

HB 1049

HD2, SD1



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TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 30, 2011
9:30 a.m.

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE BILL NO. 1049, H.D. 2, S.D. 1 – RELATING TO
INSURANCE.**

TO THE HONORABLE DAVID IGE, 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”). Thank you for hearing this bill. The Department strongly supports this Administration bill, with a requested technical amendment.

The purpose of this bill is to update the Insurance Code, Hawaii Revised Statutes (“HRS”) chapter 431, and related provisions.

The S.D. 1 amended HRS § 431:2-105 by allowing the chief deputy commissioner to perform the commissioner’s duties when a commissioner has not been appointed and until the appointment becomes effective; amended the deemer date in HRS § 431:2-202.5 from 30 days to 60 days, rather than repeal the statute; ensured that amendments to insurance licensing fees in HRS § 431:7-101 are not repealed when HRS § 431:7-101 is reenacted per section 7(3) of Act 59, Session Laws of Hawaii 2010; has an effective date of July 1, 2011; and made technical amendments. The

companion measure, Senate Bill No. 1276, S.D. 2, was passed, with amendments, by the House Committee on Consumer Protection & Commerce.

HRS § 431:2-105(a) currently allows the chief deputy insurance commissioner to perform any act or duty "assigned" by the commissioner. Prior to 2000, this provision allowed the chief deputy insurance commissioner to perform any act or duty "conferred" upon the commissioner. There may be times where there will be no commissioner to delegate duties to the chief deputy commissioner. Allowing the chief deputy commissioner to perform all acts of the commissioner ensures the continuous operations of the Insurance Division.

HRS § 431:2-202.5 currently deems any approval required by law to be granted in 30 days after the filing of the request, where the commissioner fails to take any affirmative action within the 30-day period. The Insurance Code contains many provisions that impose specific time limits for approvals of various rate filings, including HRS §§ 431:10A-309 for Medicare Supplement policy and certificate filings (61 days), 431:10B-108 for credit life insurance filings (45 days), 431:14-104 for property and casualty insurance rate filings (30 days), 431:14G-105 for health insurance rate filings (60 days). These statutory time limits currently ensure that the Insurance Division will take timely action on pending matters.

HRS § 431:2-206(a) currently allows for service of legal process against an insurer upon the commissioner at a cost of \$12. The commissioner is required to send the complaint to the insurer's agent for service of process, pursuant to HRS § 431:2-206(c). This fee has remained unchanged since 1987. The fee increase to \$25 is intended to reflect the increased cost of mailing the complaint via certified mail to the insurer.

HRS § 431:9-204 governs applications for adjusters and independent bill reviewers. HRS § 431:9-204(b) currently allows partnerships and corporations to apply for these licenses. By definition in HRS § 431:9-105, adjusters and bill reviewers must be individuals. For consistency with section 431:9-105, HRS § 431:9-204 should be amended by deleting subsection (b).

HRS § 431:9C-101 currently defines the term "managing general agent" (MGA). To maintain consistency with the NAIC's Managing General Agents Model Act, the definition should be amended by specifying that an MGA who pays claims in excess of \$10,000 is subject to the provisions of Article 9C. This amendment is intended to conform Hawaii law to national standards, thus improving reciprocity with the other states and contributing to the Insurance Division's retention of NAIC accreditation.

HRS § 431:10H-228 governing long-term care insurance advertising is based upon the provision in the NAIC's Long-Term Care Insurance Model Regulation. The current language is vague and provides no guidance to the industry as to what standards the long term care advertisement is to be measured against. Clarifying that compliance is to be with the long-term care regulation will give greater certainty to the industry and streamline the process of review for the regulator.

HRS § 431:11-106(a)(5) currently requires a domestic insurer to notify the commissioner within 30 days of an investment in any person as defined in section 431:11-102, where the total investment by the insurance holding company in any one person exceeds 10% of the corporation's voting securities. This amendment clarifies that the notification requirement applies where the total investment exceeds 10% of the person's voting securities or where the domestic insurer controls the person.

HRS § 431:14G-105 governs rate filings for health insurers. Currently, property and casualty insurance rate filings may be submitted by electronic means in accordance with the System for Electronic Rate and Form Filing (SERFF), pursuant to HRS § 431:14-104(a). Electronic filing of health insurance rate filing is required in conformity with reporting requirements under federal health care reform.

