

SB 2767

Measure Title: RELATING TO INSURANCE.

Report Title: Insurance Guaranty Association

Description: Updates the laws governing guaranty associations in conformity with the National Association of Insurance Commissioners' Property and Casualty Insurance Guaranty Model Act and the Life and Health Insurance Guaranty Association Model Act.

Companion: HB2505

Package: Gov

Current Referral: CPN, WAM

Introducer(s): TSUTSUI (BR)

Sort by Date		Status Text
1/25/2012	S	Introduced.
1/25/2012	S	Passed First Reading.
1/25/2012	S	Referred to CPN, WAM.
1/27/2012	S	The committee(s) on CPN has scheduled a public hearing on 02-02-12 9:00AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

**STATE OF HAWAII
INSURANCE DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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KEALIPI S. LOPEZ
DIRECTOR

GORDON I. ITO
INSURANCE COMMISSIONER

**TO THE SENATE COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION.**

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2012**

**Thursday, February 2, 2012
9:00 a.m.**

TESTIMONY ON SENATE BILL NO. 2767 – 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”). Thank you for hearing this bill. The Department strongly supports this Administration bill, with two requested amendments.

The purpose of this bill is to update the Hawaii Insurance Guaranty Association Act and the Hawaii Life and Disability Insurance Guaranty Association Act by adopting the National Association of Insurance Commissioners’ (“NAIC”) Property and Casualty Insurance Guaranty Association Model Act (April 2009) and the NAIC Life and Health Insurance Guaranty Association Model Act (July 2009), respectively.

The insurance guaranty association laws are contained in Article 16, Hawaii Revised Statutes (“HRS”) chapter 431: Part I pertains to property and casualty insurers and Part II pertains to life and health insurers.

When a Hawaii-licensed insurer is deemed insolvent, the insurance guaranty association provides a mechanism for the payment of covered claims or contractual obligations within certain statutory limits.

Current limits on covered claims for the Hawaii Insurance Guaranty Association ("HIGA") are: (1) the full amount for benefits under a workers' compensation insurance policy; (2) up to \$10,000 per policy for return of unearned premium; and (3) up to \$300,000 per claim for all other covered claims.

Current limits on covered claims for the Hawaii Life and Disability Insurance Guaranty Association ("HLDIGA") are: (1) \$300,000 for life insurance coverage; (2) \$100,000 for accident and health or sickness coverage; and (3) \$100,000 for annuity coverage.

The insurance guaranty associations requested that the Insurance Division introduce this bill on their behalf.

For Part I, three sections are updated by: (1) adding three new definitions and revising the definitions of "covered claim" and "net direct written premium" in HRS § 431:16-105; (2) adding a new subsection (c) in HRS § 431:16-108 requiring suits brought by and against HIGA to be filed in Hawaii courts; and (3) clarifying exhaustion of coverage in HRS § 431:16-112(a).

For Part II, the most significant changes clarify limitations on covered claims in HRS § 431:16-203 as follows: (1) \$300,000 for long-term care coverage (currently \$100,000); (2) \$250,000 for annuity coverage and structured settlement annuity coverage (currently \$100,000); (3) \$300,000 for disability insurance coverage (currently \$100,000); and (4) \$500,000 for basic hospital medical surgical coverage (currently \$100,000). The cap on life insurance coverage remains the same.

The new limits and other revisions in Part II will not apply to any member insurer placed under an order of liquidation prior to July 1, 2012. The remaining changes in Part II are largely technical revisions designed to improve the operations of HLDIGA, eliminate coverage gaps by enabling consistent coverage across state lines, conform the statute to the technical ways that insolvencies are actually handled, and facilitate greater coordination among the various state guaranty associations.

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The Department requests two amendments to the bill as follows:

1. replace proposed language: "of competent jurisdiction:" in subsection (f) in section 7 on page 40, line 14, with the following language: "in this state:". This language follows the Model Act and Department believes following a court order issued in this state, rather than an order issued outside of Hawaii, appropriate; and
2. language in subsection (g) in section 10 on page 62, lines 18 to 22, to page 63, lines 1 to 5, not be deleted from HRS § 431:16-212. HRS § 431:16-212(g) requires HLDIGA to submit a report to the Commissioner which contains pertinent information regarding the history and causes of any insurer insolvency where HLDIGA paid covered claims. The Department believes this requirement is important and should not be removed.

