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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Tuesday, March 16, 2021  
2:00 p.m.  
Via Videoconference**

**On the following measure:  
S.B. 1096, S.D. 1, RELATING TO INSURANCE**

Chair Johanson and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division (INS). The Department supports this administration bill.

The purpose of this bill is to amend various portions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions.

Currently, HRS chapter 431, article 9, does not mandate contractual terms for agreements between public adjusters and insureds, leaving an insured in a vulnerable position that can be exploited by exorbitant commissions and unreasonable contractual terms. In the past five years, the INS has handled 36 files related to public adjusting. Of this total, 12 involve contractors acting as public adjusters, 19 involve disputes between insurers and public adjusters, 3 involve consumers, and 2 involve miscellaneous public adjusting issues. By including mandatory contractual terms, mandatory disclosures, and reasonable commissions that adjusters may charge insureds, **Section 1** of this bill will help consumers know when they are engaging the

services of a public adjuster, prevent unlicensed persons from acting as public adjusters, and help insurers know when their insureds have engaged the services of licensed public adjusters.

Niche insurance markets are increasingly seeking to obtain limited lines producer licenses from the INS. These licenses are currently not subject to uniform standards, creating potential for consumer misinformation and harm. **Sections 2, 3, 4, and 11** of this bill will set forth standards of conduct for limited lines producers and hold them to standards consistent with those of other producers.

Fees deposited into the Commissioner's Education and Training Fund and the Compliance Resolution Fund may exceed expenditures in a given fiscal year, and the Insurance Commissioner currently has no authority to waive, in part or whole, the fees deposited into these funds when expenditures are not commensurate with deposits. **Sections 5, 14, 15, 16, 17, 18, 19, 20, and 21** of this bill will give the Insurance Commissioner this authority.

Insurers submit premium taxes via OPTIns, an electronic payment platform developed by the National Association of Insurance Commissioners to facilitate the submission of premium tax, surplus lines, and other state-specific filings and payments to participating states. However, HRS section 431:7-202(f) does not employ the term "OPTIns." **Section 6** of this bill will amend that subsection to correctly reference the electronic system used to facilitate insurers' electronic payment of premium taxes.

Insurers currently file paper statements and pay fees and surplus lines taxes via paper check. This can create inefficiency, delays, and errors in manual processing. **Sections 7 and 8** of this bill will 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.

HRS section 431:9-230 inaccurately provides that adjusters and bill reviewers handle premiums, when they handle only funds from clients. **Section 9** of this bill will replace "premiums" with "client funds" in that section to accurately reference that adjusters and bill reviewers handle clients' claim funds and not premiums.

Act 279, Session Laws of Hawaii 2019, inadvertently removed the right to an administrative hearing and an appeal from an order in all cases, even when the suspension, revocation, or nonrenewal does not stem from defaults involving student loans or scholarship contracts. **Section 10** of this bill will reinsert in HRS section 431:9-235(e) the right to an administrative hearing and an appeal from an order suspending, revoking, or refusing to extend any license for any cause specified in HRS chapter 431, article 9, thereby preserving due process rights in those cases.

HRS section 431:10C-405(a) has outdated and nonexistent criteria for the Hawaii Joint Underwriting Plan (HJUP) Board of Governors and does not accurately reflect the member composition commensurate with the HJUP's plan size and operations. **Section 12** of this bill will amend the board's composition to more accurately reflect member composition and member selection criteria.

Wellness programs and devices tied to monitoring health may be viewed as rebates and in violation of HRS section 431:13-103(a)(9) when offered by insurers. **Section 13** of this bill will clarify that rewards under certain wellness programs of health care plans do not constitute a rebate by insurers to insureds; this, in turn, may reduce utilization of health services and potentially reduce insurance premiums.

In HRS sections 431K-3.5 and 431K-7.1(a), the specified dates for extensions of certificates for risk retention groups are inconsistent with the extension dates established pursuant to section 431:3-214. **Sections 14 and 15** of this bill will replace the specified dates for extensions of certificates for risk retention groups with the extension dates established pursuant to section 431:3-214; this will maintain consistency with other certificates issued by the INS.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill.



March 16, 2021

The Honorable Aaron Ling Johanson, Chair  
The Honorable Lisa Kitagawa, Vice Chair  
House Committee on Consumer Protection & Commerce

Re: SB 1096 SD1 – Relating to Insurance

Dear Chair Johanson, Vice Chair Kitagawa, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1096, SD1, which amends various portions of title 24 of the Hawaii Revised Statutes to update and improve existing provisions.

HMSA supports this measure to align and improve existing provisions in the insurance statutes.

Thank you for allowing us to testify in support of SB 1096 SD1.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew W. Sasaki". The signature is fluid and cursive, with the first name "Matthew" being the most prominent part.

