notice.

SECTIONS 11 and 12 of the bill amend §§ 431:19-304 and 431:19-305(a) to add flexibility to captive laws of sponsored captive insurance companies by allowing a risk retention group (“RRG”) to participate in a sponsored captive insurance company as a protected cell by establishing a separate account to fund the liability of the sponsored captive insurance company. The amendments also help sponsored captive insurance companies stay competitive with captives domiciled in other states. Captive domiciles such as Vermont, Delaware, Montana, and the District of Columbia allow an RRG to participate in a sponsored captive insurance company.

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DCCA Testimony of Gordon Ito
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SECTION 13 of the bill amends § 431M-4(b) to add licensed dietitians as a provider type who can approve an individualized treatment plan for mental health services, as some health plans currently exclude such coverage.

SECTION 14 of the bill amends § 431P-10(b) as a result of adding a new part to article 10E of chapter 431 in SECTION 2 of the bill.

SECTION 15 of the bill amends § 431R-5 to maintain its uniformity with chapter 431 by requiring an entity to respond during the course of an investigation or examination.

SECTION 16 of the bill amends § 432:1-102(b) to add two consumer protections (delivery of policy and notice of cancellation or renewal) to MBS policies. This section also amends § 432:1-102(b) to provide coverage-specific services to maintain its uniformity with article 10A of chapter 431 and chapter 432D.

SECTION 17 of the bill amends § 432:1-602.5(e) to add physician assistant-delivered services to maintain its uniformity with article 10A of chapter 431 and chapter 432D.

SECTION 18 of the bill amends § 432:1-604.5(d) to add pharmacist-delivered medical contraceptive services to maintain its uniformity with article 10A of chapter 431 and chapter 432D.

SECTION 19 of the bill amends § 432D-14(b) to maintain its uniformity with chapter 432 regarding suspension, revocation, or denial of a certificate of authority.

SECTION 20 of the bill amends § 432D-19(d) to add two consumer protections (delivery of policy and notice of cancellation or renewal) to health maintenance organization policies.

SECTION 21 of the bill repeals § 431P-17 as a result of adding a new part to article 10E of chapter 431 in SECTION 2 of the bill.

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

Hawaii State Legislature
Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 2, 2016

Filed via electronic testimony submission system

RE: SB 2854, Hawaii Mandatory Catastrophe Reserve Act - NAMIC's Written Testimony in Opposition to Legislation

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 3, 2016, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC is opposed to Sections 1 and 4 of SB 2854 and respectfully submits the following statement of concerns:

1) The proposed Hawaii Mandatory Catastrophe Reserve Act proposal is entirely unnecessary and inconsistent with the national trend on enhancing solvency protections.

NAMIC is concerned that the proposal is “a solution in search of a problem”. There is no evidence to support the contention that insurers are either inadequately reserving to insure against hurricane risk or that there are any legitimate reasons to believe that there is an insurer insolvency risk in the state.

We believes that there are already plenty of regulatory safeguards in place today to ensure that insurers maintain adequate reserves and are engaged in appropriate risk management. NAMIC is hopeful that the Division of insurance (DOI) will also have the NAIC Own Risk Solvency Assessment law in place by the end of the 2016 legislative session to assist insurers and the DOI in enhancing solvency protection. Moreover, Hawaii has a well-established insurance guaranty fund in place to address the unlikely event of insurer insolvency.

Additionally, no other state in the nation has adopted a proposal like the one contemplated in SB 2854. In 2009, New York considered a somewhat similar proposal, but after extensive debate and evaluation decided not to adopt the proposal. Consequently, NAMIC believes that the proposed mandatory catastrophe reserve proposal is a risky and unproven approach to solve a non-existent problem.

2) NAMIC is concerned that proposed mandatory catastrophe reserve proposal could adversely impact the marketplace and actually create an unnecessary and harmful financial drain on insurers.

