

# SB 1072

Measure Title: RELATING TO INSURANCE.  
Report Title: Insurance  
Description: Updates the Insurance Code.  
Companion: [HB841](#)  
Package: Gov  
Current Referral: CPN, WAM  
Introducer(s): KIM (Introduced by request of another party)

<b><u>Sort by</u></b> <b><u>Date</u></b>		<b>Status Text</b>
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN, WAM.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-07-13 9:00AM in conference room 229.



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

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TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Thursday, February 7, 2013  
9 a.m.

**TESTIMONY ON SENATE BILL NO. 1072 – RELATING TO INSURANCE.**

TO THE HONORABLE ROSALYN 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.

The purpose of this bill is to streamline and improve the operations of the Insurance Division and to ensure that the Insurance Division retains its accreditation with the National Association of Insurance Commissioners ("NAIC") by updating the Insurance Code, Hawaii Revised Statutes ("HRS") chapter 431 ("Insurance Code").

Section 1 of the bill amends HRS § 431:2-308(d) by establishing a 10-day deadline to request an administrative hearing. HRS § 431:2-308(d) currently requires that a request for administrative hearing be in writing, but does not provide a specific deadline for filing the request. HRS §§ 431:9A-112(b) and 431:19-109(b) specify that the written demand for hearing must be made within 10 days of the date of receipt of the notice of hearing. This amendment would ensure consistency in the Insurance Code for administrative hearing requests.

Section 2 of the bill amends HRS § 431:3-403(a)(1)(B) by updating the authorized control level for risk-based capital ("RBC") trend test for life insurers from 2.5 to 3 to ensure the Insurance Division retains its NAIC accreditation. RBC represents an amount of required capital that an insurer should hold to protect policyholders against adverse developments based on an assessment of the inherent risks in the insurer's operations.

In November 2011, NAIC revised the RBC for Insurers Model Act for life insurers, changing the authorized control level to a higher standard at which the RBC trend test was triggered to be consistent with the level used for health and property and casualty insurers. NAIC raised the authorized control level at which the life trend test could be triggered from 2.5 to 3. The life trend test attempts to give an indication of weakly capitalized companies that are not currently at an RBC action level but are showing financial results that indicates they may soon be at an action level. Having the same trend test level across states provides a consistent RBC standard for insurers to follow.

Section 3 of the bill amends HRS § 431:9A-153(f) by changing the maximum allowable credit hours for producer continuing education courses from 20 to 24, consistent with HRS § 431:9A-124(b). Under HRS § 431:9A-124(b), an insurance producer must take 24 credit hours of continuing education coursework to qualify for license renewal. The housekeeping change would bring HRS § 431:9A-153(f) in line with HRS § 431:9A-124(b).

Section 4 of the bill amends HRS § 431:15-103.5 by adopting the provisions of the NAIC Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition ("NAIC Model Regulation") to ensure the Insurance Division retains its NAIC accreditation. In July 2010, NAIC adopted revisions to the NAIC Model Regulation, which governs the standards and authority for determining whether any insurer may be operating in a financial hazardous condition.

Section 5 of the bill amends HRS § 431:19-102.3 by clarifying that the nonrefundable application fee for a captive insurance company ("captive") redomesticating from another jurisdiction to Hawaii must be paid at the time of

application. This housekeeping amendment clarifies that the nonrefundable application fee for redomesticating captives must be paid at the time of application, as is the case for all other captives, and codifies long-standing existing practice.

Section 6 of the bill amends HRS § 431:19-115(b) by clarifying the Insurance Code provisions applicable to risk retention captives, ensuring that the Division retains its NAIC accreditation and reflecting the Insurance Division's current practices. This amendment would make the following provisions apply to risk retention captives:

- HRS § 431:3-304.5: This section requires traditional insurers to file the statement of actuarial opinion with the annual statement, deems an insurer's statement of actuarial opinion as a public document, and provides confidentiality for the actuarial opinion summary and related documents. Similarly, captives are also required to file a statement of actuarial opinion with the annual statement under HRS § 431:19-107(c). Although statements of actual opinion are considered public records for traditional insurance companies under HRS § 431:3-304.5, this section currently does not apply to risk retention captives under HRS § 431:19-115. NAIC accreditation standards require that statements of actuarial opinion for risk retention captives be considered public records, as required by HRS § 431:3-304.5.
- HRS §§ 431:3-401 to 431:3-407 and 431:3-414: These sections govern RBC reports. This amendment would clarify existing law, since risk retention captives are currently required to file RBC reports, pursuant to HRS § 431:19-107(b)(2).

