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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Wednesday, February 5, 2014  
2:10 p.m.

**TESTIMONY ON HOUSE BILL NO. 2271 – 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”). Thank you for hearing this bill. The Department strongly supports this  
Administration bill.

The purposes of this bill are to: (1) adopt revisions to the National Association of  
Insurance Commissioners’ (“NAIC”) model laws on Credit for Reinsurance Model Act,  
Standard Valuation Law, Standard Nonforfeiture Law for Life Insurance, and Insurance  
Holding Company System Regulatory Act; and (2) ensure that the Insurance Division  
maintains its accreditation with the NAIC.

These revisions are part of NAIC’s Solvency Modernization Initiative (“SMI”), a  
critical self-examination to update the U.S. insurance solvency regulation framework  
and to review international developments regarding insurance supervision, banking  
supervision, and international accounting standards and their use in U.S. insurance

regulation. The scope of the SMI is not limited to the evaluation of solvency-related areas and includes the entire U.S. financial regulatory system and all aspects concerning the financial condition of an insurer. The SMI focuses on key issues, such as capital requirements, governance and risk management, group supervision, statutory accounting and financial reporting, and reinsurance.

SECTIONS 1 AND 2 of the bill amend Hawaii Revised Statutes (“HRS”) §§ 431:4A-101 and -102 to reduce the reinsurance collateral requirements of non-U.S. licensed reinsurers that are licensed and domiciled in jurisdictions qualified by the NAIC. These amendments, which are modeled after NAIC’s Credit for Reinsurance Model Act, stem from the global financial crisis of 2008 and the resulting federal Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which was signed into law on July 21, 2010. The Dodd-Frank Act includes the Nonadmitted and Reinsurance Reform Act (“NRRA”), which prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is either an NAIC-accredited state or has financial solvency requirements substantially similar to NAIC’s accreditation requirements. The NRRA also preempts extraterritorial application of a non-domiciliary state’s laws, regulations, or other actions, and it reserves sole responsibility for regulating the reinsurer’s financial solvency to a reinsurer’s domiciliary state. Finally, the NRRA prohibits any state from requiring a reinsurer to provide financial information in addition to that required by its NAIC-compliant domiciliary state. The amendments to HRS §§ 431:4A-101 and -102 seek to incorporate these changes.

SECTION 3 of the bill repeals HRS § 431:4A-105, which contains dates that no longer apply to the current revision.

SECTION 4 of the bill amends HRS § 431:5-307 to introduce Principle-Based Reserving (“PBR”), a new method of calculating life insurance policy reserves that better measures the risks of innovative life insurance policies. Currently, preset formulas are used to value life insurance policy reserves. Once adopted by a

supermajority<sup>1</sup> of legislatures, PBR would replace this formulaic approach with an approach that uses a valuation manual containing reserving requirements, thereby more accurately reflecting the risks of life insurance products. PBR is also expected to “right-size reserves,” reducing reserves that are too high for some products and increasing reserves that are too low for others. Accordingly, the amendments modeled after NAIC’s Standard Valuation Law use a more nuanced method to assess the risks of highly complex life insurance policies.

SECTION 5 of the bill amends HRS § 431:10D-104 and is modeled after NAIC’s Standard Nonforfeiture Law for Life Insurance. These amendments are intended to exist as a package with NAIC’s Standard Valuation Law and preserve coordination between mortality and interest rate assumptions.

SECTION 6 of the bill adds a new section to article 11 of chapter 431, HRS, and SECTIONS 7 THROUGH 14 of the bill amend article 11 of chapter 431, HRS, to comply with NAIC’s accreditation requirement that states adopt significant elements of its Insurance Holding Company System Regulatory Act (“Regulatory Act”), effective January 1, 2016. The Regulatory Act resulted from the global financial crisis of 2008, which exposed the need for regulators to assess the enterprise risk of insurance holding company systems and its impact or contagion upon insurers in those systems. In accordance with the Regulatory Act, the addition and amendments to article 11 enhance certain features of group supervision by providing clearer windows into group operations while simultaneously building upon the existing walls that protect insurer solvency. The concepts addressed in this enhanced “windows and walls” approach include: (1) communication between regulators; (2) supervisory colleges; (3) access to and collection of information; (4) enforcement measures; (5) group capital assessment; and (6) accreditation.

More specifically:

SECTION 6 of the bill adds a new section to article 11 of chapter 431, HRS, to introduce supervisory colleges for regulators.

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<sup>1</sup> PBR will be effective after at least 42 states (comprising more than 75% of U.S. direct written premiums) adopt the amended law and Valuation Manual.

SECTION 7 of the bill amends HRS § 431:11-102 by adding a new definition of “enterprise risk” and amending the definition of “person.”

