



DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
LIEUTENANT GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Wednesday, March 14, 2018
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2938, S.D. 1, RELATING TO INSURANCE
REGULATORY VARIANCE.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2938, S.D. 1, Relating to Insurance Regulatory Variance. My name is Gordon Ito, and I am the Insurance Commissioner (“Commissioner”) for the Department’s Insurance Division. The Department strongly supports this bill and provides the following comments.

This bill proposes that the Commissioner have the authority of granting limited variances with respect to the enforcement or application of certain requirements of insurance laws. Applicants for these variances must justify that the variances do not have negative economic impacts, are warranted, and are beneficial to the public.

Technology and consumer expectations are rapidly transforming the regulated insurance industry. Insurers are making substantial investments in innovative insurance products, services, and technologies which hold great promise in mitigating risks, improving efficiencies, reducing transaction costs, speeding claims’ payments, and improving overall customer understanding of and satisfaction with this essential form of financial protection.

Without altering current statutory and rule requirements which regulate the financial viability and duties and obligations of insurers, it appears advantageous to have a procedure available to promote expanded competition and innovation for the benefit of consumers by providing narrowly tailored variances for insurers.

By actively engaging with and encouraging the piloting and testing of new and innovative products, pricing, and ways of delivering insurance to businesses and consumers, the State can encourage mitigation of risks resulting in reduced insurance costs and expand insurance markets, in particular, by making insurance transactions more accessible for first-time insurance buyers.

Thank you for the opportunity to testify on this measure.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Consumer Protection & Commerce

From: Cheryl Kakazu Park, Director

Date: March 14, 2018, 2:00 p.m.
State Capitol, Conference Room 329

Re: Testimony on S.B. No. 2938, S.D. 1
Relating to Insurance Regulatory Variance

Thank you for the opportunity to submit testimony on this bill, which would permit the Insurance Commissioner to approve applications for no action letters, waivers, or variances of insurance laws and regulations. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **seeks clarification of an apparent conflict between two provisions relating to application information and suggests technical amendments.** OIP apologizes that it was not aware of this bill until recently and thus has not testified on it previously.

OIP's concern is with the interaction between proposed subsection 431:2-__ (c), beginning at bill page 5, line 4, and (e), beginning at bill page 6, line 12. Subsection (c) **requires the Commissioner to provide public notice of an application**, specifically including the applicant's name, the duration of the application, and the law or rule it applies to. However, subsection (e) provides that "[n]otwithstanding the provisions of subsection (c)," **information contained in an application is confidential** and a trade secret and not subject to public

disclosure, as is all information provided to the Commissioner by the applicant and the application itself.

OIP assumes that the applicant's name, the proposed duration of the application, and the law or rule the application applies to are all provided to the Commissioner as part of the application, and thus are "[i]nformation contained in an application," and also "information provided to the [C]ommissioner" by the applicant. Subsections (c) and (e) contradict each other, because **subsection (c) requires the Commissioner to provide public notice of the applicant name, the duration of the application, and the applicable law or rule, whereas subsection (e) mandates that all of those are confidential information not subject to public disclosure, "[n]otwithstanding the provisions of subsection (c)."**

This contradiction will provide a problem in the event OIP (or a court) is ever called on to interpret it. Concluding that the specific publication requirement trumps the confidentiality requirement would mean ignoring the specific statement that the confidentiality requirement applies notwithstanding the publication requirement in subsection (c). Concluding that the confidentiality requirement trumps the publication requirement would mean treating subsection (c) as essentially pointless, since the required notice couldn't include any of the information it was required to contain. For this reason, **OIP seeks an amendment to clarify whether the information listed in subsection (c) is in fact supposed to be disclosed to the public in a public notice, or whether it is supposed to be kept confidential as required by subsection (e).**

If the information listed in subsection (c) is supposed to be disclosed in a public notice as required by subsection (c), then at bill page 6, line 12, OIP recommends replacing subsection (e) as follows:

“(e) Notwithstanding the provisions of subsection (c), . . .”

with

“(e) Except as provided by subsection (c), . . .”

