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TO THE HOUSE COMMITTEE ON
FINANCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 28, 2018
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2774, S.D.1, H.D.1, RELATING TO
INSURANCE.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA” or “Department”) appreciates the opportunity to testify in strong support of S.B. 2774, S.D.1, H.D.1, Relating to Insurance. My name is Gordon Ito, and I am the Insurance Commissioner (“Commissioner”) for the Department’s Insurance Division (“Division”).

The Department believes the various provisions proposed in this bill will update and improve Hawaii Revised Statutes titles 24 and 26 in a number of areas.

SECTION 1 of this bill adopts the National Association of Insurance Commissioners’ (“NAIC”) Corporate Governance Annual Disclosure Model Act to maintain the State’s accreditation with the NAIC by adding a new article to chapter 431. This bill provides more information on an annual basis to regulators regarding insurers’ corporate governance practices. Currently, regulators obtain a significant amount of information on insurers’ corporate governance practices during full-scope examinations, which typically occur once every three to five years. However, information on governance practices, including changes that can substantially impact current and

prospective solvency, is not widely available to regulators in the period between onsite examination. Through the adoption of standards in this area, regulators can ensure that sufficient information on governance practices is available to assess insurer solvency on an annual basis.

SECTIONS 2, 6, 8, 9, and 21 of this bill allow the DCCA and the Commissioner to determine whether an applicant's request to add or change a trade name or an assumed name satisfies chapter 431 ("Insurance Code") and corporation law requirements. This will ensure that both the DCCA and the Commissioner will receive notice of a proposed name change and that both have express authority to permanently retire or bar the use of a trade name or an assumed name associated with a revoked license.

SECTIONS 3 and 10 of this bill move the newly enacted section 431:10-104(5) from article 10 to article 10A, which is the more appropriate section for the short-term health insurance pre-existing disclosure requirement. In addition, SECTIONS 3, 5, 11, 12, 25, and 32 of this bill clearly provide for reimbursement to providers who deliver coverage managed by chapter 431, article 10A and chapter 432, article 1 and delete reimbursement mandates added to the Insurance Code in conjunction with medical service provider practice acts. These amendments do not remove any existing mandates. These amendments will clarify that coverage for services mandated by chapter 431, article 10A should include reimbursement to providers and will discourage the practice of creating reimbursement mandates in the Insurance Code to accompany expansions in provider practice acts.

SECTIONS 4, 14, and 15 of this bill adopt 2014 revisions to the NAIC's Insurance Holding Company System Regulatory Act to maintain the State's accreditation with the NAIC. This bill provides clear legal authority to a designated state to act as the group-wide supervisor for an internationally active insurance group.

SECTION 7 of this bill eliminates optional language in the NAIC's Standard Valuation Model Law to streamline how changes to the valuation manual become effective.

SECTIONS 13, 26, and 27 of this bill correct a technical drafting error by replacing “designed” with “assigned” in the definition of “perceived gender identity” and accordingly conform State law to federal guidance on gender identity.

SECTIONS 16, 17, 18, and 19 of this bill remove obsolete language and clarify existing language to avoid ambiguity for insurers submitting rate filings.

SECTION 20 of this bill amends section 431:14G-105 by removing obsolete language and clarifying existing language to avoid ambiguity for managed care plans submitting rate filings.

SECTION 22 of this bill amends section 431:19-115 to give the Commissioner additional regulatory authority to supervise or liquidate a captive, rather than simply suspending or revoking its insurance license.

SECTIONS 23 and 24 of this bill temporarily allow the Division to create stopgap measures to implement the NAIC’s Network Adequacy Model Act and to promulgate administrative rules with the benefit of any future NAIC guidance and input from other jurisdictions.