Matthew W. Sasaki  
Director, Government Relations

Testimony of  
Jonathan Ching  
Government Relations Manager

Before:  
House Committee on Consumer Protection & Commerce  
The Honorable Aaron Ling Johanson, Chair  
The Honorable Lisa Kitagawa, Vice Chair

March 16, 2021  
2:00 p.m.  
Via Videoconference

**Re: SB 1096 SD1 Relating to Insurance**

Chair Johanson, Vice Chair Kitagawa, and committee members, thank you for this opportunity to provide testimony on SB 1096 SD1, amends various portions of title 24 of the Hawai'i Revised Statutes to update and improve existing provisions.

**Kaiser Permanente Hawai'i SUPPORTS SB 1096 SD1.**

Kaiser Permanente Hawai'i is Hawai'i's largest integrated health system that provides care and coverage for approximately 260,000 members. Each day, more than 4,400 dedicated employees and more than 600 Hawai'i Permanente Medical Group physicians and providers come to work at Kaiser Permanente Hawai'i to care for our members at our 20 medical facilities, including Moanalua Medical Center, providing high-quality care for our members and delivering on our commitment to improve the health of the 1.4 million people living in the communities we serve.

We support SB 1096 SD1 because it will update and improve existing provisions of title 24 of Hawai'i Revised Statutes, thereby enhancing consumer protections for our community.

We ask the committee to PASS SB 1096 SD1. Mahalo for the opportunity to testify on this important measure.



March 15, 2021

TO: Representative Aaron Johanson, Chair  
Representative Lisa Kitagawa, Vice-Chair  
Members of the Consumer Protection and Commerce Committee

FR: Blake K. Oshiro, Esq., on behalf of  
American International Group (AIG), Inc.

RE: TESTIMONY IN SUPPORT OF SENATE BILL (SB) 1096, SENATE DRAFT (SD) 1 **WITH**  
**REQUESTED AMENDMENTS**

Dear Chair Johanson:

American Insurance Group, Inc. (AIG) supports SB1096, SD1 but requests your consideration to amend the bill by adding a new section that covers individual annuities and the standard nonforfeiture law. It is our understanding that the amendment should not be controversial as it was recently adopted as part of the model act.

The National Association of Insurance Commissioners (NAIC) recently passed an amendment to their Annuity Minimum Nonforfeiture Model Act lowering the required minimum rate from 1.00% to 0.15%. This change is necessary due to the persistent low interest rate economy we are experiencing. The current interest rate environment creates unique challenges on crediting rates. In 2020 the yields for the US 5-year and 10-year Treasuries have been as low as 0.19% and 0.52%. The .15% floor will only be triggered in low interest rate environments, such as the one we are currently experiencing and will only apply to newly issued contracts.

It is our understanding that our Hawaii Insurance Commissioner voted in favor of this change when it was before the NAIC. Unfortunately, by the time that this was adopted in December of 2020, it was too late to get included in the bill as introduced and submitted to the Legislature. As such, we are seeking to have this issue addressed via the legislative process.

REQUEST AMENDMENT:

Subsection (e) of Haw. Rev. Stat. Section 431:10D-107, Standard nonforfeiture law; individual annuities, would be amended to read as follows:

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest

determined as the lesser of three per cent a year and the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year constant maturity treasury rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one per cent, specified in the contract not later than fifteen months prior to the contract issue date or redetermination date under paragraph (4);

(2) Reduced by one hundred twenty-five basis points;

(3) Where the resulting interest rate is not less than **one-fifteenth of** one per cent; and

(4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this paragraph, "basis" means the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

Below, is some additional information on the issue for your review:

**The Issue:** Generally speaking, the standard Nonforfeiture Law (within the Insurance Code) requires that an individual deferred annuity contract provide the contract holder with a paid-up annuity or cash surrender benefits of a minimum amount if the contract holder surrenders the policy (e.g. stops making payments) during the accumulation period. The nonforfeiture amount is the deferred annuity's accumulated value minus certain charges (such as prior withdrawals and loans), based on interest rate minimums regulated by statute. In recent months, market interest rates have fallen so low as to render unrealistic the old statutory rates that insurance companies were required to use in determining the amount to return to contract holders. The NAIC has determined this threatens the availability of annuity products to consumers.

### **Deferred Annuity Nonforfeiture Law Changes**

- The current interest rate environment creates unique challenges on crediting rates. In 2020 the yields for the US 5-year and 10-year Treasuries have been as low as 0.19% and 0.52%.
- The best course of action is to amend the minimum nonforfeiture interest rate in the states' respective Insurance Codes to reflect NAIC action on December 9<sup>th</sup>, 2020 amending the Model Standard Nonforfeiture Law for Individual Deferred Annuities to reduce the minimum rate from 1% to .15%.

