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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, February 19, 2020
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 2876, RELATING TO INSURANCE**

Chair Baker and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports this administration bill and requests an amendment to section 1 to correct a drafting error.

The purpose of this bill is to update and improve Hawaii Revised Statutes (HRS) title 24 (Insurance Code) in a number of areas. Specifically, this measure will do the following:

Section 1 of this bill requires, in agreements between public adjusters and insureds, contractual terms, disclosures, and a cap on commissions that adjusters may charge insureds. This mandate will reduce the potential for exorbitant commissions and unreasonable contractual terms that are unfavorable to insureds.

The Department respectfully requests amending subsection (e)(3) on page 4, lines 9 to 10 to read: "Precludes the insured from pursuing civil remedies."

Sections 2, 3, 4, and 12 of this bill establish a uniform standard of conduct agreement for various limited lines (motor vehicle rental, self-service storage, and portable electronics) that are currently not subject to uniform standards, thereby reducing the potential for consumer misinformation and harm.

Sections 5, 15, 16, 17, 18, 19, and 20 of this bill give the Insurance Commissioner authority to waive, in part or whole, or reduce fees deposited in the Commissioner's Education and Training Fund and the Compliance Resolution Fund, when expenditures are not commensurate with the fees deposited into these accounts.

Section 6 of this bill mandates electronic payment for all service fees related to extensions of certificates of authority, thereby reducing processing errors and delays in the availability of funds paid to the State.

Section 7 of this bill amends HRS section 431:7-202(f) to correctly reference the electronic system used to facilitate insurers' electronic payment of premium taxes.

Section 8 and 9 of this bill mandate electronic filing of surplus lines reports and payment of surplus lines premium taxes, thereby reducing processing errors and delays in the availability of funds paid to the State.

Section 10 of this bill replaces "premiums" with "client funds" in HRS section 431:9-230 to accurately reference that adjusters and bill reviewers handle only funds from clients.

Section 11 of this bill reinserts in HRS section 431:9-235(e) the right to an administrative hearing and appeal from an order suspending, revoking, or refusing to extend any license for any cause specified in HRS chapter 431, article 9. Act 279, Session Laws of Hawaii 2019, inadvertently deleted this due process right in all cases, and not just when the suspension, revocation, or nonrenewal stems from defaults involving student loans or scholarship contracts.

Section 13 of this bill amends the Hawaii Joint Underwriting Program Board of Governors' composition to more accurately reflect member composition commensurate with plan size and operations and to eliminate outdated and nonexistent criteria from which board members are selected.

Section 14 of this bill clarifies that rewards under certain wellness programs established under health care plans do not constitute a rebate by insurers to insureds.

In addition, the Department respectfully requests inserting the following severability clause into the bill: "If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill to provide clarity to the Insurance Code and enhance consumer protection.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

Wednesday, February 19, 2020
9:00 a.m.

SB 2876

Chair Baker, Vice Chair Chang, and members of the Committee on Commerce, Consumer Protection, and Health my name is Alison Ueoka, President of 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.

Hawaii Insurers Council supports the intent of this administration bill which amends various sections of the insurance code. We especially acknowledge and appreciate the Division's approach to managing the funds in the Compliance Resolution Fund as it pertains to insurance and the monies that insurers and producers pay to support the regulation of our industry.

We note that there is one technical error in the bill that we believe the Insurance Division will correct in their testimony on this bill. It appears in Section 1 on page 4, line 9 of the bill. The words "public adjuster" should be replaced with "an insured", so that a public adjuster contract shall not contain any contract term that precludes an insured from pursuing civil remedies.

Thank you for the opportunity to testify.

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February 18, 2020

Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection and Health
414 South Beretania Street
Honolulu, Hawaii 96813

Re: Senate Bill 2876

Dear Chair Baker and members of the Committee:

Thank you for the opportunity to testify in **opposition** to **Senate Bill Number 2876's eight percent (8%) cap on what can be earned by a licensed Hawaii public insurance adjuster.**

The American Association of Public Insurance Adjusters ("AAPIA") is a leading professional organization representing not just public adjusters but also consumers nationwide, and has worked on some of the largest issues facing the industry, including the National Association of Insurance Commissioners ("NAIC") Public Adjuster Model Act, drafted in 2005. AAPIA works to help our member firms protect the interests of homeowners and business owners who have sustained property damage.

