



DAVID Y. IGE
GOVERNOR
SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Thursday, February 9, 2017
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1087 – RELATING TO INSURANCE.

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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, which is a companion to S.B. 953.

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 conforms fraud monetary amounts with the penal code in changing the dollar amount of the benefits, recovery, or compensation obtained or attempted to be obtained for a class C felony and misdemeanor, by amending section 431:2-403(b).

SECTIONS 2 and 3 of the bill require insurers seeking a certificate of authority to submit a Uniform Certificate of Authority Application to the Insurance Division and to clarify that the insurer’s name must comply with sections 431:3-202(b) and 431:4-104(d)(1), by amending sections 431:3-212 and 431:3-212.5(b).

SECTION 4 of the bill establishes application and service fees for motor vehicle self-insurers by amending section 431:7-101(a).

SECTION 5 of the bill allows the Insurance Commissioner to issue a declaration prior to an event that may require the use of nonresident adjusters, and to not require a governor's proclamation before issuing the declaration, by amending section 431:9-201(b). Currently, the Commissioner must wait until a catastrophe has occurred, which typically the Governor proclaims. This amendment will allow the Commissioner to proactively trigger the arrival and assistance of nonresident adjusters in the State ahead of an emergency.

SECTIONS 6, 7, and 8 of the bill conform article 9A to the National Association of Insurance Commissioners' Producer Licensing Model Act by eliminating producer-to-producer appointments and amending the definition of "terminate" in sections 431:9A-102, 431:9A-114, and 431:9A-115. In 2001, when Hawaii adopted the NAIC's Producer Licensing Model Law to conform with the uniformity and reciprocity requirements, we deviated in one area by retaining the ability of agents to appoint other agents. This was a carry over from the old general agency scheme, as requested by insurance agents. Hawaii is the only state that has a "producer-to-producer" appointment law. The Division developed a computer system to accommodate this difference which is a legacy system over 12 years old. Deleting producer-to-producer appointments moves the Insurance Code to uniformity with other states' statutes and also provides options for the Division in eventually moving to another computer system to replace the current one.

SECTION 9 of the bill allows third-party claimants to claim the general excise tax and certificate of ownership fee in total loss claims by amending section 431:10C-312.

SECTION 10 of the bill requires certain costs and expenses incurred by the Commissioner during supervisory proceedings be paid by or reimbursed from the assets of the insurer by amending section 431:15-201. This requirement is similar to that in section 431:15-303(a) for rehabilitation proceedings.

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

TESTIMONY OF MARIE WEITE

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE,
Representative Angus L.K. McKelvey, Chair
Representative Linda Ichiyama, Vice Chair

Thursday, February 9, 2017
2:00 p.m.

HB 1087

Chair McKelvey, Vice Chair Ichiyama, and members of the Committee Consumer Protection and Commerce, my name is Marie Weite, Assistant Vice President of Claims of First Insurance Company of Hawaii and the Law & Regulations Chair of 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.

The Hawaii Insurers Council takes no position on HB 1087, except in two areas.

First, the Hawaii Insurers Council requests that the effective date of Sections 6, 7 and 8 (regarding insurance producers) be postponed to, ideally, January 1, 2019. Currently, the bill makes Sections 6 and 7 effective on January 1, 2018, and Section 8 effective upon approval. Hawaii insurers and insurance agency principals will need to draft new agreements, which should not be problematic. The challenge will be obtaining signatures from thousands of insurance producers in a timely manner, some of whom may be nonresidents. A delay in the effective date of these three sections will provide adequate time for individual producers to discuss the new agreements with each of the insurers they represent prior to signing so that they will receive uninterrupted commission payments.

Second, the Hawaii Insurers Council offers one comment and proposes one amendment to Section 9.

- (a) Our comment is that this section conflates first-party and third-party concepts, which could lead to confusion. HRS § 431:10C-309 through HRS § 431:10C-312 all deal with first-party insureds rather than “third-party claimants.” While we do not believe that this will be a practical problem, it would be clearer to include the desired language in a separate section.
- (b) Our proposed amendment is related to our comment (a) above, as it distinguishes between the types of coverage afforded to first-party insureds compared to “third-party claimants.” Section 9 does not limit an insurer’s obligations to the Property Damage Liability limit applicable to the claim for “third-party claimants.” First-party collision or other-than-collision coverages typically do not have a policy limit, per se. A strict reading of Section 9 of the bill implies that an insurer may be obligated to pay in excess of the Property Damage Liability limit of coverage, and we do not believe that this is the intent.

Hawaii Insurers Council requests that the bill explicitly provide that the insurer’s obligations to a “third-party claimant” are subject to the Property Damage Liability limit of the applicable auto policy. For example, a new subsection (e) could be added to section 431:10C-312 to read:

“(e) An insurer’s obligation to reimburse a third-party claimant for the applicable general excise tax and certificate of ownership fee as set forth in this section shall be subject to the property damage liability limit of the policy.”

Thank you for the opportunity to testify.



An Independent Licensee of the Blue Cross and Blue Shield Association

February 9, 2017

The Honorable Angus L. K. McKelvey, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 1087 – Relating to Insurance

Dear Chair McKelvey, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1087, which amends various section of the Insurance Code. HMSA supports the intent of this Bill, but we offer comments seeking clarification.

Section 431:3-212 (page 2, lines 6-7)

This section provides for an insurer's name on the application for a certificate of authority to include the word "corporation," "incorporated," or "limited." While this section does not ordinarily apply to mutual benefit societies (MBS), the bill could be read to make section 431:4-104(d)(1) applicable to MBS entities. This could be confusing and potentially could be read to require an MBS to change its corporate form.

