

Hawaii State Legislature
Senate Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

February 18, 2016

Filed via electronic testimony submission system

Dear Senator Baker, Chair; Senator Kidani, Vice Chair; and honorable members of the Committee on Commerce, Consumer Protection, and Health:

RE: SB 3064, Adjusters and Public Adjuster - NAMIC's Written 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 19, 2016, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC and its members appreciate the importance of consumer education and informed consumer choice, so we support the intent of the bill. However, NAMIC is concerned that the bill may actually confuse insurance consumers, needlessly increase insurance claims adjusting costs, delay settlement of claims, and establish a claims adjusting process that is inconsistent with the national standard and the National Association of Insurance Commissioners' (NAIC) Model Act on Public Adjusters.

NAMIC respectfully submits the following statement of the concerns and recommendations:

1) Definition of an “adjuster” -

To start with, NAMIC believes that the definition of an “adjuster” is confusing and incompatible with the definition of a “public adjuster”. It is also inconsistent with the practical reality of the situation and the common understanding of the professional relationship between an insurer and an “adjuster”, and the relationship between a policyholder and a “public adjuster”.

In common parlance, the “adjuster” works for and represents the insurer in adjusting the claim in a manner consistent with the terms of the insuring agreement. In contrast, the “public adjuster” works for and represents *only* the policyholder during the claims adjusting and settlement process.

The proposed definition in SB 3064 needs to be simplified and clarified so that it reflects the true and actual relationship these professionals have with their respective employer (insurer or policyholder).

Consequently, NAMIC recommends the following proposed revisions to the definition of an “adjuster” (deletions in red font, additions in blue font):

“Adjuster” - Means any licensed individual who: (A) Acts solely on behalf of either the insurer or the insured, as an independent contractor or as an employee of an independent contractor; and (B) Investigates for, reports to, or adjusts for the individual’s principal relative to claims arising under insurance contracts;

NAMIC suggests removing “the insured” language, because the “public adjuster” represents the policyholder in the claims adjusting and settlement process. Including “insured” in *both* the definition of an (“adjuster” and “public adjuster” is confusing).

NAMIC recommends adding the word “licensed” to “individual” so that it is clear that these professionals are independent contractor, who personally comply with state licensure since they are not directly employed, trained, and supervised by the state licensed insurance company.

NAMIC also respectfully recommends that the section captioned, “Adjuster - Does not include an individual who is -” be revised so that the following exclusion from the definition of an “Adjuster” is made clear and consistent with earlier provisions in the definition.

NAMIC suggests that the exclusion from the definition of an “Adjuster” include the following: “[a] salaried employee of an insurer or salaried employee of an adjusting corporation or an association owned or controlled by an insurer who performs claims administration and adjusting on behalf of the insurer.” [Blue font denotes suggested addition to original statutory exclusion].

This exclusion is important, because the vast majority of insurance companies have claims departments with claims staff adjuster employees who administer, adjust, and settle insurance claims on behalf of and pursuant to the licensure of the state licensed insurer.

Insurers do this because it promotes pro-consumer efficiency (timely resolution of claims for policyholders), cost-effectiveness (independent contractors are often more expensive service rate-wise and have higher administrative costs/expenses), and uniformity (insurer claims departments are better able to develop subject matter expertise and maintain internal uniformity and consistency in adjusting practices). Consequently, the proposed definition in HB 1990 is inaccurate and needs to be amended to reflect the practical reality of the claims adjusting process.

2) Definition of a “public adjuster” -

The most straight forward approach to defining a “public adjuster” would be to simply adopt the definition contained in the NAIC 2005 Public Adjuster Licensing Model Act. However, if the State Legislature is wedded to following the current structure of the statute, NAMIC suggests that the definition of a “public adjuster” mirror the definition of the “adjuster” except for the *operative difference* that the “public adjuster” solely represents the policyholder.

NAMIC’s proposed definition:

“Public adjuster”: Means any licensed individual who: (A) Acts solely on behalf of the policyholder; and (B) Investigates for, reports to, or adjusts the insurance claim for the benefit of the policyholder. A “public adjuster” does not include: (A) an individual who is an “independent adjuster” retained by an insurer; and (B) any professional retained by the insurer or policyholder as part of the claims adjusting and settlement process who does not have a contractual duty to act solely on behalf of the policyholder.

NAMIC recommends adopting this clear and concise definition, so as to avoid consumer confusion or the creation of legal ambiguity that could lead to costly and protracted litigation for the policyholder or insurer.

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,



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