



S

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Monday, February 10, 2025
9:35 a.m.
State Capitol, Conference Room 229 and via Videoconference

On the following measure:
S.B. 1563, RELATING TO INSURANCE

Chair Keohokalole and Members of the Committee:

My name is Jerry Bump, and I am the Acting 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 establish rate transparency requirements for insurance companies operating in the State and establish and appropriate moneys for an Office of Insurance Consumer Affairs within the Insurance Division of the Department of Commerce and Consumer Affairs to provide oversight, information, and consumer advocacy.

While we appreciate the intent of the bill, the Department offers the following comments regarding Section 2:

Page 3:

1. Lines 3 to 5: We note that sections 431:14-103(a) and 431:14G-103, Hawaii Revised Statutes (HRS) mandate the considerations insurers shall use in making rates.
2. Lines 6 to 21 to page 4, lines 1 to 14: We note that the Insurance Division is charged with ensuring solvency of insurers and rate-related approvals. Establishing an Office of Insurance Consumer Affairs (OICA) within the Insurance Division that advocates for policyholders in approval hearings, disputes, and other regulatory processes presents a potential conflict of interest.

Page 4:

1. Lines 15 to 21 to page 5, lines 1 to 21: We note that underwriting rules are generally considered a trade secret. Additionally, rate filings are already publicly accessible through the Systems for Electronic Rates & Forms Filing (SERFF) Access portal found on our website: <https://cca.hawaii.gov/ins/serff/>. The level of detail requested for each explanation would place an onerous burden on insurers since filings are very technical and utilize actuarial specialists.

Page 5:

1. Line 15: We note that the Health branch in the Insurance Division currently has established filing deadlines. We would ask that any filing deadline outlined coincide with the branch established deadlines. This would also help with the workload and efficiency of filings for insurers.

Page 6:

1. Lines 1 to 7: We note that rate adjustments are already submitted for approval under HRS § 431, Article 14 and 14G. For the fiscal year ending June 30, 2024, the Insurance Division reviewed 3,629 rate filings for all lines of insurance.
2. Lines 8 to 10: First, we note that rate making is a technical process by credentialled actuaries which produces rates that reflect the risk intended

to be covered. And while we acknowledge the value of outside input, mandating the OICA approve rate changes means that two entities now need to approve rates. This will likely cause a significant delay in approval times which could lead to carrier departure. Second, should the bill move forward, we offer the following comments: (1) we note that the bill defines “material changes,” page 2, lines 16 to 17, as “adjustments to rates resulting in a premium increase of more than ten percent for any policyholder.” Further down, the bill tasks the department with conducting public hearings for all “significant rate changes,” page 6, line 9. If the two terms are synonymous, we request the language on page 6, line 9 be amended for purposes of conformity; or (2) If the two terms are not meant to be synonymous, we ask for clarity in defining the scope and specific considerations used to determine “significant rate changes.”

3. Lines 13 to 17: Subsection (a) allows policyholders to request a full breakdown of their rate calculation data using “factors, weights, and assumptions.” We would ask for clarity whether “rate calculation data” refers to rate making, as outlined in HRS §§ 431:14-103(a) and 431:14G-103 or refers to the data points used in the “rate calculation factors” to calculate a policyholder’s premium, as defined on page 3, lines 3 to 5. If “rate calculation data” refers to rate making in an insurance program, to maintain consistency between statutes, we propose that “including specific factors, weights, and assumptions” be replaced with a reference to HRS §§ 431:14-103 and 431:14G-103. If “rate calculation data” refers to the data points in the rate calculation factors used for calculating premiums, then we ask that “weights and assumptions” be removed.
4. Lines 18 to 20: We note that HRS § 431:14-110 already provides a means for policyholders to challenge the rating organization or insurer regarding the rating program. We also note that for health insurance rate regulation, HRS § 14G-109 provides a means for information to be furnished to enrollees.