SECTION 8 of the bill amends HRS § 431:11-104(a), (b), (d), and (g) by detailing the filing requirements for merging with or acquiring control of a domestic insurer. These amendments enhance regulators’ rights to access information, including the examination of affiliates and access to books and records to better ascertain the financial condition of the insurer.

SECTION 9 of the bill amends HRS § 431:11-104.2(b) by indicating exclusions to the applicability of HRS §§ 431:11-104.2 and 431:11-104.3 through -104.6.

SECTION 10 of the bill amends HRS § 431:11-105 by setting forth the registration requirements for insurance holding company systems.

SECTION 11 of the bill amends HRS § 431:11-106(a) by setting forth the standards for transactions of insurance holding company systems. Subsection (c), pertaining to domestic insurers, is also amended to delineate the makeup of directors and committees of the board of directors, as well as the quorum requirements for transacting insurance business during board or committee meetings.

SECTION 12 of the bill amends HRS § 431:11-107 by setting forth the Commissioner’s examination authority of insurers registered under HRS § 431:11-105, as well as their affiliates, to ascertain their financial condition and enterprise risk.

SECTION 13 of the bill amends HRS § 431:11-108 by setting forth the confidential treatment afforded to documents, materials, or other information obtained by or disclosed to the Commissioner in the course of an examination made pursuant to HRS § 431:11-107.

SECTION 14 of the bill amends HRS § 431:11-111 by imposing sanctions upon insurance holding company systems that violate article 11, including: fines, civil forfeiture, cease and desist orders, orders of supervision, criminal proceedings, and the disapproval of dividends.

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

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Consumer Protection and Commerce

From: Cheryl Kakazu Park, Director

Date: February 5, 2014, at 2:10 p.m.  
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2271  
Relating to Insurance

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes no position on the substance of this bill, which adopts revisions to several model insurance laws. OIP is testifying to seek clarification of several references to chapter 92F, HRS, the Uniform Information Practices Act (“UIPA”).

The bill provides in four different places that specified information is “confidential by law and privileged, and shall not be subject to chapter 92F”: at bill page 37 line 22 to page 38 line 1; page 92 lines 15-16; page 182 lines 4-5; and page 187 lines 1-2. The **effect** of this language would be not simply to provide confidentiality, but **would bring the information entirely outside the requirements of the Uniform Information Practices Act (“UIPA”), chapter 92F. In other words, the department would have no obligation to even acknowledge receipt of a request for the records covered by this bill or to tell the requester that it was being denied and why; the department could simply ignore requests for records containing that information.**

OIP uniformly and strongly recommends against provisions in statutes outside of the UIPA that seek to exclude records from the UIPA's entire statutory scheme, which even for clearly confidential records requires agencies to at least respond to a record request with a denial and a citation to the relevant statutory authority. **OIP believes that, where the intent is to exempt certain records from disclosure, it is clearer and more appropriate to instead simply make the records "confidential."** If a record is made confidential, then it may be withheld from disclosure under an exception to the UIPA **and** it may be considered in an executive meeting, *i.e.*, a closed meeting, under the Sunshine Law. See Haw. Rev. Stat. § 92F-13(4) (1993) (exception to disclosure provided for government records protected by statute from disclosure); Haw. Rev. Stat. § 92-5(a)(8) (exception to open meeting requirement provided to deliberate or decide a matter that requires consideration of information that is confidential by law).

Here, the bill language already specifies that the records in question are "confidential by law," so the only additional effect of also providing that they "shall not be subject to chapter 92F" is to relieve the agency of any obligation to actually inform a record requester that the request was received and has been denied. **OIP therefore recommends that the phrase "shall not be subject to chapter 92F" simply be deleted where it appears** at bill page 37 line 23 to page 38 line 1; page 92 lines 15-16; page 182 line 5; and page 187 line 2. **Alternatively,** if this Committee feels strongly that a reference to chapter 92F is necessary, it could instead replace the phrase "shall not be subject to chapter 92F" with the phrase **"shall not be disclosable under chapter 92F,"** which would merely restate that the records are confidential.

Thank you for the opportunity to testify.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN SUPPORT OF  
HOUSE BILL 2271, RELATING TO INSURANCE, WITH RESERVATIONS

January 31, 2014

Via e mail:

Honorable Representative Angus L. K. McKelvey, Chair  
Committee on Consumer Protection & Commerce  
State House of Representatives  
Hawaii State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair McKelvey and Committee Members:

Thank you for the opportunity to testify in support of HB 2271, relating to Insurance, with reservations, as noted below.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred twenty-five (225) ACLI member companies currently do business in the State of Hawaii; and they represent 92% of the life insurance premiums and 90% of the annuity considerations in this State.