We do not believe this change was the drafting intent, and the Committee may wish to consider the following clarifying language to the Bill:

"Its name, in compliance with sections 431:3-202(b) and 431:4-104(d)(1) to the extent the insurer is otherwise subject to those sections, home office location, type of insurer..."

Section 431:9A-102 (page 9, lines 3-4); Section 431:9A-114 (page 9, lines 11-15, and 18-19; page 10, lines 2-3, 11, 13, 16, and 17); Section 431:9A-115 (page 11, lines 4-9, 14-15; page 12, lines 3-4, 6-7, 10-13, 16-17, 20-21)

These three sections seek to conform the statutes to the NAIC's Producer Licensing Model Act. Under the current law, an individual insurance broker can be appointed either by the insurer itself, or by a brokerage agency with whom the insurer contracts. We understand the Bill to change the law such that only the insurer would have the authority to appoint brokers.

If we correctly understand this amendment, this could significantly impact how HMSA does business with regard to our Akamai Advantage (AA) line of business. HMSA contracts with up to 15 brokerage agencies that in turn appoint individual brokers for our products. The Bill may require HMSA to contract directly with the individual brokers, rather than with the brokerage agency, potentially resulting in a considerable amount of additional administrative burden each year. We seek clarification on this matter.

Thank you for allowing us to provide comments on HB 1087 seeking clarification on this provisions.

Sincerely,

Mark K. Oto
Director, Government Relations



LATE

To: The Honorable Angus L.K. McKelvey, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

From: Mark Sektnan, Vice President
Property Casualty Insurers Association of America

Re: HB 1087 – Relating to Insurance
PCI Position: Comments; Request Amendments

Date: Thursday, February 9, 2017
2:00 p.m., Conference Room 329

Aloha Chair McKelvey, Vice Chair Ichiyama and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is requesting amendments to two provisions of HB 1087 which would change the law relating to insurance producers and how insurance claims are handled. In Hawaii, PCI member companies write approximately 42.3 percent of all property casualty insurance written in Hawaii. PCI member companies write 44.7 percent of all personal automobile insurance, 65.3 percent of all commercial automobile insurance and 76.5 percent of the workers' compensation insurance in Hawaii.

PCI would like to request that the effective date of Sections 6, 7 and 8 (regarding insurance producers) be postponed one year to January 1, 2019. Currently, the bill makes Sections 6 and 7 effective on January 1, 2018, and Section 8 effective upon approval. Insurers writing insurance in Hawaii and insurance agency principals will need to draft new agreements, which should not be problematic. The challenge will be obtaining signatures from thousands of insurance producers in a timely manner, some of whom may be nonresidents. A delay in the effective date of these three sections will provide adequate time for individual producers to discuss the new agreements with each of the insurers they represent prior to signing so that they will receive uninterrupted commission payments.

PCI also has a comment and a requested amendment to Section 9. PCI believes that this section combines first-party and third-party concepts, which could lead to confusion. HRS § 431:10C-309 through HRS § 431:10C-312 all deal with first-party insureds rather than "third-party claimants." While we do not believe that this will be a practical problem, it would be clearer to include the desired language in a separate section.

PCI recommends the following amendment to clear up any possible confusion and ensure that an insurer is not obligated to pay in excess of the Property Damage Liability limit of coverage, and we do not believe this is the intent of this provision. Language should be added to explicitly provide that the insurer's obligations to a "third-party claimant" are subject to the Property Damage Liability limit of the applicable auto policy.

For example, a new subsection (e) could be added to section 431:10C-312 to read:

“(e) An insurer’s obligation to reimburse a third-party claimant for the applicable general excise tax and certificate of ownership fee as set forth in this section shall be subject to the property damage liability limit of the policy.”

Thank you for your consideration of these two amendments.



HAWAII

House Committee on Consumer Protection & Commerce

Hearing Date: February 9, 2017

Time: 2:00 pm

RE: HB 1087 – Relating to Insurance

Chair McKelvey, Vice Chair Ichiyama and Members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii represents life insurance producers/agents across Hawaii who primarily market life insurance, annuities, long term care insurance and disability income insurance products.

We are limiting our comments to Sections 6 to 8 of HB 1087 from pages 8 to 19 that we **support and ask that the effective date for these sections be January 1, 2019, as it will take some time for insurers to make the necessary individual producers appointments and securing all the necessary signatures.**

Sections 6 to 8 of HB 1087 will change the way producers (insurance agents) are appointed in Hawaii. This measure will adopt the NAIC model act for producer licensing. Our current system is an anomaly in the country since we are **currently able to appoint producer** (an insurance agency can be a producer or an individual) **to producer** and insurer to producer. This proposed amendment will allow for **only insurer to producer** appointments and repeal all “producer to producer” appointments. Prior to the enactment of the producer licensing law that was passed in 2001, we had a 3 tier classification system for insurance licensees. Producer to producer appointments were allowed in the new 2001 appointment scheme, along with insurer to producer appointments so that all Hawaii appointments could be found on the Insurance Division’s website.

Section 7 outlines the appointment process, the required reporting time frames to the Insurance Commissioner, and the appointment fee. Section 8 outlines the termination process, the required reporting time frames to the Insurance Commissioner, other requirements for the producer initiating the termination, and immunity from civil liability for notification of termination.

The Insurance Division will have to determine which technology to engage in this new appointment scheme.

Thank you for allowing to us to share our views.

Cynthia Takenaka
Executive Director