AAPIA supports the goals of the Governor to help those residents of Hawaii who have suffered property damage. Those provisions of **Senate Bill Number 2876** that deal with public adjusters mirror the NAIC Model Act in many ways and we believe that the bills can accomplish the goal of protecting the consumers of Hawaii. Unfortunately, we cannot support the bill in its entirety due to the fee provisions in Section 431:9 (b) which would impose an across-the-board fee cap on public adjusters. Such proposed limitations on fees would hurt the consumers of Hawaii, as well as prevent the public adjusting industry from remaining a sustainable profession in Hawaii.

We have worked on this issue most recently in Nebraska, Maryland, Rhode Island, and Utah. It was the goal of remaining business-friendly, while at the same time protecting consumers, that we believe ultimately guided those states to **join the two-third majority of states and adopt public adjuster legislation without caps on fees.** Attached to this letter is a list of those two-thirds of states without fee caps, including California.



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When it comes to public adjuster fees, the NAIC Model Act merely states that “a public adjuster may charge the insured a reasonable fee” (Section 14 NAIC Model Act). This type of language gives regulators broad oversight and power to enforce penalties on public adjusters who charge fees that are clearly excessive or unreasonable, while allowing the public adjuster to charge a higher percentage fee on small claims where the actual dollar amounts are low.

In contrast to the broader “reasonable” standard, a cap on fees would prevent public adjusters from helping consumers on small to average sized claims, since such a small percentage fee is not enough to cover time and expenses in real dollars on those claims.

Small claims actually make up the majority of claims. According to the 2010 Insurance Information Fact Book published by the Insurance Information Institute, **eighty-seven percent of all claims nationwide are valued at between \$2,494 and \$7,163. That same publication as updated in 2015 lists the average sized homeowners claim nationally from 2008-2012 at \$8,384.**

With a fee cap, public adjusters are not able to help homeowners with the majority of claims sustained. Empirical data has been collected to support this statement, through an independent study commissioned by AAPIA. In states with fee caps, **75% of public adjuster firms surveyed have not handled a claim of under \$8,000.00 in the last year**, and of those 25% who have done so, one half of the firms surveyed said that those claims made up less than 5% of their claims and the other 10% stated that those claims made up less than 10% of their business. Yet, claims of this size make up the vast majority of claims. *These numbers evidence that in states with fee caps, homeowners are left to fend for themselves on most claims, since public adjusters can’t afford to handle these claims.*

Public adjusters offer consumers great value during the claims process. Most people do not have the time and/or expertise to properly evaluate their insurance coverage or to estimate the actual damage and effectively negotiate with the insurance company adjuster who does have such expertise. This inequality leads to the undervaluing of claims. The consumer with these types of claims is less able to hire an attorney for representation either, due to the prohibitive cost of paying the attorney on an hourly basis or finding an attorney to charge a contingent fee on a small claim. **Historically, homeowners who used public adjusters on non-catastrophic claims received, on average, a 574%¹ higher settlement amount than homeowners who did not use a public adjuster. Instead of losing a portion of the recovery to a public adjuster, the homeowner is receiving a greater recovery than without that public adjuster.**

As advocates for homeowners who have suffered damage, we understand the problems they face after such an event. Our members are on the ground fighting for policyholders every day and have seen the heartbreak that results from loss and damage to one’s home. Unfortunately, the claims process can be long and difficult, and the homeowner must navigate many obstacles to

¹ OPPAGA report, pp. 7-8.



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recovery. Public adjusters help homeowners through this complex process. A fee cap would take away the ability of the public adjusters to help many of the homeowners of Hawaii.

Further, not all professional services within the industry are equal. Consumers deserve the right to choose a firm they feel can best serve their needs. Firms with greater expertise and more years of experience may charge a premium for their services and the consumer has the right to make that decision to protect the largest asset that most Americans own, which is their home.

Please feel free to contact me should you have any comments or questions regarding the above.

Very truly yours,

Natori Law Office LLLC

A handwritten signature in black ink that reads 'Nate J. Natori'.

Nathan T. Natori



STATES WITHOUT ACROSS THE BOARD FEE CAPS FOR PUBLIC ADJUSTERS

Arizona
California
Colorado
Georgia
Hawaii
Idaho
Illinois
Indiana
Kentucky
Louisiana**
Maine
Maryland
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

** Percentage fees not allowed