The proposed “one size fits all” mandatory reserve and regulatory restrictions proposal could adversely impact market competition in the state, which could lead to higher insurance rates for property and hurricane insurance consumers. Specifically, the proposed legislation arguably restricts the way insurance companies may underwrite risk and allocate insurer capital. NAMIC is concerned that the proposal would impose an unnecessary and imprudent financial burden on insurers by requiring them to tie up their capital for a ten years period of time. Insurers use their capital resources to purchase reinsurance coverage that provides them with protection against financial risk necessary to address sudden large-scale claims exposure.

Further, there is no evidence to support the contention that insurers are not properly investing and using their capital reserves in a financially prudent manner to address their claims exposure and solvency responsibilities. Insurer discretion as to how they manage their risk and invest their capital should be allowed so that insurers can be competitive and innovative for the benefit of insurance consumers.

NAMIC is also concerned that the proposal fails to take into consideration the adverse tax implications for insurers that will result from the creation of a mandatory catastrophe reserve program. An insurer’s capital funds placed in the program will still be considered taxable income by the IRS, because the tax code does not allow for a tax deduction for pre-event catastrophe reserves. Therefore, the after-tax rate of return of impacted insurers will be reduced and insurers will likely be forced to adjust their rates to address this new tax-related financial burden.

3) NAMIC is concerned that the legislation fails to define what is meant by a “catastrophe”.

The definition of a “catastrophe” is overly-broad in scope and arguably includes any event declared a natural disaster by the governor. Consequently, a number of property loss perils, in addition to hurricane related losses, could trigger use of the mandatory catastrophe reserves. A clear and limiting definition of a “catastrophe” is necessary to insulate the program from external political pressures to access the reserve funds.

4) NAMIC believes that Section 2 of the bill will needlessly hinder market competition in insurance coverage offered to consumers.

The legislative proposal would require an insurer to seek “authorization” from the commissioner if the insurer wishes to provide standard extended coverage endorsements for residential property, including hurricane insurance, to a policyholder. NAMIC is confused as to what alleged marketplace problem this provision is intended to remedy. Moreover, the term “authorization” is undefined in the proposed legislation, so it is unclear as to what an insurer would need to do to obtain “authorization”, what regulatory standards the DOI would use in determining whether to “authorize” the coverage, and what administrative due process will be afforded to an insurer who disagrees with the DOI’s rejection of the insurer’s request for authority. Since Hawaii is a prior approval of rates regulatory regime and the DOI approves rates and forms, there is no need for this additional and somewhat duplicative regulatory process. If the DOI has a specific concern with an insurer’s filed standard extended coverage endorsement, the DOI already possesses the regulatory authority to address their concerns through a well-established regulatory oversight procedure.

5) NAMIC is concerned that the effective date for the proposed electronic filing and payment of premium taxes would impose an unnecessarily administrative burden on insurer.

Although NAMIC’s members support Section 5 and 6 of the bill, which mandate that insurers file their annual statement and premium tax statements electronically and pay their premium taxes electronically, we are concerned that proposed effective date is unworkable.

Insurers need reasonable time to make necessary IT changes and internal processing adjustments to properly comply with this new filing and payment requirement. Thus, NAMIC respectfully request that the effective date deadline be extended to January 1, 2017, instead of July 1, 2016.

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 Director – State Affairs, Western Region



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February 2, 2016

To: Hon. Rosalyn H. Baker, Chair
Hon. Michelle N. Kidani, Vice Chair
Members, Senate Committee on Commerce,
Consumer Protection and Health

From: Steven Suchil, Assistant Vice President/Counsel

Subject: SB 2854 - Catastrophe Reserve
Hearing Wednesday, February 3, 2016
9:00 a.m., Room 229

The American Insurance Association (AIA) opposes the provisions in SB 2854 which would establish the Hawaii Mandatory Catastrophe Reserve Act and require a Hawaii mandatory catastrophe reserve, which must be used for payment of claims resulting from qualifying losses in Hawaii.

AIA is the leading property-casualty insurance trade organization, representing approximately 325 insurers that write more than \$127 billion in premiums each year. AIA member companies offer all types of property-casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance. In Hawaii AIA member company property-casualty insurance market share is about 22 percent, with nearly \$500 million in premiums.

