

SB 2440

Measure Title: RELATING TO SURETY INSURANCE.

Report Title: Contractors; Surety Bond; Performance Bond; Surety Company; Elderly

Description: Requires surety companies to disclose risks of default to principals when signing surety bonds.

Companion:

Package: None

Current Referral: CPN

Introducer(s): CHUN OAKLAND, Baker, Nishihara, Taniguchi



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn H. Baker, Chair
Sen. Brian T. Taniguchi, Vice Chair

Wednesday, February 19, 2014
9:00 a.m.

SB 2440

Chair Baker, Vice Chair Taniguchi, and members of the Committee on Commerce and Consumer Protection, my name is Michael Tanoue, counsel for the Hawaii Insurers Council, 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.

The Hawaii Insurers Council **opposes** SB 2440.

Subsection (a)(1) of the bill – which would require each surety company to “disclose, in writing, all potential personal losses to the principal arising from any action on the surety bond” – is already provided in the indemnity agreement that is part the typical surety bond package. The indemnity agreement is signed by the principal and other indemnitors, who agree that they will reimburse the surety for any liabilities, attorneys’ fees, expenses or damages the surety company may incur as a result of the issuance of the bond. The potential amount owed by the principal and indemnitors is the penal sum as shown in the bond.

If subsection (a)(1) of the bill seeks to impose additional disclosure obligations on the surety company, then the bill is vague. The term “personal losses” is not defined or explained in the bill, and the types and degrees of potential “personal losses” may vary from principal to principal.

Subsection (a)(1) of the bill also ignores practical reality. Surety companies do not always have direct contact with principals during the bond procurement process. Explanations and answers to questions posed by principals are provided by surety producers, who have closer direct relationships with, and more intimate knowledge of, the principals. After meeting with the principals, producers then provide the bond application, indemnity agreement, and supporting financial information to the surety company for evaluation and acceptance.

Subsection (a)(2) of the bill – which would require each surety company to provide each principal over the age of sixty-two years with “counseling,” as prescribed by the DCCA, “regarding the principal’s capacity to sustain personal losses that may arise from any action on the surety bond” – is similarly redundant, vague, and principal-specific. Requiring surety companies to “counsel” a principal also appears to force surety companies to inappropriately assume duties and interfere in the domain of the surety producer in its relationship with the principal (client).

Additionally, the Hawaii Insurers Council questions the rationale behind a requirement that surety companies “counsel” those principals who are over the age of sixty-two. What does age, versus, for example, financial stability, have to do with a principal’s capacity to sustain personal losses on account of a surety bond claim? Is the reference to the principal’s age a potential ground for a claim of age discrimination?

Based on the foregoing, the Hawaii Insurers Council opposes SB 2440 and requests that it be held. Thank you for the opportunity to testify.

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Submitted on: 2/16/2014

Testimony for CPN on Feb 19, 2014 09:00AM in Conference Room 229

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|----------------------------|---------------------------|---------------------------|
| Sheri Sakamoto | Retail Merchants of Hawaii | Oppose | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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