

**HB 2544**



LINDA LINGLE  
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TO THE HOUSE COMMITTEES ON  
CONSUMER PROTECTION AND COMMERCE  
AND  
JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Thursday, February 4, 2010  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2544 – RELATING TO INSURANCE.**

TO THE HONORABLE ROBERT HERKES AND JON RIKI KARAMATSU, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”). Thank you for hearing this bill. The Department strongly supports this  
Administration bill.

The purpose of this bill is to modernize the Insurance Code, Hawaii Revised  
Statutes (“HRS”) chapter 431, and insurance-related provisions by:

- (1) Extending to property and casualty insurers confidentiality of documents supporting the statement of actuarial opinion, similar to that afforded to life insurers;
- (2) Allowing port-of-entry insurers in section 431:4F-103(a) to diversify assets used to satisfy capital and surplus requirements;
- (3) Promoting uniformity of licensing laws governing insurance producers, adjusters, and independent bill reviewers by revising sections 431:9-203(d) and 431:9A-107(f), allowing licensees to report address changes

online in sections 431:9-228(b) and 431:9A-122(c), and adding to Article 9 a new section similar to section 431:9A-117;

- (4) Allowing the results of third-party proficiency examinations approved by the federal Risk Management Agency to fulfill the examination requirement in section 431:9-222.5(a) for crop insurance adjusters;
- (5) Updating managing general agent laws in Article 9C to conform with the current National Association of Insurance Commissioner (NAIC) model law;
- (6) Clarifying in section 431:10-244 that insurance contracts requiring the Commissioner's approval under the Insurance Code, temporary disability insurance law, or workers' compensation law or certified by the insurer to be in conformance with the Insurance Code must be accompanied by the filing fee;
- (7) Allowing insurers to certify compliance with sections 431:10A-105, 431:10A-106, 431:10A-107, and 431:10D-111, rather than requiring the Commissioner's approval of these policy provisions;
- (8) Allowing the Commissioner to publish notice of availability of motor vehicle insurance (MVI) premium rates and to request detailed reports on MVI claims and cancellations, rather than mandating filing of these reports, in sections 431:10C-210 and 431:10C-215(d), respectively;
- (9) Clarifying in section 431:11-101(b) that the exemption in the insurance holding company law applies to any insurer, as well as any class of insurers, where it is consistent with the law and serves the public interest;
- (10) Substituting the term "person" for "corporation" in section 431:11-106(a);
- (11) Adding to sections 431:19-107(b), 432:1-404(a), and 432D-5(a) an express reference to rules governing audited financial statements for captive insurers, mutual benefit societies, and health maintenance organizations, respectively;
- (12) Adding consumer protection measures:
  - (a) To require in sections 431:2-208(c) and 431:13-103(f) prompt response from insurers to the Commissioner's request for information;

- (b) To provide additional time in 431:10D-603(c) for consumers to review annuity policy during "free-look" period, where producer does not provide buyer's guide and disclosure documents as required by law; and
  - (c) To provide in section 431:9N-102 for revocation or suspension of bail agent's license for failure to discharge bail forfeiture judgments;
- (13) Deleting in 431:19-109(a) the reference to a repealed statute; and
- (14) Amending sections 431:30-102 and 431:30-112(d) and repealing section 431:30-105 of the interstate insurance product regulation compact (IIPRC) to designate the commissioner as the representative to the IIPRC, to allow the State to opt out of uniform standards for long-term care insurance products, and to delete the appointment and confirmation of Hawaii's IIPRC representative, respectively.

Enactment of these provisions is necessary so that Hawaii is uniform with the best practices in insurance regulation.

Sections 431:2-208(c) and 431:13-103(f) currently require an insurer or licensee to respond with reasonable promptness to any written inquiry made by the Commissioner regarding a claim or consumer complaint. These sections do not ensure that insurers and licensees provide prompt responses to the Commissioner's inquiries. This amendment will aid the Commissioner's ability to conduct investigations adequately and encourage timely and consistent responses to the Commissioner's inquiries.

