

SB953

Measure Title: RELATING TO INSURANCE.

Report Title: Insurance Fraud Violations; Insurer; Certificate of Authority; Uniform Certificate of Authority Application; Fees; Motor Vehicle Self-Insurance; Declaration by the Commissioner; Nonresident Adjusters; Insurance Producer License; Producer Licensing Model Act; Appointments; Notification of Termination; Motor Vehicle Insurance; Third-Party Claimant; General Excise Tax; Certificate of Ownership Fee; S

Description: Updates Hawaii Revised Statutes title 24 by: changing the dollar amount of the benefits, recovery, or compensation obtained or attempted to be obtained for a class C felony, and misdemeanor; requiring insurers seeking a certificate of authority to submit a Uniform Certificate of Authority Application to the Insurance Division and to clarify that the insurer's name must comply with sections 431:3-202(b) and 431:4-104(d)(1); including application and service fees charged to motor vehicle self-insurers; allowing the Insurance Commissioner to issue a declaration before an event that may require the use of nonresident adjusters; complying with the National Association of Insurance Commissioners' Producer Licensing Model Act; allowing third-party claimants to claim the general excise tax and certificate of ownership fee in total loss claims; requiring that certain costs and expenses incurred by the Insurance Commissioner during supervisory proceedings be paid or reimbursed by the assets of the insurer; and making technical, nonsubstantive amendments for clarity and consistency.

Companion: [HB1087](#)

Package: Governor

Current Referral: CPH/JDL, WAM

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



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TO THE SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND JUDICIARY AND LABOR

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Friday, February 3, 2017
9:30 am

TESTIMONY ON SENATE BILL NO. 953 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, GILBERT S.C. KEITH-AGARAN,
CHAIRS, 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”). The Department strongly supports this Administration bill, which is a
companion to H.B. 1087.

The Department believes the various provisions proposed in this bill will update
and improve Hawaii’s Insurance Code in a number of areas. Specifically, this measure
will do the following:

SECTION 1 of the bill conforms fraud monetary amounts with the penal code in
changing the dollar amount of the benefits, recovery, or compensation obtained or
attempted to be obtained for a class C felony and misdemeanor, by amending section
431:2-403(b).

SECTIONS 2 and 3 of the bill require insurers seeking a certificate of authority to
submit a Uniform Certificate of Authority Application to the Insurance Division and to

Senate Bill No. 953
DCCA Testimony of Gordon Ito
Page 2

clarify that the insurer's name must comply with sections 431:3-202(b) and 431:4-104(d)(1), by amending sections 431:3-212 and 431:3-212.5(b).

SECTION 4 of the bill establishes application and service fees for motor vehicle self-insurers by amending section 431:7-101(a).

SECTION 5 of the bill allows the Insurance Commissioner to issue a declaration prior to an event that may require the use of nonresident adjusters, and to not require a governor's proclamation before issuing the declaration, by amending section 431:9-201(b). Currently, the Commissioner must wait until a catastrophe has occurred, which typically the Governor proclaims. This amendment will allow the Commissioner to proactively trigger the arrival and assistance of nonresident adjusters in the State ahead of an emergency.

SECTIONS 6, 7, and 8 of the bill conform article 9A to the National Association of Insurance Commissioners' Producer Licensing Model Act by eliminating producer-to-producer appointments and amending the definition of "terminate" in sections 431:9A-102, 431:9A-114, and 431:9A-115. In 2001, when Hawaii adopted the NAIC's Producer Licensing Model Law to conform with the uniformity and reciprocity requirements, we deviated in one area by retaining the ability of agents to appoint other agents. This was a carry over from the old general agency scheme, as requested by insurance agents. Hawaii is the only state that has a "producer-to-producer" appointment law. The Division developed a computer system to accommodate this difference which is a legacy system over 12 years old. Deleting producer-to-producer appointments moves the Insurance Code to uniformity with other states' statutes and also provides options for the Division in eventually moving to another computer system to replace the current one.

SECTION 9 of the bill allows third-party claimants to claim the general excise tax and certificate of ownership fee in total loss claims by amending section 431:10C-312.

SECTION 10 of the bill requires certain costs and expenses incurred by the Commissioner during supervisory proceedings be paid by or reimbursed from the assets of the insurer by amending section 431:15-201. This requirement is similar to that in section 431:15-303(a) for rehabilitation proceedings.

