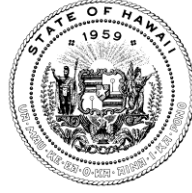


# SB356

Measure Title:	RELATING TO INSURANCE.
Report Title:	Homeowners Insurance; Natural Disasters; Perils; Disclosure; Coverage
Description:	Requires homeowners insurers to provide written and oral disclosure to an insured regarding the natural disaster perils not covered by the insured's homeowners insurance policy.
Companion:	
Package:	None
Current Referral:	CPH
Introducer(s):	S. CHANG, K. KAHELE, KANUHA, RUDERMAN, Baker, Inouye



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Friday, February 15, 2019  
9:30 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 356, 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 does not support this bill.

The purpose of this bill is to require homeowners insurers to provide written and oral disclosure to an insured regarding the natural disaster perils not covered by the insured's homeowners insurance policy.

The written disclosures mandated by this bill are unnecessary and redundant, as homeowners policies currently set forth exclusions under a specified exclusion section. In addition, the Department will be unable to enforce the requirement that insurers orally disclose to named insureds the perils not covered by their policies, as producers and agents, rather than insurers, explain policy coverages and exclusions to policyholders.

The Department is willing to work with the Legislature in addressing the concerns that gave rise to this measure. Thank you for the opportunity to testify on this bill.

## **TESTIMONY OF ALISON UEOKA**

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

Friday, February 15, 2019  
9:30 a.m.

### **SB 356**

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 opposes subsection (b) of this bill that requires insurers to orally disclose to the named insured the natural disaster perils not covered by the policy. The requirement is for all policies issued after July 1, 2019. This would include all new and renewal homeownersqinsurance policies in the state.

Today, consumers may purchase a homeownersqinsurance policy online or through a licensed producer. For new business, there is no interaction with the insurer. Even upon renewal, there is no interaction with the insurer as renewals are mailed to the policy holder. Oftentimes, the lender is the entity that pays the homeownersqpremium directly.

For these reasons, we ask that this subsection be deleted from the bill.

Thank you for the opportunity to testify.

Hawaii State Legislature  
Senate Committee on Commerce, Consumer Protection, and Health

February 13, 2019

*Filed via electronic testimony submission system*

**RE: SB 356, Disclosure; natural disaster; perils - NAMIC's written testimony**

Dear Senator Baker, Chair; Senator Chang, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 15, 2019, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

NAMIC and its member companies share the bill sponsors' desire to encourage policyholders to be well-informed insurance consumers. However, NAMIC is concerned that the proposed legislation is likely to confuse insurance consumers and/or lead them to falsely believe that they don't need to read the actual terms and conditions of the insuring agreement if they merely read the attached natural disaster disclosures. As the saying goes, "a little knowledge may be a dangerous thing."

We also question the necessity of the proposed requirement, because there is no evidence to support the contention that the insuring agreement, which is written in a clear and understandable manner and approved by the Department of Insurance (DOI) is not providing consumers with appropriate notice of coverages and exclusions to their policy. Although NAMIC appreciates the desire of the sponsors to make sure that consumers are aware of key provisions in their insurance policy, the language of the insuring agreement is legally controlled, so the consumer should be reading the policy not just a one-page summary of coverages and exclusions.

NAMIC is also concerned that the proposed legislation will create a new administrative cost and burden that could adversely impact the affordability of insurance for consumers. Every new requirement imposed on insurers comes with a price-tag, that is the inescapable reality of the business world. The cost driver implications of the proposed written disclosure requirement is not just limited to the cost of creating the disclosure, securing approval of the disclosure language from the DOI, and printing and affixing the disclosure to the policy, but also in having to deal with litigation over consumer confusion associated with the



disclosure and legal disputes over whether the disclosure alters, modifies or conflicts with the terms and conditions of the insuring agreement.