HB 2271 adopts updated revisions to the National Association of Insurance Commissioners’ model laws relating to Credit for Reinsurance, Standard Valuation Law, Standard Nonforefeiture for Life Insurance and Insurance Holding Company System Regulatory Act.

ACLI generally supports legislation which updates Hawaii’s Insurance Code to conform to uniform national standards.

As drafted, however, HB 2271 contains many provisions which deviate from the foregoing NAIC model laws.

Credit for Reinsurance

Section 1 of HB 2271 amends HRS Section 431:4A-101(c): Credit allowed a domestic ceding insurer, as follows:

Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled [~~and licensed~~] in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance equal to or exceeding those applicable under this article and



the assuming insurer or United States branch of an alien assuming insurer: . . . .”  
At page 4, lines 3 – 9.

The NAIC Credit for Reinsurance Model has nearly identical provisions. However, the Model requires a state to “...employ standards regarding credit for reinsurance substantially similar to those applicable...” rather than the proposed bill’s wording of standards “. . . equal to or exceeding” (emphasis added). Hence, the amendment to this section proposed by HB 2271 applies a stricter standard than the Model Law. ACLI requests that the term “substantially similar” from the Model be used.

#### Standard Valuation Law (“SVL”)

Section 4 of the bill contains several deviations from the Model Act.

Page 45, line 3 - 5, of HB 2271 would amend HRS Section 431:5-301(d)(4)(G) to provide that “Disciplinary action by the Commissioner against the company or the qualified actuary shall be defined in regulations by the Commissioner.” The bill should be amended to comply with the NAIC Model’s use of the term “appointed actuary” instead of the bill’s designation of a “qualified actuary”.

It also amends HRS Section 431:5-301(f) by adding a new section which proposes to add a new subsection (f)(4), beginning at page 52, lines 17 – 22, and page 53, lines 1 – 3, which applies to annuity contracts issued prior to June 1, 1979. This may set a standard for business issued between 1975 and 1979. ACLI respectfully questions whether the Insurance Division is attempting to make a change or a clarification of the reserve standard for this business.

Section 4 of the proposed bill, beginning at page 55, at line 18 – 23, and at the top of page 56, at lines 1 - 2 , amends HRS Section 431:5-301(g)(2)(A). The proposed amendment does not properly present the formula for life insurance rates. It appears to be consistent with the NAIC Model but “W/2” doesn’t appear properly. The formatting of the formula should be changed to clearly reflect the formula.

On page 76, at lines 18 – 19, Section 4 amends HRS Section 431:5-301(l) by referencing “subsections (f) and (g)”. The correct references should be to (e) and (g).

#### Standard Nonforfeiture for Life Insurance

Section 5 of HB 2271, beginning on page 103, et seq., amends several provisions of HRS Section 431:10D-104.

ACLI notes that there is a typographical error which appears on page 131, at line 13, of the bill – “issues” should be changed to “issued”.

The amendments to HRS Section 431:10D-104(e)(8)(1), at page 131, beginning at line 22, do not include a 4% floor to the nonforfeiture interest rate set forth in the Model Act. That section, as amended, should be revised as follows (underlined text reflects text to be added):



(i) For policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five per cent of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one quarter of one percent, however, the nonforfeiture interest rate shall not be less than four percent; and

#### Insurance Holding Company System Regulatory Act

Section 13 of HB 2271, beginning on page 181, at line 19, amends HRS Section 431:11-108, relating to confidential treatment, does not reflect the Model Act by deleting text as set forth below:

§431:11-108 Confidential treatment. [~~All information, documents, and copies thereof~~] (a) Documents, materials, or other information in the possession or control of the insurance division that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 431:11-107 and all information reported pursuant to [section] sections 431:11-104(b)(12) and (13), 431:11-105, and [section] 431:11-106, shall be [given] confidential [treatment] by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be [made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholder or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.] subject to discovery or admissible in evidence in a any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public as may be deemed appropriate. Page 181, beginning at line 19, and page 182, at lines 1 – 22.

Existing language that has been struck through (indicating deletion of text) at the top of this page beginning with “. . . made public by the commissioner, the National Association of Insurance Commissioners [etc.] . . . “, only, should be RETAINED in the HB 2271. The appropriate placement for this deleted text is set forth below.