- The .15% floor will only be triggered in low interest rate environments, such as the one we are currently experiencing and will only apply to newly issued contracts.
- While companies can invest in assets with higher yields than US Treasuries, examination of the US Treasuries is appropriate when considering the level of guarantee that a product may support as has been historically by the NAIC.
- Companies are challenged to continue to be able to sell annuities with guarantees in the current environment. Anecdotally, several companies have limited their product offerings while others are considering changes to meet the current economic condition.
- The reduced interest rate is the floor and the current formula will continue to be used to set minimum guarantees at the time of purchase. The floor only comes into play in an historically low interest rate environment such as the one we are currently experiencing.
- Companies will continue to use non-guaranteed crediting rates, bonuses, and other features to maintain market competitiveness and product differentiation.
- When market conditions improve, companies will be pressured to increase both their current and guaranteed crediting rates regardless of the regulatory floor.
- An annuity contract is a long-term commitment and requires that insurers maintain a long-time horizon with respect to managing contract liabilities. Companies invest in long-duration assets to achieve a consistent yield for the duration of the policy. New premiums are invested at current rates which limit both the return and amount available to credit on those assets.
- Maximum surrender charges will not increase under the NAIC change, because they are based on a different interest rate (“the interest rate specified in the contract for accumulating the net considerations to determine maturity value”).

Thank you for your consideration and the opportunity to provide testimony.



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March 15, 2021

Chairman Aaron Ling Johanson  
House Committee on Consumer Protection & Commerce  
415 South Beretania Street, Room 329  
Honolulu, Hawaii 96813

**Re: Senate Bill Number 1096 SD1: Testimony in Support of Section 1**

Dear Chairman Johanson and Members of the Committee:

My name is Nathan Natori and I am testifying for the American Association of Public Insurance Adjusters (“AAPIA”). The AAPIA represents public adjusters and 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. Thank you for the opportunity to offer testimony in support of Senate Bill Number 1096 SD1’s Section 1, which amends the public adjuster law.

The insurance claims process can be long and difficult, and the homeowner must navigate many obstacles to recovery. Public adjusters help homeowners through this complex process. Senate Bill Number 1096 SD1’s Section 1 updates the current Hawaii public adjuster law to track more closely the NAIC Model Act. Senate Bill Number 1096 SD1’s Section 1 will impose required contractual terms including “reasonable compensation”, mandatory disclosures, and other standard consumer protections. These new provisions establish rules which allow licensed public adjusters to continue to offer great value to homeowners during the claims process, under clearly established guidelines.

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

Very truly yours,

Natori Law Office LLLC



Nathan T. Natori

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
COMMENTING ON SB1096, SD 1, RELATING TO INSURANCE

March 16, 2021

Honorable Representative Aaron Ling Johanson, Chair  
Committee on Consumer Protection and Commerce  
State Senate  
Hawaii State Capitol, Room 329 & Video-Conference  
415 South Beretania Street  
Honolulu, Hawaii 96813

Chair Johanson and Members of the Committee:

Thank you for the opportunity to comment on SB 1096, SD 1, Relating to Insurance Data Security.

Our firm represents the American Council of Life Insurers (“ACLI”). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94% of the industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 99% of the annuity considerations in this State.

If enacted, SB 1096, SD 1, would update Hawaii’s standard nonforfeiture law for individual deferred annuities to reflect a technical but important revision to its Model Law recently approved by the National Association of Insurance Commissioners (NAIC).

Existing Hawaii law requires that individual deferred annuity contracts provide the contract holder with a paid-up annuity or cash surrender benefit of a minimum amount if the contract holder stops making payments during the accumulation period. The **nonforfeiture amount** is the annuity’s guaranteed minimum value, adjusted by any charges such as any withdrawals made or loans received by the contract holder, and is based on a minimum interest rate, which in Hawaii law is currently 1 percent. That law is based on an older version of the NAIC Model Law dating back almost eighteen (18) years.

In recent years, historically low U.S. Treasury interest rates have fallen so low as to render unrealistic the old statutory rates that insurance companies were required to use in determining the minimum amount to return to annuity contract holders. After review, the NAIC determined that this threatens the availability of annuity products to consumers and decided to lower the minimum interest rate required from 1 percent to .15 percent.

Accordingly., ACLI concurs in the comments submitted on SB 1096, SD 1, by one of ACLI's member companies, the American Insurance Group, Inc. (AIG), with, however, one correction. The minimum rate of interest applicable to individual Deferred Annuities to reflect the NAIC recent amend to the Model Act should be "fifteen-hundredth of one percent", not "one-fifteenth of one percent" as stated in AIG's testimony.

It is important to note that this reduced interest rate change would apply to new business only – existing annuity contracts would remain unaffected. We read this legislation as applying to contracts issued after the effective date of this legislation.

Thank you for your consideration of our proposed amendment and the opportunity to comment on SB 1096, SD 1, Relating to Insurance.

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