

SB 2821

Measure Title: RELATING TO INSURANCE.

Report Title: Insurance

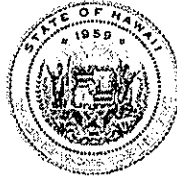
Description: Adopts revisions to the National Association of Insurance Commissioners' model laws on Credit for Reinsurance Model Act, Standard Valuation Law, Standard Nonforfeiture for Life Insurance, and Insurance Holding Company System Regulatory Act.

Companion: HB2271

Package: Governor

Current Referral: CPN, WAM

Introducer(s): KIM (Introduced by request of another party)



NEIL ABERCROMBIE
GOVERNOR

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TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Friday, January 31, 2014
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2821 – 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.

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

supermajority¹ 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.

¹ 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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EMAIL: oip@hawaii.gov

To: Senate Committee on Commerce and Consumer Protection

From: Cheryl Kakazu Park, Director

Date: January 31, 2014, at 9:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2821
Relating to Insurance

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.

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Hawaii State Legislature
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

January 30, 2014

Filed via electronic testimony submission system

RE: SB 2821, Insurance - NAMIC's Written Testimony for Committee Hearing

Dear Senator Rosalyn H. Baker, Chair; Senator Brian T. Taniguchi, 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 your committee for the January 31, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC does not oppose the proposed legislation, and is only submitting comments on the provisions pertaining to the Holding Company Act which are modeled after the NAIC's Model Holding Company Act (HCA). However, NAMIC believes that a *size-based exemption* from the requirement to file an Enterprise Risk Report (Form F) should be included in the proposed legislation to address the practical differences between large and small insurers.

SB 2821, as currently drafted, would create an inappropriate *one-size fits all* Enterprise Risk Reporting (ERR) Requirement that fails to balance the cost vs. the benefit of the Enterprise Risk Report for small insurers, the state regulator, and the insurance marketplace. Each new regulatory requirement, filing, or report imposed on an insurer adds to the expense of providing insurance products to the consumer. This added expense impacts small companies disproportionately to the detriment of their insurance policyholders.

While the Enterprise Risk Report may not seem like an overly burdensome report for a large company, for a small company its completion can require outside consultants, attorneys, accountants, and enterprise risk management experts, who are not typically employees of the insurer.

A number of states, including the state of Hawaii, recognize the general public policy need and benefit of considering the impact of regulations on small businesses. The Hawaii State Legislature previously passed the Small Business Regulatory Flexibility Act to make sure that appropriate attention was given to laws and regulations that could have an unequal and disproportionately adverse impact on small businesses in the state.

Consequently, NAMIC respectfully requests that the Senate Committee on Commerce and Consumer Protection consider two different size-based approaches to bring regulatory review proportionality to the Enterprise Risk Report Provision in SB 2821:

1) Monetary threshold exemption – This regulatory approach exempts companies with less than \$300 million (or it could be set at \$500 million to be consistent with the size-based threshold exemption in ORSA and the Model Audit Rule) in direct written premiums from the Enterprise Risk Report requirement. *Texas, Kansas, and Indiana* have adopted a monetary threshold exemption and *Alabama* has a 2014 bill that includes this exemption language. *Idaho* has passed a law granting the Commissioner discretion to exempt insurers from the ERR requirement based upon the insurer's size.

2) Proportionality of review approach – This regulatory approach states that “the report must be appropriate to the nature, scale and complexity of the operations of the insurance holding company system”. *Maine* has passed such a law. *Missouri, Ohio, and Virginia* all have pending bills in the 2014 legislative session that have this type of measured and thoughtful regulatory review provision.

Both of the proposed regulatory review approaches are consistent with and in furtherance of the public policy rationale that supported the 2010 NAIC revisions to the HCA and the creation of the requirement that insurers in a holding company system file an annual Enterprise Risk Report. When the NAIC debated the proposed HCA amendments, regulators were focused upon creating and designing a regulatory review process that would address the 2008 financial crisis. The objective was to address regulatory oversight of very *large and complex* holding companies, like the ones involved in the 2008 financial crisis. The NAIC proposed amendments to the HCA were not drafted in contemplation of small insurance holding companies, because they did not play a part in the 2008 financial crisis. In fact, there was no real discussion at the NAIC about how the proposed amendments and the ERR would be applied to or impact small insurers. The regulatory focus was upon addressing “system risk”, which is something that is not created by small insurance holding companies.