Page 7:

1. Lines 1 to 7: We note that HRS § 431:14-117 already provides penalties for violations specific to rate making under article 14, and HRS § 431:2-203 gives the Insurance Commissioner authority to enforce and take action against violations of the Insurance Code. We also note that HRS § 14G-111 provides penalties for violations specific to article 14G which regulates rates for health insurance.

Thank you for the opportunity to testify.

TESTIMONY OF ALISON UEOKA

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

Monday, February 10, 2025

9:35 a.m.

SB 1563

Chair Keohokalole, Vice Chair Fukunaga, and members of the Committee on Commerce and Consumer Protection, my name is Alison Ueoka, President for Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit association of property and casualty insurance companies licensed to do business in Hawaii. Members companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. This bill, while on its face appears to provide information to consumers, it duplicates and overlaps with current law and could have the unintended consequence of causing insurers to flee an already small property and casualty insurance marketplace.

The bill creates a new Chapter, Insurance Rate Transparency. In present law, the Insurance Commissioner has extremely broad powers. We believe many provisions in this bill exist within current law or can be implemented by the Insurance Commissioner without law. Part of the Insurance Commissioner's duties are to ensure that rates are not excessive, inadequate or unfairly discriminatory.

In addition, Hawaii has one of the strictest ratemaking schemes in the nation, prior approval. Existing ratemaking statutes require literal reams of data and analysis and there is significant communication and back and forth on rate filings between insurer and regulator as a general rule. Therefore, adding more ratemaking bureaucracy to one of the most heavily regulated states in the nation will not lead to more insurers entering the

market. It could in fact lead to a retraction in the marketplace among insurers already writing in Hawaii.

Finally, the fines in this bill seem inappropriately large. Insurers are already subject to fines up to \$10,000 for violations of the insurance code.

For the abovementioned reasons, we ask that this bill be held. Thank you for the opportunity to testify.

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

February 8, 2025

Filed via electronic testimony submission system

RE: SB 1563, DCCA; Insurance; Rate Transparency; Consumer Advocacy - 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 10, 2025, 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's members appreciate the importance of informed consumer choice and embrace consumer transparency when it is helpful, reasonably practical, cost-effective, and consistent with protecting insurer trade secrets and proprietary/confidential information used in an insurer's rating and underwriting practices. Healthy competition between insurers is pro-consumer.

Transparency for the mere sake of transparency can be counter-productive, confusing to consumers, and detrimental to the competitive health of the insurance marketplace.

NAMIC is adamantly opposed to the proposed legislation, because it would establish a number of expensive, impractical, unworkable, and anti-consumer mandates. We respectfully submit the following comments:

- 1) **Section 2, Office of Insurance Consumer Affairs** would create a new and specific advocacy and consumer education sub-department within the Division of Insurance (HID). NAMIC believes that this is an unnecessary expenditure of limited state tax resources, because the HID already provides basic insurance education to consumers and assists insurers in resolution of insurance questions with insurers. The HID is not intended to be an *advocacy* department it is intended to be a *regulatory* department. *There is no reason to question the thoroughness or effectiveness of the HID's regulatory oversight to make sure insurers are complying with the insurance code on proper rating practices.*

Moreover, insurance consumers already have the legal right to retain their own independent representation in insurance disputes, via a public adjuster to assist in claims adjusting or a licensed attorney to assist in a legal dispute.

Section 3, Rate Transparency would require insurers to automatically send a “detailed explanation of the company’s rate setting practices to all policyholders upon the issuance or renewal of a policy”. [Emphasis added]

First, although we appreciate the sponsor’s desire to make sure that consumers have what they need to make informed decisions about their insurance needs and to compare insurance options, we are concerned that this bill far exceeds that laudable public policy objective. Since common experience teaches us all that no one wants to pay more for anything in life, especially things that don’t really benefit them, NAMIC believes that it is imperative for the bill sponsor to offer evidence or data that the vast majority of consumers want, need or would even read a “detailed explanation” of an insurer’s rating practices. Otherwise, why create this additional administrative burden and cost for insurers and their policyholders?