If the information listed in subsection (c) is supposed to be confidential and not subject to public disclosure as required by subsection (e), OIP recommends deleting subsection (c) altogether as there would be no point in requiring publication of information that is barred from public disclosure.

Thank you for your consideration of our technical amendments.

Testimony of the
American Insurance Association
on
Senate Bill No. 2938, S.D. 1
Relating to Insurance Regulatory Variance
Committee on Consumer Protection and Commerce
Wednesday, March 14, 2018
2:00 p.m. Room 329

The American Insurance Association strongly supports SB 2938, S.D. 1, which would give the Insurance Commissioner the flexibility needed to implement a regulatory sandbox, a supervised environment where innovative new insurance products, services and technologies can be pilot tested in a live market situation in a controlled manner. By creating the first such sandbox in the United States, Hawaii would have the opportunity to attract high tech companies to the State, which would be good both for the economy at large as well as creating more competition for insurance consumers. Furthermore, because insurance is a capital-intensive and somewhat unique business, there will be plenty of opportunities for established Hawaiian insurers, as well, since many high-tech companies will seek partners with the requisite knowledge and reputation among consumers to successfully attract and service customers.

The opportunity to attract business to Hawaii is not insignificant. According to a recent report by the consulting firm Willis Towers Watson P.L.C.¹, investment in so-called “insurtech” companies grew to \$2.3 billion in 2017, a 36% increase over the prior year. This investment is likely to continue, as innovative new technologies hold great promise for improving:

- Understanding and mitigation of risk;
- Efficiency and cost of insurance transactions;
- Speed of claim payments; and
- Overall customer satisfaction.

Regulatory sandboxes for both banks and insurance have been successfully implemented in other countries, including the United Kingdom, Australia and Singapore. The U.K. Financial Conduct Authority (FCA) – that country’s regulator of financial services market behavior – first introduced their regulatory sandbox in June 2016 and recently issued a report on their experience over the first year of sandbox operation². In that report, the FCA concluded that their regulatory sandbox already is successfully meeting the following objectives:

¹ Quarterly Insurtech Briefing Q4 2017, Willis Towers Watson, February 1, 2018, <https://www.willistowerswatson.com/en/insights/2018/01/quarterly-insurtech-briefing-q4-2017>

² Regulatory Sandbox Lessons Learned Report, Financial Conduct Authority, October 2017 <https://www.fca.org.uk/publication/research-and-data/regulatory-sandbox-lessons-learned-report.pdf>

- reducing the time and, potentially, the cost of getting innovative ideas to market;
- enabling greater access to finance for innovators, by reducing regulatory uncertainty;
- enabling more products to be tested and, thus, potentially introduced to the market, increasing competition
- encouraging innovative insurance companies to work closely with regulators to ensure that appropriate consumer protection safeguards are built into new products and services.

The success of the U.K.'s regulatory sandbox, combined with the proximity of the State to the epicenter of the U.S. technology industry on the mainland's West Coast, are positive indicators for a productive and successful sandbox in Hawaii.

AIA also applauds the consumer protections and level playing field provisions built into SB 2938, including those listed below.

- **No reduction in consumer protection:** A company seeking a variance, waiver or no-action letter in order to test a new product or service would be required to demonstrate to the Insurance Commissioner that they can achieve the underlying intent of a statute or regulation by alternative means. The legislation also authorizes the Commissioner to reasonable terms, conditions, or limitations on the conduct or activity permitted under a variance, waiver, or no action letter in order to mitigate risks and protect consumers.
- **No waiver of any licensing or seasoning requirements:** The Commissioner would be prohibited from waiving any licensing or certificate of authority requirements, including any applicable seasoning requirements necessary to secure a license.
- **No easing of solvency standards:** The Commissioner would be prohibited from waiving any requirements governing assets, deposits, investments, capital, surplus, or other solvency requirements.
- **No exemption from taxes or fees:** The Commissioner would be prohibited from waiving any taxes or fees.
- **Required Transparency:** So that other market participants are kept informed of the potential opportunity to secure variances, waivers or no action letters, the

Commissioner would be required to publish certain information whenever such regulatory relief is granted.

