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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 27, 2024
10:00 A.M.
State Capitol, Conference Room 229 and via Videoconference**

**On the following measure:
S.B. 524, S.D. 1, RELATING TO BUSINESS REGULATION**

Chair Keohokalole and Members of the Committee:

My name is Gordon Ito, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to authorize the Insurance Commissioner to require pre-approval for certain salary increases granted to any person receiving a salary from an insurer.

We have the following concerns with this bill:

1. This bill refers generally to "an insurer"; it is unclear if this reference is intended to apply to all insurers, regardless of its domicile and line of business.
2. The Insurance Division will need to hire staff or a consultant with expertise in salary compensation and development of standards to review and determine compensation approval or disapproval to meet the

requirements of this bill and therefore requests an increase in the
Insurance special fund authorization.

Thank you for the opportunity to testify.

Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection

February 26, 2024

Filed via electronic testimony submission system

RE: SB 524 SD-1 Proposed - NAMIC's Testimony in Opposition

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 13, 2024, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

The National Association of Mutual Insurance Companies consists of nearly 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. The association supports local and regional mutual insurance companies on main streets across America as well as many of the country's largest national insurers. NAMIC member companies write approximately \$391 billion in annual premiums and represent 68 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance.

NAMIC is opposed to the following provision in the proposed legislation:

Require pre-approval from the commissioner for any salary increase granted to any person receiving from an insurer a salary exceeding \$1,000,000.

Specifically, NAMIC is concerned that the above referenced provision is arguably inconsistent with state and federal employment law and contract law, an inappropriate authorization of a labor law regulatory function to the insurance commissioner, an improper use of the insurance commissioner's regulatory staffing and resources, and a public policy position that could adversely impact availability of insurance in the state for consumers.

1) The proposed provision is arguably inconsistent with state and federal employment law and contract law

First, Constitutional Law Legal Doctrine strongly supports "freedom of contract" between parties to a lawful contract. Employment compensation is an integral part of any employment agreement and has been historically left to the negotiations and sole discretion of the private contracting parties.

Second, the proposed provision could be in violation of the Dormant Commerce Clause as it could interfere with interstate commerce. Insurers who sell insurance products nationally have a state of legal domicile and have employment contracts governed by those states. The State of Hawai'i should not be engaging in extra-jurisdictional regulatory authority over employment agreements, legal consideration provided by contracting parties, and compensation-packages negotiated in other states and subject to the labor and employment laws of those other lawful jurisdictions. If the proposed provision is enacted into law, insurers domiciled in other states may be forced to reconsider their business activities in the State of Hawai'i so as to protect their employees' contractual rights and right to privacy.

2) The proposed provision is an inappropriate authorization of a labor law and employment law regulatory function to the Insurance Commissioner

Although the employees to be regulated are insurance company professionals, the subject matter issue being addressed by this provision is not an “insurance” issue addressed by the insurance code. It is an employment law and labor law function. Parties are free to enter into any lawful contract and negotiate terms of service and compensation that are lawful. Providing the Insurance Commissioner with authority to approve or disapprove compensation is rife with legal, administrative due process of law, and public policy concerns, especially in light of the fact that the Insurance Commissioner has no experience or expertise in evaluating market-based employment compensation.

3) The proposed provision is an improper use of the Insurance Commissioner’s regulatory staffing and resources

Supervision over insurance company compliance with the insurance code, state insurance law, and market conduct business practices related to rating, underwriting and claims adjusting is within the purview of the Insurance Commissioner. Regulatory oversight of these activities should not be compromised by extending the Commissioner’s regulatory authority to employment law issues which are not germane to regulatory activities relating to the insuring agreement and the sale and service of insurance products.

4) The proposed provision could adversely impact availability of insurance in the state for consumers

National and international insurers may have serious legal and business operations concerns associated with doing business in Hawai’i if they are forced to disclose executive salaries and expose these private professionals to having their compensation-package subject to regulatory approval. Insurers should not be forced to limit their compensation packages used to attract talent and address the needs of insurance consumers. Compensation is, and should be, based on employment market dynamics and the business needs of employers and employees, not arbitrary compensation evaluations of a single government official. The proposed provision begs the question – does Hawai’i plan to require all private sector employment contracts over \$1 million dollars in salary to be approved? This is clearly an unworkable, impractical, and inappropriate usurpation of a private employment law activity.

For the aforementioned reasons, NAMIC asks for a No Vote on SB 524– SD 1.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
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