The Department strongly supports this administration bill because it would further enhance consumer protection. Thank you for the opportunity to testify, and we ask for your favorable consideration.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 28, 2018

The Honorable Sylvia Luke, Chair
The Honorable Ty J. K. Cullen, Vice Chair
House Committee on Finance

Re: SB 2774, SD1, HD1 – Relating to Insurance

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2774, SD1, HD1 which updates various areas of the State's insurance laws to: adopt the NAIC's Corporate Governance Annual Disclosure Model Act beginning on 1/1/2020; allow the department of commerce and consumer affairs and the insurance commissioner to determine whether a request to add or change a trade name or assumed name satisfies certain requirements; clarify certain provider reimbursement requirements; adopt revisions to the Insurance Holding Company System Regulatory Act beginning on 1/1/2020; provide the insurance commissioner with additional regulatory authority to supervise or liquidate a captive insurer; enable the insurance division to create stopgap measures, until 12/31/2020, to implement the Network Adequacy Model Act; change notice requirements and recordkeeping obligations for vehicle protection product warrantors and service contract providers; and make various housekeeping amendments to clarify existing language and avoid ambiguities. HMSA supports this Bill and acknowledges this Bill is a work in progress. We appreciate the work of the previous Committees in taking into consideration our proposed amendments.

Thank you for allowing us to testify in support of SB 2774, SD1, HD1.

Sincerely,

Pono Chong
Vice-President, Government Relations

March 28 , 2018

The Honorable Sylvia Luke, Chair
The Honorable Ty Cullen, Vice Chair
House Committee on Finance

Re: Support Senate Bill 2774, SD1, HD1 Based on Amendments in House Draft 1 as it relates to Vehicle Protection Product Warrantors and Service Contract Providers

On behalf of its members, the Motor Vehicle Protection Products Association (MVPPA) would like to express its **support of the HOUSE DRAFT 1 for Senate Bill (SB) 2774**, because as currently drafted, it deleted the Senate Draft 2 version's sections 28 through 31 based on recent discussions with the Insurance Commissioner.

By way of background, MVPPA is a national trade association with member companies that include providers, retailers, administrators, and insurers of motor vehicle protection products ("VPPs"), which include protection service warranties and protection products. Collectively, MVPPA's members represent the leading companies in the protection products industry. The MVPPA's member companies offer over 80% of the protection products available in the marketplace today and include Ally Insurance, AmTrust Financial Services, Assurant Solutions, Automobile Protection Corporation (APCO), Toyota Motor Insurance Services, CNA National Warranty Co., and Nation Safe Drivers. MVPPA's primary goal is to establish a uniform, balanced regulatory landscape across jurisdictions, one that minimizes confusion or dispute about the regulatory status of protection products.

MVPPA previously opposed sections 28 through 31 of House Bill 2347/Senate Bill 2774 for two primary reasons:

- 1) Those sections have been represented as alleviating administrative burdens upon the VPP warranty and service contract industries and the Division, but in practice the proposed revisions are more likely to increase the administrative burden on all interested parties.
- 2) Several of the proposed revisions relative to service contract providers not only take Hawaii further from the NAIC's Service Contract Model Act, but actually remove or revise provisions under current law that are verbatim provisions from the NAIC's model act.

Now that the recent draft deleted those provisions, MVPPA can now be in support of the bill as it does not adversely affect its industries interests and maintains the current regulatory framework for annual filings and recordkeeping. Please do not hesitate to contact me directly with any questions, concerns, or requests for additional information at jim@meenanlawfirm.com or (850) 425-4000.

Thank you for your time and consideration in this matter.

"Tire, wheel, windshield, dent, appearance care and other valuable coverage."

**TESTIMONY ON SENATE BILL NO. 2774, S.D.1, H.D.1
RELATING TO INSURANCE**

HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Wednesday, March 28, 2018, 2:00 p.m.
Conference Room 308
State Capitol
415 South Beretania Street

To Representative Sylvia Luke, Chair; Representative Ty J.K. Cullen, Vice Chair; and members of the House Committee on Finance:

My name is Matthew Takamine, and I am submitting this testimony as a director and Chair of the Board of Directors of the Hawai'i Captive Insurance Council (HCIC). The HCIC is a nonprofit corporation that is committed to promoting, developing, and maintaining a quality captive insurance industry in the State of Hawai'i. In partnership with the State of Hawai'i Insurance Division, the HCIC provides information and education on issues affecting captives, which includes risk retention captive insurance companies ("RRGs"), and assists the State of Hawai'i in promoting Hawai'i as a quality captive domicile on the local, national, and international level.

The HCIC generally supports Senate Bill No. 2774, Senate Draft 1, House Draft 1 (SB2774 SD1 HD1), but **opposes** the insertion of "3D" in subsection (b) on page 59, line 21, which makes RRGs subject to the National Association of Insurance Commissioner's (NAIC) Risk Management and Own Risk and Solvency Assessment Model Act ("ORSA").

