

# SB2853

**Measure Title:** RELATING TO INSURANCE.

**Report Title:** Risk Management and Own Risk and Solvency Assessment Act; Model Risk Retention Act; Captives; Insurance

**Description:** Adopts the National Association of Insurance Commissioners' ("NAIC") Risk Management and Own Risk and Solvency Assessment Act; applies chapter 431, Hawaii Revised Statutes, provisions to risk retention captive insurance companies; includes new corporate governance language from the NAIC Model Risk Retention Act.

**Companion:** [HB2324](#)

**Package:** Governor

**Current Referral:** CPH, WAM

**Introducer(s):** KOUCHI (Introduced by request of another party)



DAVID Y. IGE  
GOVERNOR  
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TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016

Wednesday, February 3, 2016  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2853 – RELATING TO INSURANCE.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department strongly supports this Administration bill.

The purposes of this bill are to: (1) add a new article to chapter 431, Hawaii Revised Statutes (“HRS”), to require certain insurers and insurance groups to maintain a risk management framework, to regularly perform an own risk and solvency assessment (“ORSA”), and to annually file an ORSA summary report; (2) amend § 431:19-115(b), HRS, to cite §§ 431:3-409, 431:3-411, and 431:3-412, HRS, as being applicable to risk retention captive insurance companies, as required for accreditation by the National Association of Insurance Commissioners (“NAIC”); and (3) amend § 431K-1, HRS, to include the definitions “board of directors” and “director,” and amend § 431K-2, HRS, to include new corporate governance language from the NAIC Model Risk Retention Act for accreditation purposes.

SECTION 1 of the bill adopts the NAIC’s Risk Management and ORSA Model Act, which stems from the NAIC’s Solvency Modernization Initiative (“SMI”). The SMI is

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**DCCA Testimony of Gordon Ito**  
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a critical self-examination to update the United States insurance solvency regulation framework and to review international developments regarding insurance supervision, banking supervision, and international accounting standards and their use in national insurance regulation.

In 2011, the NAIC Group Solvency Issues (E) Working Group determined that the enterprise risk management and ORSA requirements were appropriate and beneficial for inclusion in the United States solvency framework. The ORSA would give state insurance regulators access to information that would improve their understanding of the insurer/insurance group and the material risks to which the insurer/insurance group is exposed, thereby benefiting solvency regulation. In addition, the ORSA would provide a group-level perspective on risk and capital.

The NAIC is requiring that all states adopt its Risk Management and ORSA Model Act by January 1, 2018, to maintain accreditation with the NAIC. Accordingly, the Department proposes adopting this bill to retain accreditation and enable adoption of the Hawaii Administrative Rules in a timely manner before the 2018 deadline.

SECTION 2 of the bill amends § 431:19-115(b), HRS, to apply supplemental provisions, rules, and exceptions for risk-based capital, as well as severability and notice provisions, to risk retention captive insurance companies for NAIC accreditation purposes.

SECTIONS 3 and 4 of the bill amend §§ 431K-1 and 431K-2, HRS, to adopt the NAIC's Model Risk Retention Act for NAIC accreditation purposes. The NAIC has required that all states licensing captive risk retention groups adopt its model act by January 1, 2017.

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

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 3, 2016, 9:00 a.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2853  
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 would adopt a new article in chapter 431, HRS, relating to risk management and to own risk and solvency assessment. OIP is testifying to point out a problem with the bill’s reference to chapter 92F, HRS, the Uniform Information Practices Act (“UIPA”) and to recommend a technical amendment.

At bill page 10, lines 4-5, the proposed new article provides that documents provided to or created by the Insurance Commissioner pursuant to the new article “shall not be subject to chapter 92F.” Assuming that the intent was to make the documents confidential by law, that language should instead read “shall not be **disclosable under** chapter 92F.” Being “subject to” the UIPA only means that records are maintained by a government agency; it does not mean that the agency automatically must disclose the records. In fact, the UIPA has exceptions to disclosure allowing an agency to deny access to certain government records, including an exception for records made confidential by law, as would be the case for these records if this Committee uses OIP’s recommended language. If the

documents were “not subject to” the UIPA, as the proposed bill’s language provides, the Insurance Division would have no legal obligation to even acknowledge requests for such records, or to deny the requests in writing and state the statutory basis for the denial. (See section 2-71-13 and -14, HAR, implementing the UIPA.) Such a result would cause confusion for the public and would run counter to the UIPA’s purpose of providing a uniform statutory scheme for handling requests for government records.