This bill ensures that the insurance guaranty associations are able to fulfill their statutory purpose of protecting Hawaii policyholders and consumers.

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

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF SENATE BILL 2767, RELATING TO INSURANCE

February 2, 2012

Via e mail

Hon. Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capitol, Conference Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to testify in support of SB 2767, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-five (235) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 92% of the annuity considerations in this State.

SB 2767 updates the laws governing the State's guaranty associations in conformity with the National Association of Insurance Commissioners' Property and Casualty Insurance Guaranty Model Act and the recently-revised *Life and Health Insurance Guaranty Association Model Act* (the "Model").

ACLI supports the comprehensive adoption of the Model. ACLI is, therefore, in support of the intent and purpose of SB 2767.

ACLI believes the Model provides for greater uniformity among the states and improves and clarifies several important provisions which benefit both Hawaii consumers and the State's Life and Disability Guaranty Association.

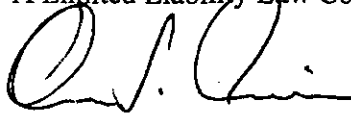
However, the bill omits the reinsurance provisions set forth in paragraph N of the Model, a copy of which is attached.

ACLI suggests that the omitted paragraph N of the Model be inserted in Section 1 of the bill, which amends §431: 1608, as appropriate.

With the suggested revision to SB 2767, as set forth above, ACLI would urge this Committee to enact the measure into law.

Again, thank you for the opportunity to testify in support of SB 2767.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

A handwritten signature in black ink, appearing to read "Oren T. Chikamoto", written over the printed name.

Oren T. Chikamoto
737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
Facsimile: (808) 531-1600

N. (1) (a) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, (in whole or in part,) by the Association, under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers. (b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts. (c) The following Subparagraphs (i) through (iv) shall apply to reinsurance contracts so assumed by the Association:

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, (in whole or in part,) by the Association. The Association may charge policies or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(A) The amount received by the Association; and

B) The excess of the amount received by the Association, over the amount equal to the benefits paid by the Association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(iii) Within thirty (30) days following the Association's election (the "election date"), the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to Subparagraph (c)(ii) of this Paragraph (1), the receiver, shall remit the same to the Association as promptly as practicable.

(iv) If the Association or receiver, on the Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, (in whole or in part), by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, (in whole or in part,) by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

N. (2) During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation), (a) (i) Neither the

Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under Subsection (1), whether for periods prior to or after the date of the order of liquidation; and (ii) The reinsurer, the receiver and the Association shall, to the extent practicable, provide each other data and records reasonably requested; (b) Provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by Subsection (1).

N. (3) If the Association does not elect to assume a reinsurance contract by the election date pursuant to Subsection (1), the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

N. (4) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Association, in the case of contracts assumed under Subsection (1), subject to the following:

(a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(b) The obligations described in Subsection (1) of this Section shall no longer apply with respect to matters arising after the effective date of the transfer; and

(c) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty (30) days prior to the effective date of the transfer.

N. (5) The provisions of this Section N shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, (subject to applicable setoff provisions.

N. (6) Except as otherwise provided in this section, nothing in this Section N shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

HAWAII LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION

Subject: **Senate Bill 2767**

Hearing Date: February 2, 2012

WRITTEN TESTIMONY OF THE HAWAII LIFE AND DISABILITY INSURANCE
GUARANTY ASSOCIATION TO THE SENATE COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION.

The Honorable Sen. Rosalyn Baker, Chair, and Members of the Senate Committee on Commerce and Consumer Protection:

The Hawaii Life and Disability Insurance Guaranty Association is an entity created by the Hawaii Life and Disability Insurance Guaranty Association Act under Hawaii Revised Statutes 431:16 to carry out the purposes of the Act and protect consumers, subject to certain limitations, against failure in the performance of contractual obligations under specified life and accident and health insurance policies because of the financial insolvency of the member insurer that issued the policies or contracts.

The proposed amendments to the Hawaii Life and Disability Insurance Guaranty Association Act will provide substantial additional benefits to Hawaii insurance consumers and allow the Guaranty Association system to more effectively and efficiently meet its statutory mandate of protecting insurance consumers.