NAMIC respectfully requests that the Senate Committee on Commerce and Consumer Protection bring insurance holding company **size-based proportionality** into the discussion of the Enterprise Risk Reporting Requirement of SB 2821 and consider amending the proposed regulation to include one of the

two different size-based approaches to the ERR regulatory requirement provision of the proposed Holding Company Act.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with a prominent initial "C" and "J".

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region

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

DATE: January 30, 2014

TO: Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via CPNTestimony@capitol.hawaii.gov

RE: **S.B. 2821– Relating to Insurance**
Hearing Date: Friday, January 31, 2014 at 9:00am
Conference Room: 229

Dear Chair Baker and Members of the Committee:

We submit this testimony in support of S.B. 2821 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. 2821, 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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JOSEPH P. GUNSET
General Counsel

LLOYD'S

January 30, 2014

VIA EMAIL

Senator Rosalyn H. Baker
Chair, Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230
415 South Beretania Street
Honolulu, HI 96813

Re: Hawaii Senate Bill 2821 ("SB 2821")

Date: Friday, January 31, 2014
9:00 a.m., Conference Room 229

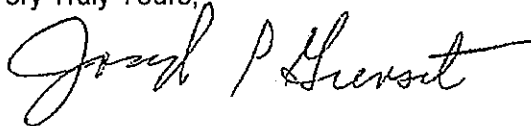
Dear Senator Baker:

We are writing to you in your capacity as the Chair of the Hawaii Senate Committee on Commerce and Consumer Protection (the "Committee"). The purpose of this letter is to express the support of Lloyd's of London ("Lloyd's") for SB 2821 which provides a framework for reducing collateral requirements for well-qualified alien reinsurers. We understand that the Committee will consider SB 2821 during a hearing on January 31, 2014. Lloyd's strongly supports this legislation and would like to thank the Committee for its consideration of SB 2821.

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 SB 2821 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 SB 2821.

Very Truly Yours,



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

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Lloyd's is authorised under the Financial Services and Markets Act 2000



Reinsurance Association of America

**Hawaii Senate Committee on Commerce
And Consumer Protection
Friday, January 31, 2014**

**Contact: Dennis Burke
Reinsurance Association of America
202/783-8325
burke@reinsurance.org**

**Statement of the Reinsurance Association of America
In support of the Reinsurance Provisions of
Senate Bill 2821 –**

The Reinsurance Association of America respectfully submits the following statement in support of the credit for reinsurance provisions of **Senate Bill 2821**, which grant discretion to the Commissioner of Insurance to allow domestic insurers to take credit for reinsurance purchased from reinsurers that the Commissioner determines meet certain eligibility criteria without the posting of 100% collateral as required under current law. The provisions of the legislation are an important and much needed update to Hawaii law and provide incentives to financially sound reinsurers to do business in Hawaii. Further, the legislation is critical to the U.S. states' role in the insurance regulatory modernization debate both at the federal level and internationally.

The Reinsurance Association of America is the leading trade association of property and casualty and life reinsurers doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross border basis. The RAA represents its members before state, federal and international bodies.

Reinsurance is essentially insurance for insurance companies. It is purchased by an insurer as a way to protect against unforeseen or extraordinary losses. Reinsurance serves to limit liability on specific risks, to increase individual insurers' capacity to write business, to share liability when losses overwhelm the insurer's resources, and to help insurers stabilize their business in the face of the wide swings in profit and loss margins inherent in the insurance business.

Hawaii's credit for reinsurance law determines the conditions under which an insurer domiciled in Hawaii can take financial statement credit for the reinsurance it purchases either as an asset or as a reduction of liabilities. As such, credit for reinsurance laws are important since there are



Reinsurance Association of America

few instances in which a ceding insurer would be willing to pay out premiums to a reinsurer without being able to reflect a corresponding increase in assets or reduction in its liabilities. Current law dictates that in order for a Hawaii insurer to take credit for reinsurance, it must purchase reinsurance from a reinsurer that is either licensed in Hawaii, accredited by Hawaii (streamlined licensing based on another U.S. state license), or, for other non-admitted (typically non-U.S.) reinsurers, puts up collateral in an amount equal to 100% of its liabilities. There have been many advances in global regulation, cooperation and transparency since the development of this method of regulation in the 1980s.