The NAIC has a separate set of accreditation standards for the governance of RRGs. It is the understanding of the HCIC that the accreditation standards applicable to RRGs do not require a state to adopt the ORSA requirements.

Furthermore, it is our understanding that RRGs domiciled in Hawaii would be automatically exempt from the application of ORSA because all are well below the exemption threshold of \$500 million in annual direct written and assumed premium, set forth in Section 431:3D-106, Hawai'i Revised Statutes.

It should be noted that subjecting RRGs to unnecessary regulation could potentially jeopardize Hawaii's position as a leading and competitive captive domicile. Hawaii cannot afford to be viewed as a jurisdiction that promulgates laws that are or may be construed as overly burdensome.

Thank you for this opportunity to submit comments.

Respectfully submitted:
Matthew Takamine
Director and Chair of the Board of Directors
Hawai'i Captive Insurance Council

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

March 26, 2018

Honorable Sylvia Luke, Chair
Honorable Ty J. K. Cullen, Vice Chair
Committee on Finance
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: S.B. NO. 2774, S.D.1, H.D. 1, RELATING TO INSURANCE

Dear Chair Luke, Vice Chair Cullen and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on Senate Bill No. 2774, Senate Draft 1, House Draft 1, relating to insurance, which is to be heard by your Committee on Finance on March 28, 2018.

Section 3 of Senate Bill No. 2774, Senate Draft 1, House Draft 1, adds two new sections, one of which requires a disclaimer that the subject policy does not satisfy the health coverage requirement of the Affordable Care Act. As drafted, Senate Bill No. 2774, Senate Draft 1, House Draft 1, exempts from the disclosure requirement "specified disease, long-term care, disability income, medicare supplement, dental, or vision" policies.

AFLAC respectfully submits that "accident-only" policies also should be included in the exemption. This would be consistent with 45 CFR §148.220, which also exempts the other policies excluded from the disclaimer requirement under Section 3 of Senate Bill No. 2774, Senate Draft 1, House Draft 1.

45 CFR §148.220(b)(4)(iv) specifies the disclaimer language contained in Section 3 of the Senate Bill No. 2774, Senate Draft 1, House Draft 1 (as modified), but only applies to "hospital indemnity or other fixed indemnity insurance." However, 45 CFR §148.220(a)(1) provides for a general exemption of accident-only policies (*i.e.*, no disclaimer required):

(a) *Benefits excepted in all circumstances.* The following benefits are excepted in all circumstances:

(1) Coverage only for accident (including accidental death and dismemberment).

45 CFR §148.220(a)(1) (underscoring added).

Accordingly, under 45 CFR §148.220, the disclaimer language is not required for accident-only policies and AFLAC respectfully requests that the first new section (HRS §431:10A-A) to be added by Section 3 of the Senate Bill No. 2774, Senate Draft 1, be amended so that accident-only policies (without sickness or wellness riders) also are exempted from the disclaimer requirement, as follows:

SECTION 3. Chapter 431, Hawaii Revised Statutes,
is amended by adding two new sections to part I of
article 10A to be appropriately designated and to read
as follows:

"§431:10A-A **Required disclaimer.** Any limited
benefit policy, certificate, application, or sales
brochure that provides coverage for accident and
sickness, excluding specified disease, long-term care,
disability income, accident-only (without sickness or
wellness riders), medicare supplement, dental, or
vision, shall disclose in a conspicuous manner and in
no less than fourteen-point boldface type the
following, or substantially similar, statement:

"THIS IS NOT QUALIFYING HEALTH COVERAGE
("MINIMUM ESSENTIAL COVERAGE") THAT SATISFIES THE
HEALTH COVERAGE REQUIREMENT OF THE AFFORDABLE
CARE ACT."

(Additional language underscored and bolded.)

Honorable Sylvia Luke, Chair
Honorable Ty J. K. Cullen, Vice Chair
Committee on Finance
March 26, 2018
Page 3

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read "Peter J. Hamasaki", written in a cursive style.