Policymakers need to be mindful that compliance with all the provisions of this bill could realistically result in a possible 8-10 pages or more of disclosures being sent to each policyholder with complex data sets, mathematical computations and analytical formulas that would require years of subject matter expertise to even understand? Who would even read this disclosure? People don’t even read instruction manuals and warranties on their new toys that are not a fraction as complex as the disclosures being contemplated. *Crushing consumers with complex disclosures is NOT consumer protection.*

Second, the sponsor of this bill has offered no evidence or data that the vast majority of consumers want, their insurance rates impacted by this needless insurance disclosure mandate that is loaded with insurance rate cost-drivers. No new administrative process, especially novel and very comprehensive ones, come free of charge to insurers and their policyholders. So implicit in the decision to impose this cost on consumers is the sponsor’s conclusion that consumers are okay with paying for this disclosure which is unlikely to help them decide between insurance products or carriers to do business with.

NAMIC respectfully requests that this committee specifically answer - whether they believe consumers want and need this level of granular information enough to merit creating a major new insurance rate cost-driver.

Third, the bill fails to define what is meant by the overly vague “detailed explanation” and “rate setting practices”. Those phrases could mean everything from software used by the insurer to educational materials employed by the insurer to train their staff on company business practices relating to performing their rate computational professional activities.

Fourth, the proposed legislation would require insurers to disclose not only their own trade secrets, and proprietary/confidential rating methodology, which is a big problem, but it would also require insurers to violate the terms of their contracts with third-party modelers and vendors, who do not want their proprietary algorithms and models disclosed to the public and their competitors.

Fifth, the very definition of "Rate calculation factors" is completely unworkable. It would be impractical and economically prohibitive for insurers to disclose “all variables, data points, and algorithms used by an insurance company to calculate a policyholder’s premium”. [Emphasis added].

And how would the average consumer, not trained as an actuary, data analyst, algorithmic modeler, or mathematician be able to interpret and understand the “information overload” of complex data that would be provided to them?

Sixth, NAMIC is concerned that the bill would require insurers to disclose what may not even be functionally possible. The bill requires the insurer to disclose “the percentage each factor contributes to the calculation of the total insurance premium.” This statement does not take into consideration the fact that rating factors interact with, influence and temper each other, so it isn’t a simple, straightforward process to disclose as the bill sponsor believes.

- 2) **Section 4, Rate Changes** - NAMIC is concerned that this section would create an unnecessary and redundant process because Hawaii already requires prior approval of insurer rates by the Insurance Division (HID). Additionally, we are concerned that this proposed provision would turn the rate review process into “a circus event” where consumers and paid advocates can intervene in the rate review process via the proposed public hearings. This requirement will only add unreasonable delays to the rate review process, needless costs for the HID and insurers, and turn the rate review process into a contentious and adversarial event.

NAMIC is also concerned that the provision states that the HID shall “represent policyholder interests”. This language could arguably be interpreted to mean that the HID is required to legally represent each and every policyholder in the ratemaking hearing. This is rife with legal licensure, ethical conflict of interest, and professional relationship problems. The HID already reviews rates in a manner that ensures that they are “not excessive, inadequate or unfairly discriminatory”, which has an inherent consumer protection emphasis. But to require HID “representation” is crossing a line that may have constitutional due process implications for insurers and policyholders.

- 3) **Section 5, Consumer Rights** - NAMIC is concerned that this section creates a vague and overly-broad requirement that may be impossible to comply with. What is meant by “a full breakdown of the rate calculation data ...”? Arguably this could be interpreted to require the insurer to retain trainers to “walk through” all the intricacies and foundational principles of actuarial science used in the entire rating process on an individual policyholder basis so that the person receives a “full breakdown”.
- 4) **Section 6, Penalties** - NAMIC is extremely concerned about the section which states that insurers “shall” (not “may” - so no discretion for the commissioner to consider the facts of the particular situation) be fined \$50,000 per instance of non-compliance. This is not only excessive and unreasonable, but it is also vague and arguably unconstitutional from a due process of law standpoint. What is the demarcation between “instances of non-compliance”? [Emphasis added].