Senate Bill No. 953
DCCA Testimony of Gordon Ito
Page 3

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



HAWAII

Senate Committee on Commerce, Consumer Protection & Health
Senate Committee on Judiciary and Labor

Hearing Date: February 3, 2017 Time: 9:30 am

RE: SB 953 – Relating to Insurance

Chair Baker, Chair Rhoads, and Members of the Committees on Commerce, Consumer Protection & Health and Judiciary & Labor, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii represents life insurance producers/agents across Hawaii who primarily market life insurance, annuities, long term care insurance and disability income insurance products.

We are limiting our comments to the provisions in SB 953 from pages 8 to 19 – Sections 6 to 8, that **we support**.

Sections 6 to 8 of SB 953 will change the way producers are appointed in Hawaii. This measure will adopt the NAIC model for producer licensing. Our current system is an anomaly in the country since we are **currently able to appoint producer** (an insurance agency can be a producer or an individual) **to producer** and insurer to producer. This proposed amendment will allow for **only insurer to producer** appointments and repeal all “producer to producer” appointments. Prior to the enactment of the producer licensing law that was passed in 2001, we had a 3 tier classification system for insurance licensees. Producer to producer appointments were allowed in the new 2001 appointment scheme, along with insurer to producer appointments so that all Hawaii appointments could be found on the Insurance Division’s website.

Section 7 of the SB 953 outlines the appointment process, the required reporting time frames to the Insurance Commissioner, and the appointment fee. Section 8 of SB 953 outlines the termination process, the required reporting time frames to the Insurance Commissioner, other requirements for the producer initiating the termination, and immunity from civil liability for notification of termination.

Thank you for allowing to us to share our view.

Cynthia Takenaka
Executive Director

TESTIMONY OF MICHAEL TANOUE

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Friday, February 3, 2017
9:30 a.m.

SB 953

Chair Baker, Vice Chair Nishihara, and members of the Committee on Commerce, Consumer Protection, and Health, and Chair Keith-Agaran, Vice Chair Rhoads, and members of the Committee on Judiciary and Labor, my name is Michael Tanoue, counsel for the Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council takes no position on SB 953, except in two areas.

First, the Hawaii Insurers Council requests that the effective date of Sections 6, 7 and 8 (regarding insurance producers) be postponed to, ideally, January 1, 2019. Currently, the bill makes Sections 6 and 7 effective on January 1, 2018, and Section 8 effective upon approval. Hawaii insurers and insurance agency principals will need to draft new agreements, which should not be problematic. The challenge will be obtaining signatures from thousands of insurance producers in a timely manner, some of whom may be nonresidents. A delay in the effective date of these three sections will provide adequate time for individual producers to discuss the new agreements with each of the

insurers they represent prior to signing so that they will receive uninterrupted commission payments.

Second, the Hawaii Insurers Council offers one comment and proposes one amendment to Section 9.

- (a) Our comment is that this section conflates first-party and third-party concepts, which could lead to confusion. HRS § 431:10C-309 through HRS § 431:10C-312 all deal with first-party insureds rather than “third-party claimants.” While we do not believe that this will be a practical problem, it would be clearer to include the desired language in a separate section.
- (b) Our proposed amendment is related to our comment (a) above, as it distinguishes between the types of coverage afforded to first-party insureds compared to “third-party claimants.” Section 9 does not limit an insurer’s obligations to the Property Damage Liability limit applicable to the claim for “third-party claimants.” First-party collision or other-than-collision coverages typically do not have a policy limit, per se. A strict reading of Section 9 of the bill implies that an insurer may be obligated to pay in excess of the Property Damage Liability limit of coverage, and we do not believe that this is the intent.

Hawaii Insurers Council requests that the bill explicitly provide that the insurer’s obligations to a “third-party claimant” are subject to the Property Damage Liability limit of the applicable auto policy. For example, a new subsection (e) could be added to section 431:10C-312 to read:

“(e) An insurer’s obligation to reimburse a third-party claimant for the applicable general excise tax and certificate of ownership fee as set forth in this section shall be subject to the property damage liability limit of the policy.”

Thank you for the opportunity to testify.