Property and casualty insurers are now required to file the actuarial opinion summary in addition to the statement of actuarial opinion. Confidentiality for the documents supporting the actuarial opinion is currently provided to life insurers in section 431:5-307(j)(4)(G). The amendments in section 431:3-304 extend to property and casualty insurers confidentiality of the documents supporting the statement of actuarial opinion, including the actuarial opinion summary, actuarial reports, and working papers.

Section 431:4F-103(a)(2) currently refers to a single trust account that a port-of-entry insurer must establish as a condition of licensure. These amendments will allow

port-of-entry insurers to diversify the assets used to satisfy capital and surplus requirements, therefore reducing the concentration of risk.

Insurance adjusters, independent bill reviewers, and producers are currently required to report any change of status to the Commissioner within 30 days of the change, pursuant to sections 431:9-203(b) and 431:9A-107(f).

Licensees are currently required to report their business and residence addresses, which must be physical locations. Since some licensees use mailing addresses, the meaning of change of status in sections 431:9-203(d) and 431:9A-107(f) needs revision to include the mailing address.

Licensees are now able to report address changes online via the National Insurance Producer Registry ("NIPR"). Thus, amending sections 431:9-228(b) and 431:9A-122(c) will facilitate this process and use statutory language consistent with sections 431:9-203 and 431:9A-107(f).

Applicants for a crop insurance adjuster license are currently required to take a licensing examination, pursuant to section 431:9-222.5(a)(3). Allowing applicants to use the results of a third-party proficiency examination approved by the federal Risk Management Agency ("RMA") ensures that these adjusters demonstrate a strong understanding of the crop insurance program.

Section 431:9A-117 currently requires producers to report within 30 days any civil, administrative, and criminal actions taken against the producer. To ensure the public's protection and for consistency with section 431:2-201.3, adjusters and independent bill reviewers should similarly be required to report any action taken against them.

Section 431:9C-103 requires managing general agents ("MGA") to furnish with the insurer a bond in an amount equal to \$100,000 or 10% of annual gross direct written premiums, whichever is greater. Presently, Hawaii law requires an MGA to furnish a bond as part of the requirements of licensing. The NAIC adopted amendments to its Managing General Agents Model Law that move this requirement from licensing and make it a part of the required contract provisions between the insurer and the MGA. This revision places the burden of compliance with the insurer, the party who is



statutorily responsible for the MGA's acts. This revision also makes sense because, as explicitly stated in section 431:9C-102, the bond requirement is for the protection of the insurer. This being the case, benefit will ultimately inure to consumers should problems develop with the MGA.

The upper bond amount limit of 10% requires insurers writing large amounts of direct written premiums to furnish bonds in an extraordinarily high amount, conceivably in the millions of dollars. This has had a deterrent effect on large insurance companies desiring to do business in the State of Hawaii. Recognizing this problem, the NAIC revised the Managing General Agents Model Act to impose the \$500,000 cap on the bond requirement. Adoption of this cap, as proposed, will improve Hawaii's business climate for insurers, which in turn will improve the State's competitiveness in the global insurance industry and enhance its potential to increase insurance options for its businesses and residents. This amendment also will conform Hawaii law to national standards, thus improving reciprocity with the other states.

Section 431:9C-102 also requires the MGA to maintain an errors and omissions policy in an amount equal to \$1 mil. or 25% of annual gross direct written premiums, whichever is greater. As with the 10% upper limit on bond requirements, the 25% upper limit applicable to the coverage amount for the errors and omissions policy requirement has a deterrent effect on insurance companies writing large amounts of direct written premiums since it may result in requiring the MGA to have an errors and omissions policy in the amount of several million dollars.