Further, the section states that the insurer shall be subject to restitution payable to the affected policyholders. This provision is also rife with legal ambiguity and due process of law violation issues. This provision is likely to create a business industry set-up to legally challenge all insurer rate filings so as to seek restitution, and arguably the \$50,000 fine per instance of violation, since the bill doesn’t address who the fine is payable to. *This entire section is a lawsuit begging to be filed.* How is this provision beneficial to the health of the insurance marketplace and insurers’ ability to provide consumers with fair, accurate and timely risk-based rates and insurance products?

In closing, NAMIC respectfully requests that this committee **VOTE NO on SB 1563**, because it is loaded with mandates that will burden and confuse consumers with overly-complex disclosures, turn the prior

approval of rates process into an adversarial public spectacle, and impose significant insurance rate-cost drivers on insurers, which consumers will ultimately be required to pay because state law requires insurers to not use *inadequate* rates based upon the coverages and costs of the insurance product being offered.

When one asks the question - How will this bill provide practical and tangible benefits to consumers, improve the health of the insurance marketplace so that insurers can engage in pro-consumer competition, and assist insurers' in their ability to provide consumers with fair, accurate and timely risk-based rates and insurance products? The answer is a resounding – It won't help – it will only hurt consumers.

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj".

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

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1001 Bishop Street #625 | Honolulu, HI 96813
866-295-7282 | aarp.org/hi | hiaarp@aarp.org |
[Twitter.com/aarphawaii](https://twitter.com/aarphawaii) | facebook.com/aarphawaii

**The State Legislature
Senate Committee on Commerce and Consumer Protection
Monday, February 10, 2025
Conference Room 229, 9:35a.m.**

TO: The Honorable Jarrett Keohokalole, Chair
FROM: Keali'i S. López, State Director
RE: Support for S.B. 1563 Relating to Insurance

Aloha Chair Keohokalole and Members of the Committee:

I am Keali'i Lopez, State Director of AARP Hawai'i. AARP is a nonprofit, nonpartisan, social impact organization dedicated to empowering people 50 and older to choose how they live as they age. We advocate at the state and federal level for the issues that matter most to older adults and their families. On behalf of our nearly 135,000 members statewide, thank you for the opportunity to share our testimony.

AARP supports S.B. 1563 which establishes rate transparency requirements for insurance companies operating in the State; establishes and appropriates moneys for an Office of Insurance Consumer Affairs within the Insurance Division of the Department of Commerce and Consumer affairs to provide oversight, information, and consumer advocacy.

This is an effective approach to increasing transparency, accountability and advocacy for consumers during these extreme upheavals in the insurance industry, especially in key lines of business in property insurance such as commercial multiple peril, homeowners' multiple peril and fire insurance.

Hawaii's economy depends on insurance, which provides financial protection for consumers when accidents, natural disasters, and other risks become reality—something we know all too well here in our state. Since consumers' homes are the largest assets that most Americans will ever own, the financial protection provided by homeowners insurance is critically important to ensuring consumers' financial stability and security as well as community resilience.

The availability of affordable property insurance has been shrinking, a situation further exacerbated by the Lahaina fire in 2023. Various types of homeowners have seen their policies increase exponentially, with rising deductibles creating significant financial burdens to retain coverage. These increases are not limited to condominium owners; single residences, businesses,

and nonprofit organizations have also been impacted by rising insurance costs. This particularly poses financial hardships on older individuals with fixed incomes, as well as organizations and businesses struggling to keep up with their rising operational costs.

As the legislature may have already seen, the insurance industry or more specifically state insurance safeguard programs (HHRF and HIPA) have been slow to be responsive to the effects of the Lahaina Wildfires and the growing impact of climate related disasters. Having an office within the Insurance Division that prioritizes and focuses on consumer advocacy may be just what is needed to increase transparency, accountability and consumer protection.

Thank you for the opportunity to testify in support of S.B. 1563.