HRS § 431P-16(e) currently authorizes the Hawaii hurricane relief fund to levy a surcharge (not to exceed 7.5% per year) on property and casualty insurance premiums, when the board determines that moneys in the hurricane reserve trust fund will be insufficient to pay claims and obligations following a covered event. This amendment clarifies that the surcharge is nondiscretionary and ensures the financial solvency of the hurricane fund.

HRS § 432:1-306 currently requires a mutual benefit society to deposit with the commissioner an amount equal to one-half of the maximum benefit amount in its benefit fund, pursuant to HRS § 432:1-401. Small mutual benefit societies are having difficulty complying with the current deposit requirement. This bill redefines the deposit amount to be a percentage of minimum net worth as provided in HRS § 432:1-407(a)(2), setting minimum and maximum deposit requirements, and capping the deposit at a reasonable amount. Deposits by mutual benefit societies protect the public in the event of insolvency. Tying up unnecessarily large sums in deposits deprives the insurer of funds that could be used to defer premium increases. Making the deposit requirement relative to the size of the mutual benefit society is fairer and removes a barrier to entry for new mutual benefit societies, thus allowing for a more competitive market.

HRS § 431:7-101, governing insurance licensing fees, was amended by sections 4 and 5 of Act 59, Session Laws of Hawaii 2010 (Act 59). Revisions are needed to reflect changes in the law. First, Act 77, Session Laws of Hawaii 2009, amended HRS § 431:9-222.5 to provide for the licensing of limited crop insurance claims adjusters. Second, Act 177, Session Laws of Hawaii 2008, governing life settlement transactions, contained an automatic sunset date of June 15, 2010. Amendments to Act 59 are required to clarify the applicable licensing fee for the claims adjuster's limited license and to delete the licensing fees pertaining to life settlement contract brokers and providers.

HRS § 432:1-401 currently requires a mutual benefit society to maintain a benefit fund in a specified amount. Since the reference in HRS § 432:1-306 is amended to refer to HRS § 432:1-407(a)(2), this section should be repealed to eliminate any confusion.

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

The Department respectfully requests a technical amendment in section 7 of the S.D. 1 on page 12, lines 14-15. The phrase "prior to the transaction" on line 15 should

appear on line 14 prior to the phrase "or a shorter prior as the commissioner may permit" such that lines 14-17 reads:

prior ~~[thereto]~~ to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved ~~[it]~~ the transaction within that period:

With respect to the deemer date, the Department notes that life insurers do not file their rates. Medicare Supplement policies and certificates and credit life insurance filings are subject to approval within 61 days and 45 days, pursuant to HRS §§ 431:10A-309 and 431:10B-108, respectively. Since there is a time period specified in the statute, the deemer date in HRS § 431:2-202.5 is inapplicable.

Insurers sometime submit filings for the Commissioner's approval, although the Insurance Code may not require approval. In these instances, the Insurance Division acknowledges receipt of the submission and notifies the insurer that the deemer date is not applicable, since the submission is not subject to approval.

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

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 30, 2011

The Honorable David Y. Ige, Chair
The Honorable Michelle Kidani, Vice Chair
Senate Committee on Ways and Means

Re: HB 1049 HD2, SD1 – Relating to Insurance

Dear Chair Ige, Vice Chair Kidani and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1049 HD2, SD1 which updates various sections of the insurance code. We would like to comment on Section 9 and offer support for the changes in Sections 11 and 12 of this measure. We take no position on the remainder of the bill.

Under federal legislation known as the Affordable Care Act (ACA), health plans will be required to comply with new rate filing requirements. HMSA has been working on the implementation of this provision with the Insurance Division. At this time, rate filings are submitted in paper format but in the future the ACA will require these filings be submitted electronically. We support the language in Section 8 of this measure which adds electronic filing as a method for filing rates but maintains the ability for plans to continue paper filings as well as the transition to electronic filing occurs.

Sections 10 and 12 of this measure would redefine the minimum and maximum amounts a mutual benefit society would be required to deposit with the Insurance Division and would cap this at a reasonable amount. We agree with the Insurance Division's justification for this provision.

In summary, HMSA commented on Section 9 and provided support for Sections 11 and 12 revising the deposit amounts mutual benefit societies are required to provide to the Division. Thank you for the opportunity to provide testimony on HB 1049 HD2, SD1.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", written over a white background.

Jennifer Diesman
Vice President
Government Relations