

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF/OPPOSITION TO SB 1324, RELATING TO INSURANCE

February 9, 2023

Honorable Jarrett Keohokalole, Chair
Honorable Carol Fukunaga, Vice-Chair
Committee on Commerce and Consumer Protection
State House of Representatives/State Senate
Hawaii State Capitol, Room 229 and Videoconference
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Jarrett Keohokalole, Vice-Chair Carol Fukunaga and Members of the Committee:

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 percent of 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 98% of the annuity considerations in this State.

Thank you for the opportunity to testify in support of SB 1324, Relating to Insurance.

ACLI supports the anti-rebating provisions set forth in the NAIC Model Unfair Trade Practices Act, as revised and recently adopted by the NAIC.

SB 1324 amends various provisions of Article 13 of Hawaii’s Insurance Code, relating to Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance (“Unfair and Deceptive Trade Practices Act”).

Section 10 of the bill (beginning on page 24, at line 8) amends Paragraph (a)(9)(E) of Section 13-103 of the Unfair and Deceptive Acts or Practices Act (HRS Section 431:13-103) to adopt the provision of the NAIC’s recent amended Unfair and Deceptive Act or Practices Model Act.

These provisions provide (among other matters) that the “. . . offer or provision by insurers or producers . . . of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance” do not constitute unlawful unfair or deceptive acts or practices. The amended provision then goes on to define what “value added products or services” an insurer or producer may lawfully provide to the customer or potential customer.

However, the amended Paragraph (a)(9)(E) of SB 1324 deviates from the NAIC Model Act's "Value Added Product or Services" provisions by omitting other value-added products or services that life insurers and its producers provide to their customers or potential customers..

Further, ACLI agrees with the sentiment expressed by many regulators and stakeholders that anti- rebating laws and regulations are interpreted and applied with wide differences by the various states. ACLI therefore shares the goal of achieving greater uniformity among the states with respect to anti-rebating.

ACLI , therefore, requests that Paragraph (a)(9)(E) be amended to include the Model acts provisions as set forth below (**amended text is in red, including additions to or deletions of existing text**).

E. The offer or provision by insurers or producers, by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance if the product or service:

- (i) Relates to the insurance coverage; and
- (ii) Is primarily designed to satisfy one or more of the following:
 - (I) Provide loss mitigation or loss control;
 - (II) Reduce claim costs or claim settlement costs;
 - (III) Provide education about liability risks or risk of loss to persons or property;
 - (IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk
 - (V) Enhance health;
 - (VI) Enhance financial wellness through items such as education and financial planning services;
 - ~~(VI)~~(VII) Provide post-loss services; ~~or~~
 - ~~(VII)~~(VIII) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a customer; or
 - ~~(VIII)~~(IX) Assist in the administration of the employee or retiree benefit insurance coverage.

...

ACLI member companies want consumers (and groups) to purchase our products (this includes all products offered by ACLI member companies) for the important financial protection and

savings features that are contained in those products., and not because of any other perceived financial or other benefit received by the insurer or producer.

Examples of those value-added services that “enhance financial wellness” provided by insurers or producers include the following:

1. Providing information and assistance tailored to the customer’s financial needs and situation in the event of his/her disability, retirement or death and care in the event of incapacity.
2. Educating the client on how life insurance products – such as life, disability, long term care and annuities – may properly provide the client or family members with the requisite protection and coverage in the event of the customer’s disability, incapacity or death. For example, by securing: disability insurance to replace the customer’s income stream in the event he or she can no longer work due to sickness or disability; life insurance to fund surviving family members’ continuing needs or to fund the payment of inheritance or estate taxes imposed on the customer’s inheritors or estate in the event of his/her death; and an annuity to insure that the customer “never outlives her/his money”. Insurers and producers assist the customer in determining these needs and more importantly, the suitable and appropriate s product required to secure financial protection for the customer and her/his family.
3. Assisting the customer is securing professional legal and tax advice and assistance with the foregoing matters.