We are concerned about the Hawaii Mandatory Catastrophe Reserve Act provisions in SB 2854 because they would interfere with underwriting and insurer practices. The Act could bring about potential unintended consequences on the market, imposition of the reserve limits companies' ability to secure reinsurance, and there are federal tax implications. No other state has such a reserve.

At present the Insurance Commissioner has the authority to examine insurers' reserves and financial adequacy, and take action if necessary. Because of such existing supervisory authority the establishment of a special reserve is not needed.

For the foregoing reasons we respectfully request that SB 2854 be held in Committee.

TESTIMONY OF MICHAEL TANOUE

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH
Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

Wednesday, February 3, 2016
9:00 a.m.

SB 2854

Chair Baker, Vice Chair Kidani, and members of the Committee on Commerce, Consumer Protection and Health, my name is Michael Tanoue, counsel for the Hawaii Insurers Council. 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 thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council (HIC) **opposes** Sections 1 and 4 of this bill and submits comments on Sections 2, 3, 5, and 6. Virtually all members of HIC would be adversely affected by Sections 1 and 4 of this bill as it seeks to establish the Hawaii Mandatory Catastrophe Reserve Act. This concept was attempted as a regulation in New York in 2009 and not adopted. We are not aware of this provision existing in any other state. While these provisions appear to be a way to ensure solvency of property insurers, we believe adequate safeguards exist today.

HIC believes these provisions if enacted, would have significant unintended consequences and perhaps result in a more restricted marketplace with higher insurance premiums for property and hurricane insurance. The legislation appears to control the way companies underwrite risk and allocate capital.

Is Hawaii's hurricane insurance market competitive? After Hurricane Iniki, there was no market in Hawaii providing hurricane insurance resulting in the formation of the Hawaii Hurricane Relief Fund in 1993. After Zephyr came into the market in 2000, there was still a dearth of competition in the market for many years. Today, the hurricane insurance market is vibrant with many carriers who underwrite both the homeowner's portion and the hurricane portion of the risk as well as carriers who underwrite hurricane-only risks. This bill could cause a constriction in the marketplace as it requires insurers to tie up capital for ten years. The definition of catastrophe is also very broad as it includes any event declared a natural disaster by the governor which could include a number of property perils in addition to hurricane.

Will this proposal provide a significant amount of money? HIC does not believe this proposal would yield as much in capital as current reinsurance products can provide. In the current reinsurance marketplace, \$1 million of premium can often buy \$20 million to \$50 million in reinsurance protection. Mandating that companies set aside cash prevents them from utilizing it as they see fit whether to purchase additional reinsurance, innovate, or otherwise.

These funds will still be considered taxable income by the IRS. The IRS does not allow a tax deduction for pre-event catastrophe reserves. Therefore, the after-tax rate of return of impacted insurers will be reduced and insurers will likely seek to adjust their rates to include this impact.

Competitive disadvantage to licensed insurers. These provisions will create a competitive disadvantage to those carriers licensed in Hawaii and allow unlicensed surplus lines companies to sell their products at a lower price for not having the same requirements, but could still be higher than today's prices. This reduces options for consumers in Hawaii and could lead to higher premiums.

As insurers evaluate their own risks and ability to pay claims as a normal part of doing business, every state has a backstop in the event of an insolvency which is the guaranty fund. In Hawaii, there have been very few insolvencies of property and casualty insurance companies and we believe this mechanism is appropriate. Finally, we believe the insurance commissioner has existing powers to examine and evaluate any one or more insurers if he believes they are not properly reserved and therefore these provisions are unnecessary. We ask that you hold sections 1 and 4 of this bill.

Section 2 of the bill adds a new part and requires insurers to seek authorization from the commissioner if an insurer wishes to provide standard extended coverage endorsements for residential property, including hurricane insurance. The term "authorization" is undefined so it is unclear as to what an insurer would need to do to obtain it. HIC is unsure why this provision is necessary as all rates must be submitted to the Division for its prior approval.

Section 3 of the bill amends the section of law regarding confidentiality. However, the intent of the amended language in Sec. 431:2D-107(g)(3) on page 8, lines 5-9 is not clear. The language contained in line 9 is redundant to line 8 and can be ended after the word, "remedied." We would like to work with the bill's author on clarifying the amendments to this subsection.