These and other provisions in SB 2938, S.D. 1, will serve to ensure that this legislation is implemented in a manner that encourages innovation while protecting consumers and maintaining an insurance market that is competitive and fair to all participants.

Hawaii has the opportunity to be innovative and attract business to the local economy by becoming the first state in the nation to create an insurance regulatory sandbox.

AIA urges the Committee to support an innovative Hawaiian economy by voting Yes on SB 2938, S.D. 1.

Thank you for the opportunity to testify in support of this exciting new legislation.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

March 14, 2018

Senate Bill 2938, SD1 Relating to Insurance Regulatory Variance

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee on Consumer Protection and Commerce:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers the following comments regarding Senate Bill 2938, SD1.

State Farm supports the intent of this bill: to promote current, and encourage future innovation in insurance products and services. There are however three areas where State Farm would like further consideration, all dealing with the procedural aspects of the proposal:

- **Consistent Application of the Process.** There should be some guarantees that this process is applied consistently to all meritorious applications submitted, regardless of the size of the company, or whether it is a domestic or foreign carrier. Perhaps there should be a provision stating that the commissioner must give equal consideration of all applications meeting the public policy goals outlined in the statute.
- **Transparency.** State Farm recognizes and appreciates that innovation, particularly technological innovation, will generally involve efforts that are entitled to Trade Secret protection. Companies often invest considerable time, resources, and money in the development of new technologies, and they should be entitled to benefit from those investments. This is essential to creative development. Notwithstanding, State Farm believes that the posted notice of the waiver request should have some general description of the applicant's legal and business need for the waiver, and that this can be done without compromising trade secrets.
- **Public Comment.** State Farm believes that there should be an opportunity for comment on a request prior to approval of a variation. This could be accomplished by building in a 30-day comment period.

With the rapid changes in technology and application of these changes to the insurance business, there are huge possibilities for improvements in delivering insurance products and services to consumers. This is particularly important for Hawaii which has geographical barriers not faced by other states: modern technology is and will continue to reduce these barriers. This bill can help to facilitate these innovations.

Thank you for the opportunity to present this testimony.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 14, 2018

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

Re: SB 2938, SD1 – Relating to Insurance Regulatory Variance

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

Hawaii Medical Service Association (HMSA) supports the intent of SB 2938, SD1, which permits the insurance commissioner to approve applications for no action letters, waivers, or variances with respect to specific requirements of the insurance code or its rules when certain conditions are met.

This Bill could allow the Insurance Commissioner to permit health plans to experiment with technology and innovation in creating programs and incentives that can promote and support healthy behavior. As we all know health care costs are on the rise, we think innovation can play a strategic part in helping to bend the cost curve.

Thank you for the opportunity to testify on this measure.

Sincerely,

Jennifer Diesman
Senior Vice-President, Government Relations

LATE

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ)
IN OPPOSITION TO S.B. 2938, SD1**

Date: Wednesday, March 14, 2018

Time: 2:00 p.m.

Room: 329

To: Chair Roy M. Takumi and Members of the House Committee on Consumer Protection and Commerce.

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to S.B. 2938, SD1, Relating to Insurance Regulatory Variance.

The stated purpose of this bill is to encourage innovations in the insurance industry by permitting no action letters, waivers or variances from the current insurance laws. However, the bill as drafted is extremely broad and its operation would be detrimental to consumers in all facets of everyday life. The bill grants the insurance commissioner unlimited power to alter current insurance laws and well-established procedures.

This bill allows any person or entity governed by the insurance code to apply to the commissioner for an exemption from most insurance code requirements. The few exceptions in section (b) have to do with such corporate issues like investments and solvency, licensing of an insurance agent, national accreditations and taxes. However, it allows the commissioner to grant exemptions from all other requirements of the insurance code. What is even more unsettling, is that the application process and all information and communication related to the exemption is kept secret from the public even after it is approved. The only requirement is that exemptions be disclosed after they are approved.