Peter J. Hamasaki

Encl. (45 CFR §148.220)

PJH:fk

45 CFR § 148.220 Excepted benefits.

The requirements of this part and part 147 of this subchapter do not apply to any individual coverage in relation to its provision of the benefits described in paragraphs (a) and (b) of this section (or any combination of the benefits).

(a) Benefits excepted in all circumstances. The following benefits are excepted in all circumstances:

- (1)** Coverage only for accident (including accidental death and dismemberment).
- (2)** Disability income insurance.
- (3)** Liability insurance, including general liability insurance and automobile liability insurance.
- (4)** Coverage issued as a supplement to liability insurance.
- (5)** Workers' compensation or similar insurance.
- (6)** Automobile medical payment insurance.
- (7)** Credit-only insurance (for example, mortgage insurance).
- (8)** Coverage for on-site medical clinics.
- (9)** Travel insurance, within the meaning of § 144.103 of this subchapter.

(b) Other excepted benefits. The requirements of this part do not apply to individual health insurance coverage described in paragraphs (b)(1) through (b)(6) of this section if the benefits are provided under a separate policy, certificate, or contract of insurance. These benefits include the following:

- (1)** Limited scope dental or vision benefits. These benefits are dental or vision benefits that are limited in scope to a narrow range or type of benefits that are generally excluded from benefit packages that combine hospital, medical, and surgical benefits.
- (2)** Long-term care benefits. These benefits are benefits that are either -
 - (i)** Subject to State long-term care insurance laws;
 - (ii)** For qualified long-term care insurance services, as defined in section 7702B(c)(1) of the Code, or provided under a qualified long-term care insurance contract, as defined in section 7702B(b) of the Code; or
 - (iii)** Based on cognitive impairment or a loss of functional capacity that is expected to be chronic.

(3) Coverage only for a specified disease or illness (for example, cancer policies) if the policies meet the requirements of § 146.145(b)(4)(ii)(B) and (C) of this subchapter regarding noncoordination of benefits.

(4) Hospital indemnity or other fixed indemnity insurance only if -

(i) The benefits are provided only to individuals who attest, in their fixed indemnity insurance application, that they have other health coverage that is minimum essential coverage within the meaning of section 5000A(f) of the Internal Revenue Code, or that they are treated as having minimum essential coverage due to their status as a bona fide resident of any possession of the United States pursuant to Code section 5000A(f)(4)(B).

(ii) There is no coordination between the provision of benefits and an exclusion of benefits under any other health coverage.

(iii) The benefits are paid in a fixed dollar amount per period of hospitalization or illness and/or per service (for example, \$100/day or \$50/visit) regardless of the amount of expenses incurred and without regard to the amount of benefits provided with respect to the event or service under any other health coverage.

(iv) A notice is displayed prominently in the application materials in at least 14 point type that has the following language: "THIS IS A SUPPLEMENT TO HEALTH INSURANCE AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES."

(v) The requirement of paragraph (b)(4)(iv) of this section applies to all hospital or other fixed indemnity insurance policy years beginning on or after January 1, 2015, and the requirement of paragraph (b)(4)(i) of this section applies to hospital or other fixed indemnity insurance policies issued on or after January 1, 2015, and to hospital or other fixed indemnity policies issued before that date, upon their first renewal occurring on or after October 1, 2016.

(5) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act, 42 U.S.C. 1395ss, also known as Medigap or MedSupp insurance). The requirements of this part 148 (including genetic nondiscrimination requirements), do not apply to Medicare supplemental health insurance policies. However, Medicare supplemental health insurance policies are subject to similar genetic nondiscrimination requirements under section 104 of the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110-233), as incorporated into the NAIC Model Regulation relating to sections

1882(s)(2)(e) and (x) of the Act (The NAIC Model Regulation can be accessed at <http://www.naic.org>).

(6) Coverage supplemental to the coverage provided under Chapter 55, Title 10 of the United States Code (also known as CHAMPUS supplemental programs).

(7) Similar supplemental coverage provided to coverage under a group health plan (as described in § 146.145(b)(5)(i)(C) of this subchapter).

[62 FR 16995, Apr. 8, 1997; 62 FR 31696, June 10, 1997, as amended at 74 FR 51696, Oct. 7, 2009; 79 FR 30341, May 27, 2014; 81 FR 75327, Oct. 31, 2016]