Insurers and producers continue to service their business customers by assisting them in administering their group and individual life and disability insurance coverage and benefits afforded to the customers’ employees and retired employees.

Further, Paragraph (a)(9)(F), which follows (beginning on page 39, at lines 10 – 13) deviates from the provisions of the Model Act by omitting its other important provisions, as detailed immediately, below.

ACLI, therefore, requests that Paragraph (F) be amended and a new Paragraph (G) be added, as set forth below.

~~(F) For purposes of this paragraph, “customer” means a policy holder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant. An insurer or producer may:~~

- ~~(i). Offer or give non-cash gifts, items, or services including meals to or charitable donations on behalf of a customer, to commercial or institutional customers in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost is reasonable in comparison to the premium or proposed premium and the cost of the gift or service is not included in any amounts charged to another person or entity. The offer must be made in a manner that is not unfairly discriminatory. The customer may not~~

be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.

- (ii). Conduct raffles or drawings, but only to the extent permitted by the laws of this state, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory. The customer may not be required to purchase, continue to purchase or renew a policy in exchange for the gift, item or service.

An insurer, producer or representative of either may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free", "no cost" or words of similar import, in an advertisement in connection with such inducement.

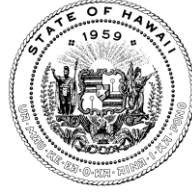
(G) For purposes of this paragraph, "customer" means a policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant).

As amended, ACLI is in strong support of this legislation.

Again, thank you for the opportunity to testify in support of SB 1324, relating to Insurance.

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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Thursday, February 9, 2023
9:31 a.m.
State Capitol, Conference Room 229 and via Videoconference

On the following measure:
S.B. 1324, RELATING TO INSURANCE

Chair Keohokalole and Members of the Committee:

My name is Gordon I. Ito, 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 amend various provisions of title 24 of the Hawai'i Revised Statutes (HRS) to update and improve existing provisions; add a Health Insurance Administrator deputy commissioner position; define "dormant captive insurance company" and sets out a procedure to apply for the certificate of dormancy; add the term "doing business as" to "trade name" statutory references; clarify continuing education provider filing requirements; clarify reinsurance intermediary-manager filing requirements; amend the surety bond threshold requirement for third party administrators and clarifies the audited financial statements requirements; adopt the revised National Association of Insurance Commissioners Model #880 Unfair Trade Practices Act regarding expansion of value-added products beyond health products;

align section 431:13-103 Hawaii Revised Statutes (HRS) with changes made to article 9 of chapter 431, HRS, by Act 110, Session Laws of Hawai'i 2021; and amend the definitions of "controlled unaffiliated business" and "participant" as applied to captive insurance companies.

Section 1 of this bill defines a position for a health insurance and **Section 3** of this bill will include the health insurance administrator as a position exempt from chapter 76. We respectfully request that Sections 1 and 3 of this bill be deleted.

There is no standardized process for a captive insurance company to transition to a dormant status in Hawaii. Under current practices, a dormant captive insurance company must obtain approval from the Insurance Division to be dormant, and if approved, must comply with modified filing requirements. A standardized process is necessary to establish a uniform, efficient, and transparent system. **Section 2** of this bill will (1) clearly define what constitutes a dormant captive insurance company; (2) outline the process for a company's transition, as well as a renewal process; (3) outline the forgoing expectations of a company, as well as any prohibited acts; (4) outline a process for a company to surrender its certificate of dormancy; and (5) define penalties for non-compliance.

To facilitate the Insurance Division's transition to an electronic licensing platform, defining the term "trade name" will avoid potential confusion for individuals and businesses submitting their electronic applications and renewals via the National Association of Insurance Commissioners (NAIC) State Based Systems and National Insurance Producer Registry. **Section 4** will clarify that "trade name" also means the name individuals and business entities are doing business as, thereby allowing applicants and licensees to add or maintain trade names on licenses. Continuing Education (CE) providers are required to only submit the licensing self-study course to the Insurance Division; however, CE providers are also submitting exam questions, which may create a false impression that the division is also approving exam content/questions. **Section 5** will make clear that exam content and questions are not required to be approved or filed with the division and are to be made available upon request of the commissioner.