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

AMERICAN COUNCIL OF LIFE INSURERS  
TESTIMONY COMMENTING ON SB 1072, RELATING  
TO INSURANCE

February 7, 2013

Via E Mail: [cpntestimony@capitol.hawaii.gov](mailto:cpntestimony@capitol.hawaii.gov)  
Senator Rosalyn H. Baker, Chair  
Senate Committee on Commerce & Consumer Protection  
Hawaii State Capital, Conference Room 229  
415 S. Beretania Street  
Honolulu, HI 96813

Dear Chair Baker and Committee Members:

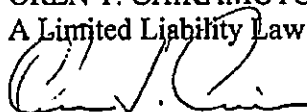
Thank you for the opportunity to comment on SB 1072, relating to Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a Washington, D.C., based trade association with more than 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 thirty-two (232) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 92% of the annuity considerations in this State.

ACLI is reviewing the provisions of SB 1072 with its member companies and will submit additional testimony on this bill in the future.

Again, thank you for the opportunity to comment on this bill.

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



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TESTIMONY ON S.B. NO. 1072  
RELATING TO INSURANCE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
Sen. Rosalyn H. Baker, Chair  
Sen. Brickwood Galuteria, Vice Chair

Thursday, February 7, 2013, 9:00 a.m.  
State Capitol, Conference Room 229

My name is Gerald C. Yoshida, Chairman of the Legislative Committee of the Hawaii Captive Insurance Council (HCIC), a trade organization of captive insurance companies and service providers who comprise and support Hawai'i's captive insurance industry.

HCIC generally supports S.B. No. 1072, which amends certain provisions of the Hawaii Insurance Code that relate to risk retention captive insurance companies domiciled in Hawaii under the State's captive insurance law, so that the State may maintain its accredited status with the National Association of Insurance Commissioners ("NAIC").

HCIC, strongly suggests, however, that Section 6 of S.B. No. 1072 be amended by adding section 431:3-408 to the list of Hawaii Insurance Code sections made applicable to risk retention captive insurance companies under section 431:19-115(b) of the Hawaii Revised Statutes ("HRS"). In this regard, S.B. No. 1072 currently proposes to amend HRS § 431:19-115(b) by adding, among others, HRS §§ 431:3-401 to 431:3-407 as applicable to risk retention captive insurance companies. Those sections relate to risk-based capital for insurers, a complex capital adequacy standard developed by the NAIC to assist insurance commissioners and their departments in their regulatory oversight of commercial insurers, and are adopted from the NAIC Risk-Based Capital (RBC) For Insurers Model Act ("RBC Model Act"). HRS § 431:3-408 was also adopted from the RBC Model Act, and relates to the confidentiality of risk-based capital reports and other documents related thereto. Adding this provision to the list of other sections of the Hawaii Insurance Code made applicable to risk retention captive insurance companies under HRS § 431:19-115(b) would help to strengthen the statutory framework applicable to these captive insurance companies.

Thank you for this opportunity to submit testimony in support of S.B. No. 1072.

Respectfully submitted:  
Gerald C. Yoshida  
Chair, Legislative Committee  
Hawaii Captive Insurance Council  
737 Bishop Street, Suite 2100  
Honolulu, Hawai'i 96813  
Ph: 524-3800

**SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION**

February 7, 2013

Senate Bill 1072 Relating to Insurance

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm opposes Section 1 of Senate Bill 1072 Relating to Insurance. Section 1 of the bill establishes a 10 day limitation period that would affect an insurer's right to seek a hearing when an insurer disagrees with some regulatory action taken by the Insurance Division. There is no such limitation period today.

