

SB2009

Measure Title: RELATING TO INSURANCE.
Report Title: Insurance; Claims History
Description: Regulates the use of claims history information for homeowners insurance by insurers.
Companion:
Package: None
Current Referral: CPN
Introducer(s): BAKER, Espero, Fukunaga, Galuteria, Ihara, Solomon, Taniguchi, Wakai

<u>Sort by</u> <u>Date</u>		Status Text
1/18/2012	S	Introduced.
1/18/2012	S	Passed First Reading.
1/18/2012	S	Referred to CPN.
1/31/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-22-12 9:00AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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

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KEALI'I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Wednesday, February 22, 2012
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2009 – 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 supports the intent of this bill and offers the following
comments.

This purpose of this bill is to regulate the use of claims history information for
homeowners insurance and provide certain consumer protections with respect to the
use of this information.

Comprehensive Loss Underwriting Exchange ("CLUE") is a claims history
database, which provides insurance companies access to consumer claims information.
This bill attempts to regulate the use of CLUE Home Seller's Disclosure Reports ("CLUE
Reports") by homeowners insurers in Hawaii. It should be noted that the federal Fair
Credit Reporting Act already provides consumers similar rights with regard to CLUE
Reports as they have for credit reports.

Many states have laws regulating the use of claims history information for homeowners insurance. The driving force of the state laws is to prohibit insurers who use CLUE Reports from increasing premiums, canceling, or not renewing the homeowners insurance policy of a policyholder when the policyholder inquires about the policy without actually making a claim.

The Department supports establishing state controls over the use of CLUE Reports when no claim is made or paid.

We thank this Committee for the opportunity to present testimony on this matter.



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Wednesday, February 22, 2012
9:00 a.m.

SB 2009

Chair Baker, Vice Chair Taniguchi, and members of the Committee, 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** SB 2009. SB 2009 imposes severe restrictions on homeowners insurers and the result may be a constriction in the voluntary market for coverage. Homeowners insurance is not defined in the bill. If homeowners cannot get insurance in the voluntary market, lenders will likely impose forced place coverage on those who have mortgages. The restrictions in the bill also make homeowners insurance less competitive by making underwriting guidelines less flexible. This may result in higher prices and less availability of homeowners insurance in the voluntary market.

The bill is adding a new part to the law, therefore, concerns below are addressed by section title:

Use of insurance claims history information generally. Subsection (a) imposes a take-all-comers approach to homeowners insurance by not allowing an insurer any

flexibility on a risk if they use claims history or loss experience of a previous owner of the property to be insured. There are situations including, but not limited to, condition of the house, roof damage from wind, and old pipes that may not be remediated from one owner to another. In these cases, the new insurer needs to have the ability to decide if they want to take on this risk, rate for it, or decide not to underwrite it. Disallowing claims history on a property may require more home inspections prior to binding coverage which will result in delays and added expense to the homeowner.

Subsection (b) requires the insurer to underwrite the coverage if it fails to act within 30 days. This works against the insurer and the insured. There is currently a ten day notice requirement for cancellation or nonrenewal which gives the insurer only 20 days to make a decision. The insured is also potentially harmed by this provision in that the insurer may ask the insured to remediate a situation that cannot be completed within 20 days. If however, the insurer is required to take the risk because of subsection (a), it is likely homeowners insurance availability will be adversely impacted.

Subsection (c) prohibits the insurer from using information contained in a claims history report that is more than 5 years old. This again restricts underwriting and prevents the insurer from properly analyzing a risk.

Use of inquiries and other information. Similar restrictions for using claims history is applied to inquiries. There are occasions when insureds make inquiries that the insurer is unaware and violates its current underwriting guidelines. Claims history and information from the insured is used by the insurer to properly analyze, underwrite, and rate risks. Limiting this ability for insurers may result in a smaller, less competitive marketplace with higher premiums.

Dispute resolution and error correction. This section requires an insurer to re-underwrite and re-rate a consumer within 30 days of receiving notice that the claims history information was incorrect or incomplete. As described above, this does not give

the insured any time to remediate potential issues that were discovered in the corrected history. In addition, the legislation makes no allowance for an insurer to collect additional premiums if warranted because of the new information.

Disclosure to insurance consumers. This section requires the insurer disclose among other things, an explanation of the ways in which the insurer uses claims history or loss experience information. It further mandates that if an insurer takes an adverse action based upon the claims history report of a consumer or property, the insurer shall provide notice under the Federal FCRA or provide notice to the consumer identifying the claim information that resulted in the adverse action. The disclosure requirement at the application point in the process may result in requiring the insured(s) to sign an acknowledgment form to limit liability to the insurer. This will mean an inconvenience to the insured(s) when many policies are bound electronically and by an agent. It may also cause future litigation, paralleling the rejection forms now required under the motor vehicle insurance law for uninsured and underinsured motorist coverages. The second part of this section mandates the insurer to explain to the insured why there was an adverse action, which requires the insurer to disclose proprietary information to the insured and could lead to a less competitive marketplace.

In summary, legislation that restricts a way an insurer is allowed to analyze, underwrite, and rate risks will have an adverse impact on consumers in the State of Hawaii. We respectfully request that SB 2009 be held.

Thank you for the opportunity to testify.



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance
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To: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Mark Sektnan, Vice President

Re: SB 2009 – Relating to Insurance
PCI Position: Oppose

Date: Wednesday, February 22, 2012
9:00 a.m., Conference Room 229

Aloha Chair Baker and Members of the Committee:

PCI is writing to express our concerns with SB 2009, which attempts to regulate use of homeowner insurance claims history information and use of inquiries, and imposes a dispute resolution and error correction process on homeowner policies. One immediate concern is that SB 2009 could increase the cost of homeowner policies because the bill precludes insurers from solely using “claims history or loss experience of a previous owner of the property to be insured.” Generally, a claims history or loss experience of a previous owner of a particular property is a good source of information on what types of claims or losses an insurer can anticipate from a given property. Thus, limitation of such information could increase costs for consumers.

PCI is equally concerned with the definition of “inquiry.” This bill broadly defines an inquiry but explicitly states that it is not a claim. We believe that this will create challenges in determining the distinction between an inquiry and a claim. In some situations, an inquiry could result in an insurer setting up a claim; for example, an insured calls and indicates that a third party might have been injured in his or her property, but cannot identify who the third party is. In such cases, the insurer may have an affirmative duty to investigate this event under both statutory and case law. Although the insured may not want a claim to be submitted, the insurer is under an obligation to set up a claim. Overall, this bill could result in more disputes for all parties—insured, insurers, and regulators.

The prohibition of homeowner insurers from disclosing or submitting consumer inquiries to any claims history provider is also troubling. As you may be aware, one of the purposes of the Comprehensive Loss Underwriting Exchange (CLUE) system is to help prevent fraudulent claims. We see no public benefit in loosening up efforts to combat

fraudulent claims, which may not be intended by SB 2009, but could be an unintended consequence.

SB 2009's Dispute Resolution and Error Correction clearly sets forth that insurers must refund any overpaid premiums to the insured, but it does not address the issue of underpaid premiums by the insured. As a matter of equity, we believe that the insured must also pay the insurer if the insurer has determined that the insured underpaid premiums. We, therefore, suggest the following amendment:

- *If an insurer determines that the insured has underpaid their premium, the insured shall pay to the insurer the amount of underpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period.*

For these reasons, PCI respectfully asks that this bill be held in committee.