Please note that OIP does not have the same concern regarding the “shall not be subject to the UIPA” language at bill page 15, lines 11-12, as the reference there is to documents in the possession or control of the National Association of Insurance Commissioners or third party consultants, which would not be considered “government records” subject to the UIPA in any case.

Thank you for the opportunity to testify.

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

February 1, 2016

*Filed via electronic testimony submission system*

**RE: SB 2853, ORSA - NAMIC's Written Testimony in Support of Legislation**

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 3, 2016, 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 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 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 supports SB 2853, because it is closely modeled after the National Association of Insurance Commissioners' (NAIC's) ORSA Model Act, which was created after extensive evaluation, thoughtful debate, and reasoned compromise by a broad cross-section of interested stakeholders and regulators, including representatives of the national insurance trade associations, multi-state insurance companies, and interested consumer protection groups.

To date, thirty-five states have adopted the NAIC ORSA Model Act, because it reflects a reasoned approach to enhance insurer solvency and risk management in a pro-consumer protection and pro-market competition manner.

NAMIC respectfully requests that the Hawaii State Legislature pass SB 2853, so that the Hawaii Division of Insurance (DOI) will be able to satisfy this regulatory requirement needed for the DOI to maintain its NAIC accreditation.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto: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, written in a professional style.

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



An Independent Licensee of the Blue Cross and Blue Shield Association

February 3, 2016

The Honorable Rosalyn H. Baker, Chair  
The Honorable Michelle N. Kidani, Vice Chair  
Senate Committee on Commerce, Consumer Protection  
and Health

Re: SB 2853 – Relating to Insurance

Dear Chair Baker, Vice Chair Kidani, and Committee Members:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on SB 2853 which would adopt the National Association of Insurance Commissioners' (NAIC) Risk Management and Own Risk Solvency Act (ORSA). In addition, the Bill provides for a corporate governance structure for Risk Retention Groups. HMSA supports the intent of this Bill.

The recent global financial crisis severely impacted the world financial system, including insurers. Regulators were forced to pay closer attention to the risks created by activities going on outside of those entities, as well as the reputational and contagion issues that could exist. State insurance regulators needed to be able to assess the financial condition of an insurer and its holding company. Last year, the NAIC adopted the ORSA model Act that would require insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process, and it will allow regulators to form an enhanced view of an insurer's ability to withstand financial stress.

Insurers would be required to regularly perform an ORSA and file a confidential ORSA Summary Report of the assessment with the Insurance Commissioner. Under ORSA, the issuer assesses the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. Insurers analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

The solvency of our members' investment in their healthcare is as critical as is our members' safety and wellbeing. We believe the ORSA model Act will help to ensure our members' investment is secured.

Thank you for allowing us to testify on HB 2853.

Sincerely,

Jennifer Diesman  
Vice President, Government Relations.



TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN SUPPORT OF SB 2853,  
RELATING TO INSURANCE

February 3, 2016

Via e mail:

Honorable Rosalyn H. Baker, Chair  
Committee on Commerce, Consumer Protection and Health  
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 2853, relating to Insurance.

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 sixteen (216) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 88% of the annuity considerations in this State.

The NAIC approved the NAIC Risk Management and Own Risk and Solvency Assessment (“ORSA”) Model Act on September 12, 2012. The ORSA Model Act outlines the information that regulators will review when evaluating insurers’ risk management practices and solvency positions. The Model requirements enable regulators to assess current and likely future solvency – through a self-assessment and certain disclosures of all reasonably foreseeable and relevant material risks. An insurer that is subject to the ORSA requirement is expected to have a risk management framework, to regularly assess the adequacy of that risk management framework and the insurer’s current prospective solvency position, to internally document the process and results, and to provide an annual high-level summary report to the state’s regulator.

As of October 23, 2015, thirty-three states have adopted ORSA.

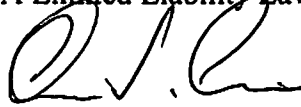
SB 2853 adopts the ORSA Model Act. Generally, ACLI supports uniform national legislation.

SB 2853 would create uniformity between other states’ laws and Hawaii law with regard to risk management practices and solvency positions.

Accordingly, ACLI supports SB 2384 and requests that this Committee pass it into law.

Again, thank you for the opportunity to testify in support of SB 2384.

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