



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. 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

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Judiciary and Hawaiian Affairs
Tuesday, March 23, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
S.B. 1100, S.D. 1, H.D. 1, RELATING TO INSURANCE DATA SECURITY**

Chair Nakashima 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.

The purpose of this bill is to adopt the National Association of Insurance Commissioners' (NAIC) Insurance Data Security Model Law to establish insurance data security standards for Hawaii insurance licensees.

The NAIC adopted the Data Security Model Law in 2017 to strengthen existing data privacy standard and consumer breach notification obligations of insurance licensees. If this bill does not pass by 2022, states may risk federal preemption of state laws in this area. Although some licensees may already have cybersecurity policies and protocols in place, this bill will ensure and formalize insurance data security protections for all insurance licensees.

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



March 22, 2021

TO: Representative Mark Nakashima, Chair
Representative Scott Matayoshi, Vice-Chair
Members of the Judiciary and Hawaiian Affairs Committee

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

RE: TESTIMONY SUPPORTING INTENT OF SENATE BILL (SB) 1100, SENATE DRAFT (SD) 2,
HOUSE DRAFT (HD) 1

Dear Chair Nakashima, Vice-Chair Matayoshi and Members of the Committee:

American Insurance Group, Inc. (AIG) supports the intent of SB1100, SD2, HD1 adopting the National Association of Insurance Commissioner (NAIC)s' Insurance Data Security Model Law to establish insurance data security standards for Hawaii insurance licensees.

It is our understanding that NAIC adopted the Data Security Model Law in 2017 to strengthen existing data privacy standard and consumer breach notification obligations of insurance licensees. It is our further understanding that if this bill does not pass by 2022, states may risk federal preemption of state laws in this area. Therefore, we support formalizing insurance data security protections for all insurance licensees in the state and support the intent of this bill.

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

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON SB 1100, HD 1, RELATING TO INSURANCE DATA SECURITY

March 23, 2021

Honorable Representative Mark M. Nakashima, Chair
Committee on Judiciary and Hawaiian Affairs
State House of Representatives
Hawaii State Capitol, Room 325 & Video-Conference
415 South Beretania Street
Honolulu, Hawaii 96813

Chair Nakashima and Members of the Committee:

Thank you for the opportunity to comment on SB 1100, HD1, 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.

SB 1100 adopts the National Association of Insurance Commissioners’ (“NAIC”) Insurance Data Security Model Act which establishes insurance data security standards for life insurers licensed to do business in this state.

While ACLI and its member companies support Hawaii’s adoption of the NAIC Model Act we request your consideration of our suggested revisions to SB 1100, as set forth below.

Section 1 of the Bill

As currently drafted, Section 1 establishes the exclusive state standards for insurers’ data security, but not for the duty to investigate a cybersecurity event or the duty to notify the Commissioner of the occurrence of a cybersecurity event. Section 1 should, therefore, be amended as follows:

The legislature finds that the National Association of Insurance Commissioners adopted the Insurance Data Security Model Law in 2017 to strengthen existing data privacy and consumer breach notification obligations of insurance licensees. The National Association of Insurance Commissioners strongly encourages that states ~~adopt~~ enact this model law by 2022, to avoid risking federal preemption of state laws in this area. While some licensees may already have cybersecurity

policies and protocols in place, this Act will ensure and formalize insurance data security protections for all insurance licensees.

The purpose of this Act is to ~~adopt enact~~ the National Association of Insurance Commissioners Insurance Data Security Model Law to establish the exclusive state standards applicable to Hawaii insurance licensees for insurance data security, the investigation of a cybersecurity event and notification to the commissioner standards for Hawaii insurance licensees.

Section 431: -102 Powers of the commissioner

The Hawaii Legislature cannot authorize regulators in other states to examine and investigate Hawaii licensees to determine whether they have violated a statute in Hawaii. Hawaii must, therefore, authorize its Insurance Commissioner – and not regulators of the licensee in other states – to examine and investigate its licensees to determine whether they have violated a Hawaii statute. Accordingly, this section should be amended as follows :

(a) The ~~commissioner licensee's regulator~~ shall have power to examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this article. This power is in addition to the powers the commissioner has under section 431:2-301.7.

(b) Any examination or investigation of a licensee ~~domiciled in the State~~ shall be conducted pursuant to section 431:2-301.7.

....

Section 431: -302 Notification of a cybersecurity event

Subsection (a) of this section is confusing and internally inconsistent. Subsection (a) requires licensees to notify the commissioner after determining a cybersecurity event impacting 250 or more consumers has occurred. The only qualification is if licensees are notified by law enforcement officials not to distribute any information. Subsection (a)(2), however, then says licensees are required to provide notice of a cybersecurity event if the licensee reasonably believes the nonpublic information involved is of 250 or more **Hawaii residents and has a reasonable likelihood of causing material harm.**

Additionally, there is no materiality trigger in the duty of domestic insurers to report the occurrence of a cybersecurity event to the commissioner.

This section should, therefore, be revised to eliminate confusion and internal inconsistency and include a materiality trigger to create the duty of domestic insurers to notify the Commissioner of the occurrence of a cybersecurity event as set forth below.