§431:11-108 Confidential treatment. [~~All information, documents, and copies thereof~~] (a) Documents, materials, or other information in the possession or control of the insurance division that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 431:11-107 and all information reported pursuant to

~~[section] sections 431:11-104(b)(12) and (13), 431:11-105, and [section] 431:11-106, shall be [given] confidential [treatment] by law and privileged, shall not be subject to chapter 92F, shall not be subject to subpoena, and shall not be [made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholder or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.] subject to discovery or admissible in evidence in a any private civil action. The commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public as may be deemed appropriate, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of the policyholders, shareholder or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as the commissioner may deem appropriate.~~

The text above which the bill proposes to delete is very important and should be retained and inserted where set forth above. First, the grammar of the Bill does not make sense without it, and leads to ambiguity in its meaning. Secondly, removal of this text from the Bill grants the Insurance Commissioner far too much discretion in determining what documents, information etc., the Commissioner "deems appropriate" to make public. The removal of this language is, therefore, a significant deviation from the corporate confidentiality language of the NAIC's Holding Company Model Act.

Subject to the foregoing revisions in the proposed bill, which will result in consistency with national standards, ACLI supports passage of HB 2271.

Again, thank you for the opportunity to testify in support of HB 2271, relating to Insurance, with reservations, as noted above.

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**Testimony of  
Gary M. Slovin / Mihoko E. Ito  
on behalf of  
USAA**

DATE: February 3, 2014

TO: Representative Angus L.K. McKelvey  
Chair, Committee on Commerce and Consumer Protection  
*Submitted Via [CPCTestimony@capitol.hawaii.gov](mailto:CPCTestimony@capitol.hawaii.gov)*

RE: **H.B. 2271 - Relating to Insurance**  
**Hearing Date: February 5, 2013 at 2:10 p.m.**  
**Conference Room: 325**

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Dear Chair McKelvey and Members of the Committee:

We submit this testimony in support of S.B. 2271 on behalf of USAA, a diversified financial services company. USAA 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, the vast majority of which are military-based members.

USAA **strongly supports** S.B. 2271, which adopts revisions to the National Association of Insurance Commissioners' model laws on Credit for Reinsurance Model Act, Standard Valuation Law, Standard Nonforfeiture for Life Insurance, and Insurance Holding Company System Regulatory Act. USAA particularly supports Parts II and III of the bill, which propose to implement the NAIC model law for Hawaii's standard valuation law and standard nonforfeiture law. Updating these sections of the law would modernize Hawaii's procedure for setting reserves for life insurance.

USAA notes that updating this area of the law is extremely complex, and we are still reviewing the bill in detail for any amendments we may wish to propose. We would respectfully request that the Committee allow stakeholders to have additional discussions regarding the bill, and/or that the bill be kept alive as a vehicle to ensure that discussion can continue on this important measure.

Thank you very much for the opportunity to testify.

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Gary M. Slovin  
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Tiffany N. Yajima  
Jennifer C. Taylor

1099 Alakea Street, Suite 1400  
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February 3, 2014

**VIA ELECTRONIC SUBMISSION**

Rep. Angus L.K. McKelvey  
Chair, House Committee on Consumer Protection and Commerce  
Hawaii State Capitol, Room 320  
415 South Beretania Street  
Honolulu, HI 96813

Re: Hawaii House Bill 2271 ("HB 2271")

Date: Wednesday, February 5<sup>th</sup>, 2014  
2:10pm, Conference Room 325

Dear Representative McKelvey:

We are writing to you in your capacity as the Chair of the Hawaii House Committee on Consumer Protection and Commerce (the "Committee"). The purpose of this letter is to express the support of Lloyd's of London ("Lloyd's") for HB 2271 which provides a framework for reducing collateral requirements for well-qualified alien reinsurers. We understand that the Committee will consider HB 2271 during a hearing on February 5, 2014. Lloyd's strongly supports this legislation and would like to thank the Committee for its consideration of HB 2271.

Lloyd's is one of the largest providers of reinsurance capacity in the world and has had a longstanding commitment to the US, which is our largest market for reinsurance. In 2012, Lloyd's assumed approximately \$30,314,198 in premium from Hawaii cedants. Lloyd's has been advocating for reinsurance collateral reform in the US for over a decade. In our view, credit for reinsurance should be based on the financial strength of the reinsurer and not on its nation of domicile.

We would like to note that HB 2271 closely tracks the language of revisions to the Model Credit for Reinsurance Law and Regulation (the "Revised Model") which were unanimously passed by the Executive and Plenary Committees of the National Association of Insurance Commissioners at its national meeting in November 2011. The Revised Model represents the culmination of over a decade of deliberation and debate among state insurance regulators with input from both ceding insurers and reinsurers. Lloyd's believes that reinsurance collateral modernization is critical in order for the US to maintain its competitive position in the international insurance market. We commend you for advancing collateral reform in Hawaii via HB 2271.

Very Truly Yours,



cc: Members of the Hawaii House Committee on Consumer Protection and Commerce