Each state has a life and health insurance Guaranty Association. When an insurance company that writes life or health insurance becomes insolvent, the Guaranty Association steps in to provide coverage up to certain limits. In general, each Guaranty Association protects the residents of its state. This system has been in existence for decades and has provided billions of

dollars to protect insurance consumers across the country when their insurance company has failed.

The Hawaii Life and Disability Insurance Guaranty Association was created in 1979. The guaranty association law was then re-codified in 1988. As insurance products and the economic situation in the country evolved over time, insurance regulators, the insurance industry and the consumer advocates recognized a need to update the Model Act on which the state based guaranty association system is based. Like the laws in other states, the Hawaii law needs updating.

The proposed revisions are all based on the latest updated version of the Life and Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners and will help ensure that Hawaii residents are protected by the Hawaii Guaranty Association when there is an insolvency. Some of the biggest benefits of the amendments are the increases in covered benefits available to Hawaii residents. Specifically, the following increases in coverage are proposed:

- Increasing Long Term Care Coverage from \$100,000 to \$300,000
- Increasing Annuity Coverage from \$100,000 to \$250,000
- Increasing Structured Settlement Annuity Coverage from \$100,000 to \$250,000
- Increasing Disability Insurance Coverage from \$100,000 to \$300,000
- Increasing Basic Hospital Medical Surgical Coverage from \$100,000 to \$500,000

The remaining changes are largely technical revisions designed to improve the operations of the Guaranty Association, eliminate potential coverage gaps by enabling consistent coverage across state lines, conform the statute to the technical ways that insolvencies are actually handled and facilitate greater coordination among individual state Guaranty Associations. This is important because most insurance insolvencies are multi-state in that they impact the residents of

numerous states. The Guaranty Associations coordinate to provide coverage and protect consumers. Consistency among the various state laws helps ensure that no consumers fall through the cracks and that coverage can be provided quickly and efficiently.

Accordingly, the Association supports the Committee's favorable consideration of S.B. 2767.

Respectfully Submitted:

Hiram Tanaka, Executive Director
Hawaii Life and Disability Insurance Guaranty Association
1132 Bishop St.; Suite 1590; Honolulu HI 96813

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TESTIMONY OF BLAKE OBATA

TO THE SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

TESTIMONY ON SENATE BILL NO. 2767– RELATING TO INSURANCE

TO THE HONORABLE ROSALYN H. BAKER, CHAIR AND HONORABLE BRIAN T.
TANIGUCHI, VICE-CHAIR AND MEMBERS OF THE COMMITTEE:

SENATOR BRICKWOOD GALUTERIA
SENATOR JOSH GREEN, M.D.
SENATOR CLARENCE K. NISHIHARA

SENATOR MALAMA SOLOMON
SENATOR SAM SLOM

Hearing Date & Time
Thursday, February 2, 3012
9:00 AM

Conference Room 229

My name is Blake Obata, Executive Director of the Hawaii Insurance Guaranty Association (“HIGA”). HIGA supports SB2767.

Introduction

In 1971, the Hawaii Legislature along with all states, except for New York, including the District of Columbia, Puerto Rico and the Virgin Islands, adopted the NAIC Post- Assessment Property & Liability Insurance Guaranty Association Model Act. This Act is now found in Part I of Article 16, Chapter 431 of the Hawaii Revised Statutes, and is known as the Hawaii Insurance Guaranty Association Act (“HIGA Act”).

Since its enactment, the “HIGA” has successfully and timely managed 38 insurance company insolvencies, in no small part guided by the “HIGA Act” which requires all stakeholders in the insolvency process to share and compromise in a finite and limited resource base afforded to parties dislocated by any given insolvency.

Purpose of Amendments

The “HIGA Act” was initially adopted in 1971, recodified in 1987, and variously modified in 2000, 2002, 2003 and 2004. The “HIGA” supports amendments in SB2767 that updates mandates of the “HIGA Act” consistent with the 2009 NAIC Property & Casualty Insurance Guaranty Association Model Act. The referenced amendment further strengthens protections for policyholders and claimants of the insolvent carrier and reinforces/refines the consumer safety net under existing law.

Thank you for the opportunity to offer testimony in support of SB2767.