Currently, the duties addressing surety bond requirements and Errors & Omissions (E&O) policy filings for reinsurance intermediary-managers (RIMs) are organized under HRS 431:9B-102(c)(1) and (2). HRS 431:9B-102 addresses licensure, while HRS 431:9B-108 addresses the duties of reinsurers utilizing the services of RIMs. Thus, HRS 431:9B-102(c)(1) and (2) are better placed in HRS 431:9B-108 as RIMs have the authority to bind or manage all or part of the assumed reinsurance business of a reinsurer and act as an agent for the reinsurer. **Sections 6 and 7** will delete the surety bond and Errors and Omissions (E&O) policy filing requirements in section 431:9B-102(c)(1) and (2) and insert the surety bond and E&O policy filing requirements in section 431:9B-108.

Currently, administrators seeking a license need only file with the commissioner, and maintain, a surety bond of at least \$100,000. Additionally, no requirement exists to file an audited financial statement reflecting proof of the requisite surety bond amount along with the annual report. **Sections 8 and 9** will ensure adequate consumer protection and promote transparency of Third Party Administrators operating in the State of Hawaii by increasing the surety bond threshold requirement for third party administrators in section 431:9J-103 to \$300,000 from the third year of licensure filing and clarifying the audited financial statements requirement in section 431:9J-112.

Currently, article 13, chapter 431 allows value-added benefits offered by a health care plan wellness program that meets statutory requirements. Amendments consistent with NAIC Model #880 Unfair Trade Practices Act (NAIC Model #880) are needed to provide consistent treatment of value-added products or services beneficial to consumers across all lines of insurance. Expanding value-added products or services at no or reduced cost to numerous lines of insurance and policyholders will: (1) ensure consistency with the national standard; and (2) benefit the local population where a non-insurance benefit can mitigate health or safety risk. **Section 10** will amend section 431:13-103(a) by (1) adopting section 4 H(2)(e) of revised NAIC Model #880 regarding expansion of value-added products beyond health products; and (2) aligning section 431:13-103 with changes made to article 9 of chapter 431 by Act 110, Session Laws of Hawaii 2021 (section 10).

Clarification is necessary to the definition of a “controlled unaffiliated business” in section 431:19-101 to make clear that this term applies to sponsored captive insurance companies that are subject to part III of article 19, chapter 431. **Section 11** will amend the definitions of “controlled unaffiliated business” and “participant” in section 431:19-101 (section 11).

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

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HAWAII

Senate Committee on Commerce & Consumer Protection
February 9, 2023 – 9:31 am

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

RE: SB 1324: Relating to Insurance (CPN, WAM)

Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee, mahalo for this opportunity to allow NAIFA (National Association of Insurance and Financial Advisors) Hawaii to share our position on SB 1324. NAIFA Hawaii is made up of life insurance agents/producers and financial advisors across Hawaii who primarily market life insurance, annuity, long term care, and disability income insurance products.

We do support the intent of this measure and ask for your support for additional provisions.

We will limit our remarks to pages 33 through 39, under 431-13-103, HRS. These amendments are from the NAIC's Spring 2021 "Unfair Trade Practices Act". Section (8) (A) (B) Rebates -- explains rebating under the "unfair methods of competition and unfair or deceptive acts or practices defined" -- in the business of insurance. For example, returning a portion of the premium to the customer or sharing the producer's commission with the customer as an inducement to place the business or anything of value that's not provided for in the policy are considered rebating.

In Section 9 from pages 34 to 39 identifies the exclusions from the discrimination and rebate definitions. Items (A), (B), and (C) are from the model act and provided for in the insurance contract. We are **concerned with two provisions that are in the model act but not included in SB 1324 in (E) beginning on page 36**, from line 11 on offers "...of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance if the product or service:...." as follows:

1. Enhance financial wellness through items such as education or financial planning services;
2. Assist in the administration of the employee or retiree benefit insurance coverage.