Additionally, NAMIC is concerned that the bill *also requires* oral disclosure of the natural disaster coverage exclusions. This requirement is unnecessarily redundant and rife with potential for legal conflict. All an unscrupulous consumer would have to say is that the oral disclosure was different from the written disclosure for the person to assert a convoluted factual “he said - she said” breach of contract claim against the insurer. Insurance coverage litigation is a serious insurance-rate cost driver that should be avoided.

NAMIC is also concerned that the proposed definition of “natural disaster peril” in SB 356 may not conform with or may oversimplify case law interpretations of the standard insuring agreement and could create legal ambiguity as to what is contractually meant by events like a “mudflow”, “earth movement”, “sinkhole” or “shockwave”. Legal ambiguity is detrimental to both insurers and consumers, and should be avoided.

Finally, NAMIC believes that the proposed effective date of July 1, 2019 is unrealistic, because insurers will need to make a number of significant administrative processes and IT changes that will first have to be vetted by the insurer’s legal department, because of the potential legal implications of making representations that are attached to and arguably incorporated into the insuring agreement. In addition to all the time it will take to draft, legally evaluate, and produce the written disclosures, insurers will also have to train their insurance producers and staff about how to communicate and document the oral disclosures to the consumer, and how to answer questions that may result from the oral communication. Further, all of these disclosures, both written and oral, will first need to be approved by the DOI before implementation, so this bill would need a twelve to eighteen month delayed effective date.

For the aforementioned reasons, NAMIC respectfully requests a **NO VOTE on SB 356**, because this well-intended legislation is likely to confuse consumers, create unnecessary insurance rate cost-drivers, and delay the ability of insurers to timely provide insurance products to consumers.

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,

Christian John Rataj, Esq.  
NAMIC Senior Regional Vice President  
State Government Affairs, Western Region

**SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, and HEALTH**

Friday, February 15, 2019

Senate Bill 356 Relating to Insurance

Chair Baker, Vice Chair Chang, and members of the Senate Committee on Commerce, Consumer Protection, and Health:

I am Rick Tsujimura, representing State Farm Fire and Casualty Company (State Farm). State Farm offers these comments about Senate Bill 356 Relating to Insurance, and more particularly disclosure notices regarding natural disaster perils for homeowners insurance.

Although State Farm understands the concerns that this bill seeks to address—informing consumers what their policy covers—we believe it is unduly burdensome and will cause more confusion than clarity.

This bill would require insurers to restate what is already in the insurance policy, which is a legal contract that has been approved as to form and content by the Hawaii Insurance Division. That contract contains the approved, binding language defining both the coverages and exclusions. This requirement would confuse consumers, who might rely on the “notice” rather than the policy language. This could be particularly problematic in situations where a common risk is excluded—flood or hurricane—in the policy form, but can be acquired separately or added to the policy (*e.g.*, flood through the NFIP, and hurricane as an added endorsement).

This bill will also increase the cost of providing insurance by requiring a notice of information that is already in the insurance policy, a notice that consumers might or might not even read. Each new requirement creates costs that are passed on to consumers. The form will have to be filed and approved by the Hawaii Insurance Division, and State Farm’s systems will need to be reprogrammed to generate the notice, something that cannot be accomplished by the proposed July 1, 2019 effective date. There will be printing and mailing expenses to send the notice to each insured. Finally, we anticipate new litigation arising from consumer confusion and the legal disputes over whether it alters, modifies, or conflicts with the provisions in the contract.

The oral requirement is very concerning. In today’s world, many policies are sold via the Internet, which will not allow for an oral communication. This requirement also presents an additional way for the information to conflict with the contract, and it is inherently difficult to control or direct the content of oral communications.

State Farm believes that this bill will create more problems than it solves; it will foment conflict, increase the cost of insurance for consumers, confuse policyholders, and generate litigation.

Thank you for the opportunity to present this testimony.

**SB-356**

Submitted on: 2/14/2019 8:47:22 AM

Testimony for CPH on 2/15/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: