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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection and Commerce
Thursday, February 24, 2022
2:00 p.m.
Room 329 and Via Videoconference**

**On the following measure:
H.B. 2111, 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. The Department supports this administration bill and respectfully requests an amendment to Section 4 and the effective date in Section 8.

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, the limited lines producer license issued under HRS section 431:9A-107.5(a) does not cover other general travel insurance products such as trip interruption or cancellation, damages to accommodations or rental vehicles, emergency evacuations, or repatriation of remains. The absence of coverage creates potential confusion for consumers and gaps in product offerings for those with this license. Additionally, some insurance products covered under HRS section 431:9A-107.5(a) are outdated and obsolete. **Section 2** of this bill will cover the gaps in limited lines product offerings and remove existing products that are outdated and obsolete.

Dental insurers and dental service corporations are currently subject to Third Party Administrators (TPA) regulation codified in chapter 431, article 9J. Additionally, existing TPA regulation requires the TPA to obtain a \$100,000 surety bond for licensure, which is a lower amount compared to surety bond requirements for other regulated insurance entities. Further, licensed TPAs are currently not required to include an audited financial statement in their annual report to the Insurance Commissioner.

Sections 3, 4, and 5 of this bill will: (1) amend the definition of “administrator” or “third party administrator” in HRS section 431:9J-101 to exclude dental insurers and dental service corporations; (2) increase the surety bond threshold amount to \$300,000 from the third year in HRS section 431:9J-103; and (3) add audited financial statements as part of the required annual report filings in HRS section 431:9J-112. Excluding dental insurers and dental service corporations from the TPA regulation will address the drafting oversight from the previous legislative session. Other amendments will promote financial stability of these entities and increase consumer protection.

Under chapter 431, article 10D, part VII, the current standard for insurance producers making annuity recommendations is a suitability standard, which may not provide adequate consumer protection. In 2020, the NAIC adopted a revised Suitability in Annuity Transactions Model Regulation to strengthen the standard. **Section 6** of this bill will amend HRS chapter 431, article 10D, part VII to adopt the NAIC’s revised Suitability in Annuity Transactions Model Regulation, which more clearly defines a producer’s responsibility to act in the best interest of the consumer when making a recommendation of an annuity and requires insurers to establish and maintain a system to supervise recommendations. These amendments will ensure that the insurance needs and financial objectives of consumers at the time of the annuity transactions are effectively considered.

The Department respectfully requests the following amendments:

Section 4, page 7, line 9, to read as follows: “two years of licensure, and at least \$300,000 from the third year of licensure.” to clarify bond requirement amount corresponds with licensure as a TPA.

Section 4, page 7, line 17, to read: “(b) At the third annual report filing, and each subsequent annual report filing, the” as the proposed language incorrectly references the type of filing required in HRS section 431:9J-112.

Insert **new Section 7** as follows, with remaining sections renumbered: “The Commissioner has authority to enforce provisions in Sections 2 and 5 until March 31, 2023.” The discretion to require compliance with amendments in Sections 2 and 5 may be necessary in the event the electronic platform for online renewals and licensure must be modified, and also if there is insufficient time for TPAs to comply with the new audited financial filing requirement.

Section 8, page 42, lines 8 - 9: “This Act shall take effect [~~upon its approval; provided that section 1 shall take effect on December 31, 2022.~~] on July 1, 2022.” An identified effective date will provide clarity to affected parties as to when amendments will be in effect.

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



House Committee on Consumer Protection & Commerce
February 24, 2022 2:00 pm

Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

RE: HB 2111 – Relating to Insurance

Chair Johanson, Vice Chair Kitagawa, and members of the Committee, Cynthia Takenaka representing the National Association of Insurance and Financial Advisors (“NAIFA”) Hawaii, an organization of life insurance agents and financial advisors throughout Hawaii who primarily market life, annuities, long term care and disability income insurance products.

We are support HB 2111, as it relates Section 6 of the bill starting on page 8 with the amendments proposed by the American Council of Life Insurers (ACLI).

The ACLI have put forth amendments in their testimony clarifying the completion date for the training course to July 1, 2023 and changing the date for producers who have completed the four credit annuity training course from “January 31, 2012” to “December 31, 2022” on page 39, lines 1-19. We support their amendments.

NAIFA was an active participant in the NAIC committee deliberations. Its adoption aligns with the goal of a uniform and standardized sales process for producers across the country.

Chapter 431, Article 10D, Part VII, HRS – Suitability in Annuity Transactions is being amended to update the NAIC’s Annuity Suitability model that **establishes a best interest standard of care for annuity solicitations and sales**, which requires a producer, or insurer where no producer is involved, **to consider the consumer's needs and financial interests above their own**. It provides a clear definition of best interest and clearly defines the benchmarks producers must meet to satisfy their obligation to the client.

The benchmarks producers must meet to satisfy the obligation to the client are: care, disclosure, conflict of interest and documentation. The updated model sets enhanced continuing education requirements for annuities, including updated education material and coursework reflecting the best interest obligations and producer requirements. It also aligns well with its federal counterpart – SEC's Regulation Best Interest. Together, these two initiatives

will significantly enhance protections for consumers across the country who seek guaranteed lifetime income in retirement through annuities.

The best interest standard works to ensure that consumers receive valuable information to help them make informed decisions when considering the purchase of an annuity. The best interest standard ensures that customer's interests are put first. It's intended to protect access to advice, choices in how to engage with advisors and to provide clear obligations with respect to disclosures, potential conflicts of interest and knowing the consumers' needs and objectives.

Nineteen states have adopted the updated model language with an additional twelve states currently in the process of adoption. There is widespread insurance industry support for the Best Interest Standard of Care in annuity transactions.

Mahalo for allowing us to share our view in supporting HB 2111.



BEFORE THE

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

HB2111 RELATING TO INSURANCE

**TESTIMONY OF PAUL KAISER
President & Chief Operating Officer,
Hawaii-Western Management Group**

February 24, 2022, 2:00 p.m.
State Capitol Conference Room 329
(via videoconference)

Chair Johanson, Vice Chair Kitagawa, and Committee Members:

My name is Paul Kaiser, the President and Chief Operating Officer of Hawaii-Western Management Group (HWMG). HWMG respectfully submits the following comments on HB2111, specifically as to the proposed amendment to raise the surety bond threshold amount.

By way of background, HWMG is a small, kama'aina third-party administrator providing health insurance management services for a wide range of organizations including Hawaii Medical Assurance Association (HMAA), Charter Communications, Hawaii Electricians Local Union 1186, and labor unions. HWMG is proud to be 100% employee-owned through its Employee Stock Ownership Plan (ESOP).

HB2111 would amend HRS Section 431:9J-103 to increase the surety bond requirement for third-party administrators from at least \$100,000 for the first two years to \$300,000 from the third year and beyond. A surety bond of \$300,000, however, is three times the amount recommended by the National Association of Insurance Commissioner (NAIC) as set forth in its model act (see <https://content.naic.org/sites/default/files/GL1090.pdf>). Such an increase in the surety bond amount will have a negative financial impact on administrators, without any appreciable benefit for the greater bond amount.

When HRS Section 431:9J-103 was first introduced in 2019 by way of Act 72 (SB 1212), the bill referenced a surety bond amount of at least \$300,000. This Committee, as reflected in Standing Committee Report No. 1406, reduced the surety bond amount from \$300,000 to \$100,000, concluding that a bond amount in excess of the NAIC guidelines was not necessary and simply added additional burden to the affected

industry. The surety bond requirements should therefore be consistent with the NAIC model act and maintained at \$100,000.

For these reasons, HWMG respectfully urges that the surety bond requirement be maintained at \$100,000. Thank you for the opportunity to testify on this matter of critical importance.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF HB 2111, RELATING TO INSURANCE

February 24, 2022

Honorable Representative Aaron Ling Johanson, Chair
Honorable Representative Lisa Kitagawa, Vice-Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capitol, Room 329 and Videoconference
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice-Chair Kitagawa and Members of the Committee:

Our firm represents the American Council of Life Insurers (“ACLI”). 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 percent of industry assets in the United States. Two hundred seventeen (217) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 97% of the annuity considerations in this State.

Thank you for the opportunity to testify in support of HB 2111, Relating to Insurance.

HB 2111 amends various provisions in Hawaii’s Insurance Code set forth in Chapter 431, Hawaii Revised Statutes, including amendments to Article 10D, relating to Annuities, adopting the National Association of Insurance Commissioners (NAIC) revised Suitability in Annuity Transactions Model Regulation provisions, which require producers to act in the best interest of the consumer when making a recommendation of an annuity and insurers to establish and maintain a system to supervise recommendations.

ACLI supports these proposed amendments including those relating to Annuities, subject, however, to the requested revisions set forth below. Note: **amended text is in red**, including deletions of existing amended text in the original bill.

First, for purposes of clarity ACLI requests that Section 8 of the bill, on page 42, lines 8 and 9 be amended as follows:

SECTION 8. This Act shall take effect upon its approval; provided that the matters described in paragraphs (1), (2) and (3) of section 1 and section 6 shall take effect on December 31, 2022.

In addition, again for purposes of clarity, ACLI suggests that the provisions relating to the completion of producer training in the sale of annuities set forth in §431:10D-626, in section 6 of the bill, on page 39, at lines 1 through and including line 19, be amended as follows:

§431:10D-626 [~~Insurance producer~~] Producer training. (a) [~~An insurance~~] A producer shall not solicit the sale of an annuity product unless the [~~insurance~~] producer has adequate knowledge of the product to recommend the annuity and the [~~insurance~~] producer is in compliance with the insurer's standards for product training. [~~An insurance~~] A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b) [~~Any insurance~~] A producer who **engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the commissioner. A producer who** is authorized to sell annuity products on or before ~~January 31, 2012~~ **December 31, 2022**, shall complete by ~~January 31, 2012~~ **July 1, 2023**, a one-time training course on annuity products meeting the requirements of subsection (d). ~~A producer who has completed an annuity training course approved by the commissioner prior to July 1, 2022, shall, within six months after July 1, 2022, by~~ completing either:

(1) A new four credit training course approved by the commissioner after December 31, 2022 ~~July 1, 2022~~; or

(2) An additional one-credit training course approved by the commissioner and provided by an approved education provider on appropriate sales practices, replacement, and disclosure requirements under this part.

(c) [~~An insurance~~] A producer who obtains a life or variable life and variable annuity products line of authority after ~~January 31, 2012~~ **December 31, 2022**, shall not engage in the sale of annuities until the insurance producer has completed training meeting the requirements of subsection (d).

Again, thank you for the opportunity to testify in support of HB 2111, relating to Insurance.

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February 23, 2022

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 HOUSE BILL (HB) 2111) **WITH REQUESTED AMENDMENTS**

Dear Chair Johanson, Vice-Chair Kitagawa and Members of the Committee:

American Insurance Group, Inc. (AIG) supports HB2111, but requests your consideration to amend the bill by specifically delaying the effective date of Section 6 of the bill dealing with annuities by clarifying Section 6 shall take effect December 31, 2022. This would ensure that the industry has sufficient time to implement these systematic changes.

It is our understanding that the amendments proposed in the bill adopt the National Association of Insurance Commissioners (NAIC) revised Suitability in Annuity Transactions Model Regulation provisions, which require producers to act in the best interest of the consumer when making a recommendation of an annuity and insurers to establish and maintain a system to supervise recommendations. We support these changes.

REQUESTED AMENDMENT:

SECTION 8. This Act shall take effect upon its approval; provided that the matters described in paragraphs (1), (2) and (3) of section 1 and section 6 shall take effect on December 31, 2022.

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