The NAIC's Managing General Agents Model Act authorizes but does not require state commissioners to impose errors and omissions policy requirements on managing general agents. Having enacted the errors and omissions requirement for the MGA, Hawaii law provides enhanced protections that other states may not provide. As with the bond requirements, the proposed deletion of the 25% upper limit will enhance our State's potential to increase insurance options for its businesses and residents, while still providing for \$1 mil. coverage requirement. Furthermore, the inclusion of the errors and omissions requirements in the insurer's required contract provisions, rather than as part of licensing, will again place the burden of compliance with the insurer, the party

who is statutorily responsible for the MGA's acts. Accordingly, this revision to section 431:9C-103 ultimately will benefit consumers should problems develop with the MGA.

As a means of ensuring compliance by the insurer, section 431:9C-104 allows any applicable insurance commissioner to view the bond and errors and omissions policy.

Section 431:9N-102 provides grounds to deny, nonrenew, suspend, or revoke a bail agent's license, in addition to those provided in section 431:9A-112. The Insurance Division has received complaints about bail agents who have not satisfied bail forfeiture judgments. This amendment will provide an additional ground for taking enforcement action against errant bail agents.

Section 431:10-244 provides for the filing of insurance contracts requiring the Commissioner's approval pursuant to the workers' compensation and temporary disability laws to be accompanied by a filing fee. This amendment seeks to clarify the scope of insurance contracts to include those filed under the Insurance Code, including the interstate insurance product regulation compact.

Insurers are required to include certain policy provisions, or to use substantially similar language that is not less favorable to insureds and beneficiaries, in accident and health or sickness policies and to obtain the Commissioner's approval, pursuant to sections 431:10A-105, 431:10A-106, 431:10A-107, and 431:10D-111. Permitting insurers to certify compliance in lieu of awaiting the Commissioner's approval facilitates insurers' ability to market their products and reduces the cost and burden of regulatory compliance. These amendments also streamline operations and improve administrative efficiency for the Insurance Division.

Section 431:10C-210 currently requires the Commissioner to publish annually in the newspaper a list of all motor vehicle insurers with representative annual premiums. This information is also currently available online on the Insurance Division's website. This amendment would allow the Commissioner to publish notice of availability of this information on the website, rather than requiring the Commissioner to prepare and publish this information in five different publications, including publications in each county.

Section 431:10C-215(d)(2) currently requires motor vehicle insurers to provide quarterly reports detailing each claim received, claim paid, application and sale of a MVI policy, each termination and renewal refusal notice posted, and each cancellation and refusal to renew effected on both mandated and optional MVI policy transactions. This amendment would make the reports available to the Commissioner at the Commissioner's request, reducing the cost of compliance for motor vehicle insurers.

Section 431:10D-603 currently requires a life insurance producer to provide a buyer's guide and a disclosure statement to consumers when the application for an annuity contract is taken. Where the buyer's guide and disclosure statement are not provided, a free-look period of 15 days is provided for the applicant to return the annuity contract, pursuant to section 431:10D-603(c). Under current law, this 15-day period runs concurrently with the free-look period provided under law. Sections 431:10-214 and 431:10D-505(a)(4) provide a 10-day and 30-day free-look period, respectively. Where no annuity policy is being replaced, the ten-day free-look period applies and the consumer gets only an additional five days to review the annuity contract, where the additional 15-day runs concurrently with the 10-day period. Where there is a replacement, the 30-day free-look period applies and the consumer gets no additional time to review the annuity contract, since the additional 15-day period runs concurrently with the 30-day period. Given this scenario, section 431:10D-603(c) does not provide incentive for the producer to comply with these disclosure requirements. This amendment is intended to provide some means of consumer protection, where there is non-compliance by the producer.

Section 431:11-101(b)(1) currently allows the Commissioner to exempt any class of insurers from provisions of the insurance company holding company law in Article 11, where an exemption is consistent with the purposes of Article 11 and serves the public interest. This amendment clarifies that the exemption applies to any insurer, in addition to any class of insurers, providing the Commissioner with the flexibility to act timely in cases where prompt action is appropriate and consistent with the public interest.