We are puzzled that these two provisions were omitted from this measure since insurance producers and insurers provide education either one on one or in group settings. When producers sell life insurance, annuity, long term care or disability income policies, the overall financial picture of the insured and family should be taken into consideration to determine the best product(s). Fact finding and getting to know the customer to better discern their needs and concerns are critical steps in this process. Many producers have clients with retirement benefits and meet with them regularly to review their status and financial goals. There are also many group insurance plans in force at the workplace whether it's life insurance, long term care, some form of disability insurance which also needs

monitoring and financial advice. Is the employer better equipped to educate and provide financial advice for the employee's retirement plan or other benefits at the workplace?

We ask for your favorable consideration of our amendments. Mahalo.

Cynthia Takenaka
Legislative Director



**TESTIMONY ON PROPOSED AMENDMENTS TO
ARTICLE 19, CHAPTER 431, HAWAII REVISED STATUTES
RELATING TO INSURANCE**

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Thursday, February 9, 2023, 09:31 a.m.
Conference Room 229 & Videoconference
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

TESTIMONY IN SUPPORT OF SECTIONS 2 AND 10 OF SENATE BILL 1324

To Senator Jarrett Keohokalole – Chair; Senator Carol Fukunaga – Vice Chair; and members of the Committee on Commerce and Consumer Protection:

My name is Paul Shimomoto, and I am submitting this testimony as President of the Hawaii Captive Insurance Council (“HCIC”). The HCIC is a nonprofit corporation whose mission is to promote, develop, and maintain a strong, stable and reputable captive insurance industry in the State of Hawaii. We do this in partnership with the State of Hawaii Insurance Division (“Division”) on a local, national, and international level.

Today, Hawaii is home to 255 actively operating and licensed captive insurance companies. Their parent companies are headquartered all over the US, in Japan and Europe. A large portion of them are traded on major stock exchanges globally and are regularly included in Forbes’ Global 100 and 500 lists. As of the end of 2021, Hawaii was ranked the fifth largest captive domicile (in terms of number of active licenses) in the US, and the eighth largest domicile worldwide. Hawaii is also currently the domicile of choice for 40 Japanese-owned captive insurance companies, making it the global leader. On a combined basis as of December 31, 2021, these captive insurance companies wrote \$12.3 billion of gross written premium and had invested assets in Hawaii financial institutions that totaled \$1.6 billion.

The captive industry that represents and supports the State of Hawaii as a captive domicile has been, and continues to be, a shining example of real, economic diversification. This industry provides local, professional job opportunities in the legal, accounting, banking and finance, and insurance management sectors to name a few, and it is estimated that it currently contributes nearly \$67 million to Hawaii’s economy annually.

Hawaii’s prominence within the global captive insurance industry is, however, not without competition. In the US, there are approximately 39 other states that are active captive insurance

domiciles. This means that prospective captive owners – as well as current captive owners – have choices as to where they domicile and operate their captive insurance companies. Although Hawaii is an established and well-respected captive domicile, it nevertheless has some inherent challenges given its location and certain perceptions of “doing business” in Hawaii. Thus, it is critically important that our legal and regulatory framework is structured and operates in a manner that incentivizes prospective captive owners to choose Hawaii in the first place and continually reaffirms the value proposition for existing captive owners already domiciled here.

HCIC and the Hawaii Insurance Division have worked collaboratively on the concept and language contained in **Sections 2 (dormant captive insurance companies) and 10 (amendments to HRS 431:19-101) of Senate Bill 1324** (“Bill”) as HCIC believes it will help us achieve our goals of ensuring: 1) that our laws are flexible and support the desires and needs of the constituency we serve, and 2) that our regulatory environment remains as responsive and efficient as possible.. For the foregoing reasons, the HCIC **supports Section 2 and 10** of the Bill. HCIC takes no position with respect to the other aspects or provisions contained the Bill.

Thank you for the opportunity to submit this testimony. We look forward to your kind and favorable consideration.

Respectfully submitted,

Paul B. Shimomoto

Paul Shimomoto, President
Hawaii Captive Insurance Council