(a) Each licensee shall notify the commissioner as promptly as possible, but in no event later than three business days from a determination that a cybersecurity event ~~impacting two hundred fifty or more consumers~~ has occurred. ~~If law enforcement officials instruct a licensee not to distribute information regarding a~~

~~cybersecurity event, the licensee shall not be required to provide notification until instructed to do so by law enforcement officials. Notification shall be provided when either of the following criteria has been met:~~

(1) The licensee is domiciled in the State, in the case of an insurer, or the licensee's home state is Hawaii, in the case of an independent insurance producer, ~~and the cybersecurity event has a reasonable likelihood of materially harming a consumer residing in this State or reasonable likelihood of materially harming any material part of the normal operations of the licensee;~~ or

(2) The licensee reasonably believes that the nonpublic information involved is of two hundred fifty or more consumers residing in the State and is a cybersecurity event that has a reasonable likelihood of materially harming:

(A) Any consumer residing in the State; or

(B) Any material part of the normal operation of the licensee.

~~(3) If law enforcement officials instruct a licensee not to distribute information regarding a cybersecurity event, the licensee shall not be required to provide notification until instructed to do so by law enforcement officials.~~

Section 431: -305 Notice regarding cybersecurity events of reinsurers to insurers

Section 6.E of the NAIC Model Law, upon which Section 431: -305 is based, deals with the duties of assuming and ceding insurers when the cybersecurity event involves nonpublic information in the possession, custody or control of a licensee acting as an assuming insurer. Model Law Section 6.E(2) deals with the duties of assuming and ceding insurers when the cybersecurity event involves nonpublic information in the possession, custody or control of a third party service provider of a licensee acting as an assuming insurer. SB 1100, HD 1, omits the language of Model Law Section 6.E(2) from Section 431: -305, and replaces it (in subsection (c), below) with language from Model Law Section 6.D(1) that already appears in Section 431: -304(a) of the Hawaii bill.

Accordingly, Section 431: -305 should be amended as follows:

§ 431: -305 Notice regarding cybersecurity events of reinsurers to insurers. (a)~~(1)~~
In the case of a cybersecurity event involving nonpublic information that is used by the licensee that is acting as an assuming insurer or in the possession, custody, or control of a licensee that is acting as an assuming insurer and that does not have a direct contractual relationship with the affected consumers, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three business days of making the determination that a cybersecurity event has occurred.

~~(b 2)~~ The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under

chapter 487N and any other notification requirements relating to a cybersecurity event imposed under this part.

~~(e b)(1) In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of impacting a licensee's nonpublic information in a system maintained by a third-party service provider, of ~~which the~~ a licensee that is an assuming insurer, the assuming insurer shall notify its affected ceding insurers and the commissioner of its state of domicile within three business days of receiving notice from its third-party service provider that a cybersecurity event has occurred. ~~has become aware, the licensee shall treat the event as it would under section 431: -302, unless the third-party service provider provides the notice required under section 431: -302 to the commissioner.~~~~

~~(2) The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under chapter 487N and any other notification requirements relating to a cybersecurity event imposed under this part.~~

Thank you for your consideration of our proposed amendments and the opportunity to comment on SB 1100, HD 1, Relating to Insurance Data Security.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
E mail: otc@chikamotolaw.com

**TESTIMONY ON SENATE BILL NO. 1100,
SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO INSURANCE DATA SECURITY**

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Tuesday, March 23, 2021, 2:00 p.m.
Conference Room 325
State Capitol
415 South Beretania Street

To Representative Mark M. Nakashima, Chair; Representative Scot Z. Matayoshi, Vice Chair; and members of the House Committee on Judiciary & Hawaiian Affairs:

My name is Paul B. Shimomoto and I am submitting this testimony as the President of the Hawaii Captive Insurance Council (“HCIC”). HCIC is a nonprofit corporation that is committed to promoting, developing, and maintaining the thriving captive insurance industry that has existed in the State of Hawaii for nearly 35 years. In partnership with the State of Hawaii Insurance Division, HCIC provides information and education on issues affecting captive insurance companies (including risk retention group captive insurance companies), and assists the State of Hawaii in promoting Hawaii as the premier captive insurance domicile in the Pacific and one of the most reputable captive domiciles nationally and globally.

The HCIC **supports** Senate Bill No. 1100, Senate Draft 1, House Draft 1 (“SB1100 SD1 HD1” or the “Bill”), however, HCIC respectfully requests that the Committee amend Section 6 of SB1100 SD1 HD1 to clarify the effective date of the application of the proposed Act to risk retention groups chartered and licensed in this State.

SB1100 SD1 HD1 seeks to substantively adopt the provisions of the Insurance Data Security Model Law (“Model Law”) produced by the National Association of Insurance Commissioners (“NAIC”).

Importantly, Hawaii is not required to substantively adopt the Model Law to maintain its NAIC accreditation as a captive insurance domicile for risk retention groups. In fact, other captive insurance domiciles such as Vermont (the largest captive insurance domicile in the United States), have also declined to adopt, or have delayed application of, the Model Law to risk retention captive insurance companies domiciled in their states. Consistent with testimony from the Hawaii Insurance Commissioner before the House Committee on Consumer Protection and Commerce, Section 6 of the Bill was amended and now delays its application to Hawaii risk retention groups for two years from the Bill’s effective date. HCIC supports and concurs with that amendment.

However, Section 3 of the Bill addresses HRS §431:19-115, which subjects risk retention groups to other insurance laws of the State of Hawaii that are not contained in Article 19, Chapter 431 of the HRS. To be consistent with the effective date provisions in Section 6 of the current Bill as regards Hawaii-domiciled risk retention groups, HCIC respectfully requests that Section 6 of the Bill be amended by adding a new subparagraph (3) at the end of Section 6 to read as follows:

“(3) Section 3 of this Act shall take effect two years from the effective date of this Act.”

Thank you for this opportunity to submit testimony on SB1100 SD1 HD1.

Respectfully submitted:
Paul B. Shimomoto
Director and President
Hawaii Captive Insurance Council