For example, Insurance Company A could apply for a waiver from having to provide Personal Injury Protection to its insureds and if the Commissioner approves it, the public would learn about this only after the approval. The other insurance companies and insureds never had a chance to weigh in before an exemption is granted, nor would they be provided any information after the exemption is granted to judge the reasonableness of the decision or accuracy of the information submitted in support of the application. You could end up with one insurance company exempt from providing Personal Injury Protection benefits, another insurance company allowed to provide less than others and there would be no uniformity in the insurance industry.

Although the bill states that the person or entity must “demonstrate that the public policy goals of this chapter may be achieved by other means and that the requirement may inhibit or discourage the introduction of new, innovative, or more efficient insurance products, services, or technologies,” the discretion to make that determination lies solely with the commissioner and is not subject to public scrutiny or legislative approval.

Requirements that are important enough to merit legislative action to codify in our insurance code are important enough to require legislative oversight for any modifications. This bill essentially gives the commissioner unilateral power to over-rule legislative determinations of public policy. This concern is not a reflection on the current commissioner who we can all agree has been doing an outstanding job. The current commissioner has a long history in insurance regulation having served in the department in various capacities including the deputy position before his appointment to commissioner. But he is the exception. Most commissioners have had little or no experience in the insurance industry or as a regulator. The almost unlimited discretion given to the current and future commissioners by this measure is simply too broad and unrestricted.

HAI does not oppose improvements in efficiency for the sale, underwriting and claims handling for the insurance industry. If proponents desire modifications to existing law such proposals should be more narrowly crafted to address the specific areas of concern, provide transparency in the process, and opportunity for review by those aggrieved by agency action in accordance with ordinary principles of administrative agency procedures. To allow almost limitless exercise of governmental power in almost total secrecy is unacceptable and contrary to sound public policy.

Thank you very much for allowing me to testify regarding this measure. Please contact me if there are any questions or concerns.

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
House Committee on Consumer Protection & Commerce
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

March 14, 2018
2:00 p.m.
Conference Room 329

Re: SB2938 SD1, Relating to Insurance Regulatory Variance

Chair Takumi, Vice-Chair Ichiyama, and committee members, thank you for this opportunity to provide testimony on SB2938 SD1, which permits the insurance commissioner to approve applications for no action letters, waivers, or variances with respect to specific requirements of the insurance code or its rules when certain conditions are met.

Kaiser Permanente Hawai'i offers the following COMMENTS on SB2938 SD1 and requests an AMENDMENT.

Kaiser Permanente Hawai'i supports the intent of SB2938 SD1 to promote new, innovative, or more efficient insurance products, services, or technologies to the state's consumers that can promote and incentive a healthy behavior. However, we have concerns that SB2938 SD1 is somewhat broad given that it allows for the possible pilot of products, pricing, and ways of delivering *all* types of insurance.

Bearing this in mind, we respectfully offer the following comments on SB2938 SD1:

1. While we support the piloting and testing of new and innovative products and ways of delivering insurance to businesses and consumers, we note that SB2938 SD1 does not specify a panel of experts that may be able to assist the Insurance Commissioner review potential applications for a no action letter, waiver, or variance from Section 431:2, Hawai'i Revised Statutes (HRS), especially if it is to demonstrate that the public policy purpose of the underlying law or rule may be achieved by alternative means;
2. Who would assess the risks and/or success of a pilot or test of such products? Furthermore, would it require applicants to self-report on the success of the pilot? Finally, how would the Department of Commerce and Consumer Affairs, Insurance Division show that the

public policy goals of Section 431:2, HRS is being “achieved by other means” as sought via SB2938 SD1?

3. Kaiser Permanente Hawai'i believes that SB2938 SD1 provides an opportunity for the Insurance Commissioner to grant limited variances with respect to the enforcement or application of certain requirements of insurance laws. However, the Legislature may wish to consider reviewing the need for such a tool. Accordingly, the committee may wish to consider establishing a sunset date.

On Section 4, Pages 8, lines 7:

SECTION 4. This Act shall take effect upon its approval ~~[-]~~;
provided that this Act shall be repealed on December 31, 2020.

We respectfully request consideration of our amendment. Thank you for the opportunity to testify on SB2938 SD1.