Section 431:11-106(a)(5) currently requires a domestic insurer to notify the Commissioner within 30 days of an investment in any corporation, where the total

investment by the insurance holding company in any one corporation exceeds 10% of the corporation's voting securities. This amendment substitutes "person" for "corporation" for consistency with the definitions in section 431:11-102.

Sections 431:19-107(b)(1)(C), 432:1-404(a)(1), and 432D-5(a)(1) currently expressly refer to NAIC annual statement instructions. The NAIC intends to delete reference to the model audit rule from the annual statement instructions and requires state insurance regulators to adopt these provisions by January 1, 2010, either by statute or rule. The Commissioner proceeded to adopt rules pertaining to the model audit rule; Hawaii Administrative Rules ("HAR") chapter 16-185 was approved by the Governor and filed with the Lieutenant Governor on January 25, 2010. Thus, the statutory references in sections 431:19-107(b)(1)(C), 432:1-404(a)(1), and 432D-5(a)(1) to NAIC annual statement instructions became outdated upon adoption of the rules.

Section 431:19-109(a)(2) currently refers to section 431:19-105, which was repealed by Act 232, Session Laws of Hawaii 2007. Therefore, this reference is outdated and needs to be deleted. The Department notes that this amendment is also contained in H.B. No. 2286 relating to Captive Insurance Companies, which was heard by this committee on Monday, February 1, 2010.

Hawaii adopted the IIPRC in Article 30 of the Insurance Code effective January 1, 2005, pursuant to Act 104, Session Laws of Hawaii 2004. Section 431:30-102 currently defines the member of the IIPRC as the person chosen by the compacting state and section 431:30-105 requires the Governor, with the advice and consent of the Senate, to appoint Hawaii's member to the IIPRC. The majority of compacting states designate the Insurance Commissioner or the Commissioner's designee as the member who represents the state on the IIPRC. Section 431:30-102 currently defines the commissioner to mean the chief insurance regulatory official of a state. The proposed amendments define Hawaii's representative to the IIPRC as the Commissioner or the Commissioner's designee. With the foregoing, section 431:30-105 is no longer necessary and should be repealed. These amendments would streamline the Insurance Code and promote national uniformity of state laws governing the IIPRC.

Section 431:30-112(d)(2) currently allows a state belonging to the IIPRC to opt out of a uniform standard, where the uniform standard does not provide reasonable protections to its state's citizens. Hawaii adopted the Long-Term Care Insurance Model Regulation in Article 10H. Hawaii law provides additional standards for federal uniformity, availability for reciprocal beneficiaries in accordance with state law, and flexibility and innovation in the development of long-term care insurance coverage. Given the foregoing protections, allowing Hawaii to opt out of the uniform standard for long-term care insurance promotes the public's interest.

The above represent efforts to promote national uniformity of insurance laws, streamline operations, improve administrative efficiency, contribute to the Insurance Division retaining NAIC accreditation, and reduce the cost of insurance regulation.

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

AMERICAN COUNCIL OF LIFE INSURERS  
TESTIMONY COMMENTING ON HB 2544,  
RELATING TO INSURANCE

February 4, 2010

Via E Mail: [cpctestimony@capitol.hawaii.gov](mailto:cpctestimony@capitol.hawaii.gov)  
Hon. Representative Robert N. Herkes, Chair  
House Committee on Consumer Protection and Commerce  
Hon. Representative Jon Riki Karamatsu, Chair  
House Committee on Judiciary  
Hawaii State Capital, Conference Room 325  
415 S. Beretania Street  
Honolulu, HI 96813

Dear Chair Herkes, Chair Karamatsu and Committee Members:

Thank you for the opportunity to comment on HB 2544, relating to insurance.