We believe that 10 days is too short of a period, depriving insurers a reasonable period of time to review the implications of a regulatory decision, including the right to seek assistance of counsel. Given only a 10 day window of time, insurers might as a matter of course, routinely demand hearings in order to avoid losing the right to appeal a regulatory decision. We recommend a 30 day period instead, noting that time frame would allow insurers to take considered action, while still requiring that action be taken in a timely manner.

Thank you for the opportunity to present this testimony.

Hawai'i State Legislature  
Senate Committee on Commerce and Consumer Protection  
Hawai'i State Capitol, Room 10  
415 South Beretania Street  
Honolulu, HI 96813

2/6/13

*Filed via electronic testimony submission system*

**RE: SB 1072, Relating to Insurance - NAMIC's Written Testimony for Committee**

**NAMIC's position on SB 1072 – Opposed unless amended**

Dear Senator Rosalyn H. Baker, Chair; Senator Brickwood Galuteria, Vice-Chair; and members of the Senate Committee on Commerce and Consumer Protection:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 7, 2013, public hearing.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums that account for 50 percent of the automobile/ homeowners market and 31 percent of the business insurance market. More than 200,000 people are employed by NAMIC member companies. NAMIC has 69 members who write P. & C. Insurance in the State of Hawai'i, which represents 30% of the marketplace.

As a general concept, NAMIC supports legislation and regulations that are designed to promote and protect the solvency of insurance companies for the benefit of insurance consumers. The insurance marketplace, the business community, insurance consumers, and the economy of the state all benefit from *reasonably measured and balanced* laws that provide regulators with the ability to properly investigate the solvency and financial stability of insurance companies.

Although SB 1072 closely follows the National Association of Insurance Commissioners (NAIC) Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in a Hazardous Financial Condition, the proposed legislation fails to incorporate two important procedural due process protections that are in the NAIC model and necessary for the bill to be *reasonably measured and balanced*. Specifically, SB 1072 does



not allow for: 1) a reasonable period of time for an insurer to evaluate the concerns of the Department of Insurance, prepare a written response, and file an application for a hearing with the Commissioner of Insurance; and 2) an administrative hearing process that addresses the reasonable confidentiality concerns and administrative needs of the insurer.

SB 1072 would amend the current law to require that insurer submit a written application for a hearing “within ten days of the date of receipt of the notice to the aggrieved party”. The Hawai’i Administrative Procedures Act (Hawai’i Revised Statutes Chapter 91) does not specify or require that the filing of a written application for a hearing be accomplished within ten days, nor does the NAIC Model Act require a ten day filing deadline.

In fact, the APA uses a “reasonable notice” standard. Therefore, the deadline for submission of a written application for a hearing should be reasonable. The supporters of the proposed legislation have offered no evidence to support the contention that a ten days application submission deadline is reasonable. From a business practicality standpoint, ten days is impractical, unreasonable, and administratively burdensome. Moreover, a thirty day deadline is universally considered in the business world and in society, in general, to be a reasonable and appropriate period of time to pay invoices, file legal notices, turn over possession of real and personal property, etc.

NAMIC appreciates the regulatory need for administrative filing deadlines and timely responses to regulatory notices. However, a ten day application submission deadline is neither necessary nor appropriate, especially when dealing with a complicated regulatory issue. A thirty day deadline would accomplish the same regulatory objective of facilitating a timely submission of an application for a hearing, but would eliminate the unnecessary administrative burdens associated with a ten day notice requirement. Furthermore, a thirty day deadline, unlike the ten day deadline, is consistent with the concept of reasonable procedural due process, in that it affords the insurer appropriate time to properly evaluate the regulator’s concerns and draft a thoughtful application for a hearing.

Additionally, SB 1072 significantly deviates from the NAIC model as it relates to procedural due process protection associated with the notice of the hearing to review an order. Section 4(d), page 12, lines 9-11 of the proposed legislation states:

(d) Any insurer subject to an order under subsection (c) may request a hearing to review that order pursuant to chapter 91.