Section 5 and 6 of this bill mandates that insurers file their annual statement and premium tax statements electronically and that they pay their premium taxes electronically. Although HIC supports the intent of these sections, we ask that they take effect on January 1, 2017 instead of July 1, 2016 to give insurers who are not now filing electronically adequate time to set up their systems with the Division.

Thank you for the opportunity to testify.



To: The Honorable Rosalyn H. Baker, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health

From: Mark Sektnan, Vice President

Re: SB 2854 Relating to Insurance
PCI Position: Oppose

Date: Wednesday, February 3, 2016
9:00 a.m., Room 229

Aloha Chair Baker, Vice Chair Kidani and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to **SB 2854** which would place onerous requirements on insurers doing business in Hawaii, including the requirement to establish separate catastrophe risk funds.

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.

SB 2854 appears to control the way companies underwrite risk and allocate capital by establishing the Hawaii Mandatory Catastrophe Reserve Act. This concept was attempted as a regulation in New York in 2009 and not adopted. We are not aware of this provision existing in any other state. While these provisions appear to be a way to ensure solvency of property insurers, we believe adequate safeguards exist today. These provisions could, if enacted, have significant unintended consequences and perhaps result in a more restricted marketplace with higher insurance premiums for property and hurricane insurance.

The hurricane insurance market in Hawaii is vibrant with many carriers who underwrite both the homeowner's portion and the hurricane portion of the risk as well as carriers who underwrite hurricane-only risks. This bill could cause a constriction in the marketplace as it requires insurers to tie up capital for ten years. The definition of catastrophe is also very broad as it includes any event declared a natural disaster by the governor which could include a number of property perils in addition to hurricane.

We would clarify the role played by reinsurance. Rather than set aside dedicated resources, reinsurance often offers a better use of resources. In the current reinsurance marketplace, \$1 million of premium can often buy \$20 million to \$50 million in reinsurance protection.

Mandating that companies set aside cash prevents them from utilizing it as they see fit, whether to purchase additional reinsurance, innovate, or otherwise.

In addition, SB 2854 further reduces a company's capital because these funds will be considered taxable income by the IRS. The IRS does not allow a tax deduction for pre-event catastrophe reserves. Therefore, the after-tax rate of return of impacted insurers will be reduced and insurers will likely seek to adjust their rates to include this impact.

As insurers evaluate their own risks and ability to pay claims as a normal part of doing business, every state has a backstop in the event of an insolvency which is the guaranty fund. In Hawaii, there have been very few insolvencies of property and casualty insurance companies and we believe this mechanism is appropriate. Finally, we believe the insurance commissioner has existing powers to examine and evaluate any one or more insurers if he believes they are not properly reserved and, therefore, these provisions are unnecessary.

Section 2 of the bill adds a new part and requires insurers to seek authorization from the commissioner if an insurer wishes to provide standard extended coverage endorsements for residential property, including hurricane insurance. The term "authorization" is undefined so it is unclear as to what an insurer would need to do to obtain it. PCI is unsure why this provision is necessary as all rates must be submitted to the Division for its prior approval.

SB 2854 also mandates that insurers file their annual statement and premium tax statements electronically and that they pay their premium taxes electronically. Although PCI supports the intent of these sections, we ask that they take effect on January 1, 2017 instead of July 1, 2016 to give insurers who are not now filing electronically adequate time to set up their systems with the Division.

For these reasons, PCI asks the committee to hold the bill in committee.

From: mailinglist@capitol.hawaii.gov
To: [CPH Testimony](#)
Cc: hpierucki@helpinghandshawaii.org
Subject: Submitted testimony for SB2854 on Feb 3, 2016 09:00AM
Date: Tuesday, February 02, 2016 12:22:05 PM

SB2854

Submitted on: 2/2/2016

Testimony for CPH on Feb 3, 2016 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Pierucki	Individual	Support	No

Comments: Honorable Chair, Vice Chair and Committee Members, Thank you for hearing this bill. I support this bill and the inclusion of Licensed Mental Health Counselors for treatment services.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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