Our firm represents the American Council of Life Insurers (“ACLI”), a national trade association whose three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States account for over 90% of the assets and premiums of the U.S. life insurance and annuity industry. ACLI member company assets account for 93% of the life insurance premiums and 98% of the annuity considerations paid in the State of Hawaii. Two hundred thirty-six (236) ACLI member companies currently do business in the State of Hawaii.

Section 3 of HB 2544 (pages 2 through 5) amends the provisions of §3-304 of Hawaii’s Insurance Code which make the financial analysis ratios and examination synopses concerning insurance companies received by the Insurance Division from the NAIC’s Insurance Regulatory Information System confidential. The proposed amendments appear to be based upon the NAIC Examinations Model Law.

Documents and materials from the insurance company are proprietary to each company. Allowing this information to become public can disadvantage a company from competing in the market.

Unlike the provisions contained in the NAIC Examinations Model Law, Section 3 of the bill appears to limit the confidentiality provisions governing information received from the NAIC Insurance Regulatory Information System only to actuarial matters. The Model Law provides broader confidentiality protection for an insurance company’s private information.

A comparison of the pertinent provisions of the NAIC Examinations Model Law and HB 2544 (at page 2 lines 14 to22, and page 3, lines 1 and 2) is set forth below (deleted text from the Model Law is crossed out and added text is underlined):

1. Documents, materials, or other information, ~~including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries~~ commissioner that are considered to be related to an actuarial report, working papers, or actuarial opinion summary provided in support of the statement of actuarial opinion and any other material provided by the insurer to the commissioner in connection with the actuarial report, working papers, or actuarial opinion summary, shall be confidential by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be subject to discovery or admissible ~~in as~~ evidence in any private civil action. ~~if they are~~

2. ~~Nothing contained in this Act~~ The commissioner may release the documents to the Actuarial Board for Counseling and Discipline or its successor so long as the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline or its successor establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. This section shall not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other ~~the documents, materials, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory or legal action that the commissioner may, in his or her sole discretion, deem appropriate~~ brought as part of the commissioner's official duties.

3. Neither the commissioner nor any person who received ~~the documents, material~~ materials, or other information while acting under the authority of the commissioner, ~~including the National Association of Insurance Commissioners and its affiliates and subsidiaries,~~ shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to ~~Paragraph~~ subsection (b).

4. ~~May~~ The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to Paragraph (1) subsections (a) and (b), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities; ~~provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information; and has the legal authority to maintain confidentiality.~~

5. ~~May~~ The commissioner may receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall



maintain as confidential or privileged, subject to subsection (b)(2), any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; ~~and~~.

6. ~~{Optional provision} May~~ The commissioner may enter into agreements governing sharing and use of information consistent with this subsections (b) (c) and (a).

7. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in ~~Paragraph (3)~~ subsections (b) , (c) , and (d)

ACLI believes that the confidentiality provisions set forth in HB 2544 should be broadened so as to conform to the provisions of the NAIC Examinations Model Law, and, thus, assure that its proprietary information remains confidential.

Section 28 of the bill includes a provision under which Hawaii prospectively opts out of adopting all uniform standards involving long-term care insurance products promulgated by the Commission established under the Interstate Insurance Product Regulation Compact (of which Hawaii is a member). ACLI opposes this provision. Hawaii, along with 34 other jurisdictions, is a member of the Interstate Compact. Hawaii agreed to maintain provisions consistent with other compact member states. Deliberations relating to long-term care insurance products are just beginning. Accordingly, Hawaii's opting out of adopting long-term care insurance product standards at this juncture may be premature.

ACLI is in the process of reviewing all 66 pages HB 2544 with its member companies and may submit additional testimony on this bill in the future.

Again, thank you for the opportunity to testify in support of this bill.