Current Hawaii collateral requirements force reinsurers to tie up capital that could be used to write more reinsurance in the U.S. This capacity is particularly important for catastrophic risk, such as hurricane risk, and commercial liability, a key component to sound business operation. This legislation gives the Commissioner of the Division of Insurance the discretion to take into account the strength of other regulatory regimes as well as the strength of individual reinsurers and in appropriate circumstances, reduce these reinsurance collateral requirements.

Under the bill, collateral reduction is permissive, not automatic. That decision would rest within the sound discretion of the Insurance Division. This decision would include an analysis of the financial strength of the reinsurer as well as a number of evaluative factors designed to ensure that only the most financially strong reinsurers from rigorous regulatory jurisdictions receive a reduction in collateral requirements and that Hawaii insurers and insureds are protected. Among the factors the Commissioner must consider are: a reinsurer's financial rating, the regulatory authority in the reinsurer's home country, financial statements and reports of the reinsurer, regulatory cooperation of the reinsurer's home country, the reciprocal treatment of U.S. reinsurers in the reinsurer's home country, enforcement of valid U.S. judgments in the reinsurer's home country, and any other matters deemed relevant to the Commissioner. A reinsurer seeking a collateral reduction for new business will have to apply to the Insurance Division and submit proof that it satisfies all the criteria to the satisfaction of the Commissioner, and must do so each year. Thus, the bill allows the Commissioner to approve collateral relief only after a thorough evaluation of the reinsurer and its regulator and provides an annual review



Reinsurance Association of America

of certified reinsurers. Further, the bill does nothing to change the fact that Hawaii insurers can negotiate the terms of their reinsurance contracts with reinsurers, including collateral. The bill provides only the opportunity for regulatory collateral reduction and allows the parties to address additional collateral if desired.

The bill empowers the Hawaii Insurance Division to require 100% collateral if the circumstances that led to the reduction in collateral change, such as the reinsurer failing to honor judgments entered against it by a U.S. Court, or if its financial condition no longer qualifies for a reduction. In this way, the bill actually increases the influence the Insurance Division has over the actions of non-U.S. reinsurers.

The Commissioner's discretion provided by the bill will make Hawaii a more attractive U.S. market for global reinsurers. Current Hawaii collateral requirements force non-U.S. reinsurers to use their capital inefficiently. Reduced collateral requirements, on the other hand, frees up that capital, encouraging reinsurers to write more business. Reinsurers, like other businesses, are attracted to those markets where they can deploy capital most productively. This bill would create such an environment in Hawaii.

Additionally, the legislation positions Hawaii as a proactive participant in both the federal and international regulatory insurance modernization debate. Both the EU and the U.S. federal government are looking critically at the current insurance regulatory landscape. One issue that is consistently raised in the debate is the application of state collateral requirements. By enacting the Division of Insurance's proposed legislation, Hawaii is demonstrating the ability of the state-based insurance regulatory system to address international insurance issues.

Hawaii's adoption of **Senate Bill 2821** will be beneficial to both residents and business in the state. The Reinsurance Association of America encourages members of the Legislature to enact this important legislation. Thank you for your consideration.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS IN SUPPORT OF
SENATE BILL 2821, RELATING TO INSURANCE, WITH RESERVATIONS

January 31, 2014

Via e mail: cpntestimony@capitol.hawaii.gov

Honorable Senator Rosalyn H. Baker, Chair
Committee on Commerce & 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 2821, 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.

SB 2821 adopts updated revisions to the national Association of Insurance Commissioners’ model laws relating to Credit for Reinsurance, Standard Valuation Law, Standard Nonforfeiture 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, SB 2821 contains many provisions which deviate from the foregoing NAIC model laws.

Credit for Reinsurance

Section 1 of SB 2821 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:”

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 SB 2821 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, of SB 2821 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, 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, 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.

At page 76, which begins at line 1, 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 SB 2821 amends several provisions of HRS Section 431:10D-104.

ACLI notes that there is a typographical error which appears on page 141, 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 132, 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 nonforefeiture interest rate shall not be less than four percent.

Insurance Holding Company System Regulatory Act

Section 13 of SB 2821 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 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.~~

Existing language that has been stuck 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 SB 2821. 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~~

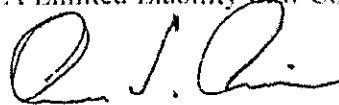
~~Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines 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 or 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 language to 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 standard, ACLI supports passage of SB 2821.

Again, thank you for the opportunity to testify in support of SB 2821, relating to Insurance, with reservations, as noted above.

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SB2821

Submitted on: 1/30/2014

Testimony for CPN on Jan 31, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	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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