The NAIC model, which SB 1072 is intended to closely modeled, has an important procedural due process safeguard that has been omitted from this section of the bill. The NAIC model specifically adds to this section the following language:

The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed

between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in [insert proper county] county or in some other place convenient to the parties designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

NAMIC believes that this NAIC language, which was extensively evaluated, debated, and intentionally included in the model act by insurance commissioners from states throughout the country to address reasonable and appropriate confidentiality and intellectual property rights protection concerns of insurers, should be incorporate into SB 1072.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in cursive script, appearing to read "Christian J. Rataj".

Christian J. Rataj, Esq.  
NAMIC's Western State Affairs Manager

TESTIMONY ON S.B. No. 1072  
RELATING TO INSURANCE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn Baker, Chair  
Senator Brickwood Galuteria, Vice Chair

Thursday, February 7, 2013, 9:00 a.m.  
State Capitol, Conference Room 229

My name is Fay Okamoto, branch manager of Artex Risk Solution, Inc.'s Hawai'i office. Artex serves as the authorized captive manager for a number of captive insurance companies domiciled in the State of Hawai'i. I am also Chairman of the Hawai'i Captive Insurance Council (HCIC), a trade organization representing approximately 100 captive insurance companies and service providers who support Hawai'i's captive insurance industry.

I support S.B. No. 1072 which amends certain provisions of the Hawaii Insurance Code which are applicable to risk retention group captive insurance companies domiciled in Hawaii. I understand these amendments will facilitate the State of Hawaii's continued accredited status with the National Association of Insurance Commissioners (NAIC), an important status to maintain for all Hawaii domiciled insurers, including risk retention group captives. I do, however, concur with the HCIC's suggestion that Section 6 of S.B. No. 1072 be amended by adding section 431:3-408 to the list of Hawaii Insurance Code sections made applicable to risk retention group captive insurers. This proposed change is to adopt those Hawaii Insurance Code sections adopted from the NAIC Risk Based Capital for Insurers Model Act relating to the confidentiality of risk based capital reports and other related documents.

Captives provide significant direct and indirect benefits to the State in the form of employment of Hawai'i-based professional service providers, investment of captive dollars in Hawaii financial institutions, and tourism dollars. We thank the legislature for their continued support of this unique industry.

Thank you for this opportunity to testify in support of S.B. No. 1072.

Respectfully submitted,



Fay Okamoto  
Division Senior Vice President  
Artex Risk Solutions, Inc.  
1457 Kapiolani Blvd, Suite 1430  
Honolulu, HI 96814



Strategic Risk Solutions

TESTIMONY ON S.B. 1072  
RELATING TO INSURANCE

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair

Thursday, February 7, 2013, 9:00 a.m.  
State Capitol, Conference Room 229

Chair Baker, Vice Galuteria, and Members of the Committee:

My name is Craig Watanabe, and I am the Regional Manager of Strategic Risk Solutions, Inc., an independent captive insurance consulting and management company with operations in Hawaii and other major captive jurisdictions in the U.S, and abroad.

I respectfully submit my testimony in general support of this Administration proposed measure to "update" the Insurance Code.

Upon reviewing the contents of Section 6 of this measure, it appears to have left out the applicability of HRS §431:3-408 which is an important component of the NAIC's Model Act relating to Risk-Based Capital. This omitted section relates to the confidentiality of risk-based capital reports and related documents.

As a result, we recommend that Section 6 of this measure be amended to add HRS §431:3-408 as one of the other sections of the Hawaii Insurance Code made applicable to risk retention captives under HRS §431:19-115(b).

The success of Hawaii's captive insurance industry has been, and will continue to be dependent upon the consistent commitment and collaborative efforts of its Lawmakers, Administration and private sector constituencies. We appreciate the opportunity to provide this testimony and look forward to your continued support of this important industry for Hawaii.

Respectfully Submitted,

A handwritten signature in black ink that reads "Craig Watanabe". The signature is written in a cursive, flowing style.