CHAR HAMILTON  
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## MEMORANDUM

**TO:** Representative Robert Herkes  
Chair, Committee on Consumer Protection & Commerce  
Representative Jon Riki Karamatsu  
Chair, Committee on Judiciary

**FROM:** Gary Slovin/Anne Horiuchi

**DATE:** February 3, 2010

**RE:** **H.B. 2544 – Relating to Insurance**  
**Hearing: Thursday, February 4, 2010 at 2:00 p.m. in Room 325**

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Dear Chairs Herkes and Karamatsu and Members of the Joint House Committees on Consumer Protection & Commerce and Judiciary:

I am Gary Slovin, testifying on behalf of USAA. USAA, a diversified financial services company, is the leading provider of competitively priced financial planning, insurance, investments, and banking products to members of the U.S. military and their families. USAA has over 82,000 members in Hawaii.

H.B. 2544 updates and modernizes the Insurance Code and other insurance-related chapters of the Hawaii Revised Statutes. USAA has concerns regarding Section 24 of the bill, and would like an amendment to this Section.

Section 24 of the bill amends Section 431:13-103(f) of the Hawaii Revised Statutes (Unfair methods of competition and unfair or deceptive acts or practices defined). Currently, insurance companies have fifteen working days to respond to the Commissioner's written inquiry regarding a "claim or consumer complaint." H.B. 2544 revises this section to state that fifteen working days is the permitted response time to *any* written inquiry by the Commissioner. USAA believes that this will be problematic as to several types of inquiries made by the Commissioner.

For example, when the Commissioner makes an inquiry as to any rate, rule or form filing, the inquiry is typically sent via U.S. mail; once it is received by USAA on the mainland, several days have passed since the letter was authored and mailed.

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Responding to an inquiry as to a rate, rule or form filing typically requires research, the collection of additional data, the sorting and analysis of that data, the development of policy positions, the preparation of language for new forms, etc. USAA does not believe that it would be possible to do such work in order to “adequately address the concerns” of the Commissioner during such a short period of time.

Additionally, USAA generally receives five or six data calls per year from the Department of Insurance. These inquiries usually require data compilation and possibly Information Technology support. It would be very difficult for USAA to respond to a data call within fifteen days. It is our understanding that the typical state standard for such responses is twenty to thirty days.

Given the current language of Section 24 of H.B. 2544, USAA is concerned that the scenarios described above could lead to a finding that USAA has engaged in an unfair or deceptive act or practice because it is unable to respond to rate and form filing inquiries or to data calls within the short time period.

To address this problem, USAA requests that Section 24 be amended to exempt inquiries as to rate, rule or form filings and to exempt data calls from Section 431:13-103(f). In the alternative, USAA requests the addition of a provision allowing for an extension of time being granted at the request of the insurer to respond to such inquiries, and to clarify that the time period for the response begins on the date that the Department’s communication is received by the insurer.

Thank you for the opportunity to submit testimony on this matter.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 4, 2010

The Honorable Robert N. Herkes, Chair  
The Honorable Jon Riki Karamatsu, Chair  
House Committees on Consumer Protection and Commerce and Judiciary

**Re: HB 2544 – Relating to Insurance**

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2544 which makes changes to the Insurance Code. HMSA takes no position on the majority of this measure however we do oppose changes being made by the Insurance Commissioner to Sections 2 (page 1, lines 15-18 through page 2, lines 1-5) and 24 (page 55, lines 3-11).

The changes which are being proposed seem rather innocuous and indeed only remove 6 words from 2 different areas of the Insurance Code. Unfortunately, we believe that the removal of this language will give the Insurance Commissioner (IC) expanded authority over health plans which he does not currently have by requiring plans provide him a response to any written inquiry. Under current statute, plans are required to provide a response to a written inquiry from the IC when it is “regarding a claim or a consumer complaint.” We believe that the extent that a written inquiry is required from a health plan should have parameters which represent the scope of the IC’s authority and not go beyond it. If HB 2544 were passed with the changes as outlined in Sections 2 and 24, the IC’s authority over health plans could be greatly expanded.

We also fear that health plans could be plagued with numerous requests from the IC without regard to the resources and time plans need to invest in order to meet the statute’s 15 day timeframe for response.

We do not believe that there is an actual issue that HB 2544 is attempting to address and therefore feel that the changes proposed in Sections 2 and 24 are unnecessary. We would respectfully request the Committee remove these sections from the bill in their entirety.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal flourish extending to the right.

Jennifer Diesman  
Vice President  
Government Relations



Pauahi Tower, Suite 2010  
1003 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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### HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair

### HOUSE COMMITTEE ON JUDICIARY

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair

Thursday, February 4, 2010  
2:00 p.m.

### **H.B. 2544**

Chair Herkes, Chair Karamatsu and members of the Committees, my name is Alison Powers, Executive Director of 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 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes Section 2 and Section 24** of H.B. 2544. These sections would require an insurer to respond to any written inquiry by the Insurance Commissioner within fifteen days.

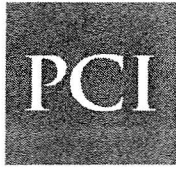
Currently, Section 431:2-208 and Section 431:13-103, Hawaii Revised Statutes, require an insurer to respond within fifteen days to an inquiry by the Commissioner in regards to a claim or consumer complaint. Removing this caveat would give the Commissioner overly broad authority by applying this requirement to any and all types of inquiries. Companies that do not respond within fifteen days could then be subject to extremely

high penalties without a limited set of conditions which would cause such penalties to be imposed.

The penalties for a violation of the timeline for any type of inquiry by the Insurance Commissioner would be disproportionately high and severe. Sanctions for violations of Section 431:2-208 include fines of up to \$10,000 per violation, imprisonment, license or certificate of authority suspension, license or certificate of authority nonrenewal, and cease and desist orders. Sanctions for violations of Section 431:13-103 include cease and desist orders, fines up to \$5,000 per violation and \$50,000 in aggregate, and suspension or revocation of license.

Hawaii Insurers Council respectfully requests that Sections 2 and Section 24 of H.B. 2544 be deleted.

Thank you for the opportunity to testify.



**Property Casualty Insurers  
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Robert N. Herkes, Chair  
House Consumer Protection & Commerce Committee

From: Samuel Sorich, Vice President

Re: **HB 2544 – Relating to Insurance**  
**PCI Position: Concerns**

Date: Thursday, February 4, 2010  
2:00 p.m.; Conference Room 325

Aloha Chairman Herkes and Committee Members:

The Property Casualty Insurers Association of American (PCI) has some concerns regarding HB 2544 because it would make it an unfair insurance practice to fail to response to ANY inquiry by the commissioner within 15 days which carries a penalty of up to \$10,000 or license revocation or suspension. Current law is limited to inquiries regarding claims and consumer complaints. The law was limited to these instances because obtaining information is critical to the timely resolution of consumer complaints.

HB 2544 would expand this requirement and the severe penalty to any request of information from the commissioner. For example, the department might have a question on some elements of a company's rate filing. It is in the company's best interest to respond quickly but the question may be too complicated to answer in 15 days. Why should a company be required to respond in 15 days or else face extreme penalties? We believe this is not the department's intent in amending this section and would appreciate the opportunity to work with the department on resolving our concerns.

We do support another provision of the bill which relates to actuarial reports, working papers and actuarial opinions that insurers submit to the insurance commissioner. The National Association of Insurance Commissioners (NAIC) has developed model language that balances the commissioner's interest in exerting effective regulatory oversight with insurers' interest in maintaining the confidentiality of proprietary information. Section 3 of HB 2544 incorporates the NAIC model language. PCI believes the enactment of Section 3 will further the uniformity, efficiency and effectiveness of state insurance regulation.

PCI appreciates the committee's consideration of our request to work with the department to resolve our concerns over the provisions expanding penalties for responding to inquiries.