

Hawai'i State Legislature
Senate Committee on Commerce and Consumer Protection
Hawai'i State Capitol, Room 10
415 South Beretania Street
Honolulu, HI 96813

2/6/13

Filed via electronic testimony submission system

RE: SB 1072, Relating to Insurance - NAMIC's Written Testimony for Committee

NAMIC's position on SB 1072 – Opposed unless amended

Dear Senator Rosalyn H. Baker, Chair; Senator Brickwood Galuteria, Vice-Chair; and members of the Senate Committee on Commerce and Consumer Protection:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 7, 2013, public hearing.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums that account for 50 percent of the automobile/ homeowners market and 31 percent of the business insurance market. More than 200,000 people are employed by NAMIC member companies. NAMIC has 69 members who write P. & C. Insurance in the State of Hawai'i, which represents 30% of the marketplace.

As a general concept, NAMIC supports legislation and regulations that are designed to promote and protect the solvency of insurance companies for the benefit of insurance consumers. The insurance marketplace, the business community, insurance consumers, and the economy of the state all benefit from *reasonably measured and balanced* laws that provide regulators with the ability to properly investigate the solvency and financial stability of insurance companies.

Although SB 1072 closely follows the National Association of Insurance Commissioners (NAIC) Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in a Hazardous Financial Condition, the proposed legislation fails to incorporate two important procedural due process protections that are in the NAIC model and necessary for the bill to be *reasonably measured and balanced*. Specifically, SB 1072 does

not allow for: 1) a reasonable period of time for an insurer to evaluate the concerns of the Department of Insurance, prepare a written response, and file an application for a hearing with the Commissioner of Insurance; and 2) an administrative hearing process that addresses the reasonable confidentiality concerns and administrative needs of the insurer.

SB 1072 would amend the current law to require that insurer submit a written application for a hearing “within ten days of the date of receipt of the notice to the aggrieved party”. The Hawai’i Administrative Procedures Act (Hawai’i Revised Statutes Chapter 91) does not specify or require that the filing of a written application for a hearing be accomplished within ten days, nor does the NAIC Model Act require a ten day filing deadline.

In fact, the APA uses a “reasonable notice” standard. Therefore, the deadline for submission of a written application for a hearing should be reasonable. The supporters of the proposed legislation have offered no evidence to support the contention that a ten days application submission deadline is reasonable. From a business practicality standpoint, ten days is impractical, unreasonable, and administratively burdensome. Moreover, a thirty day deadline is universally considered in the business world and in society, in general, to be a reasonable and appropriate period of time to pay invoices, file legal notices, turn over possession of real and personal property, etc.

NAMIC appreciates the regulatory need for administrative filing deadlines and timely responses to regulatory notices. However, a ten day application submission deadline is neither necessary nor appropriate, especially when dealing with a complicated regulatory issue. A thirty day deadline would accomplish the same regulatory objective of facilitating a timely submission of an application for a hearing, but would eliminate the unnecessary administrative burdens associated with a ten day notice requirement. Furthermore, a thirty day deadline, unlike the ten day deadline, is consistent with the concept of reasonable procedural due process, in that it affords the insurer appropriate time to properly evaluate the regulator’s concerns and draft a thoughtful application for a hearing.

Additionally, SB 1072 significantly deviates from the NAIC model as it relates to procedural due process protection associated with the notice of the hearing to review an order. Section 4(d), page 12, lines 9-11 of the proposed legislation states:

(d) Any insurer subject to an order under subsection (c) may request a hearing to review that order pursuant to chapter 91.

The NAIC model, which SB 1072 is intended to closely modeled, has an important procedural due process safeguard that has been omitted from this section of the bill. The NAIC model specifically adds to this section the following language:

The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed

between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in [insert proper county] county or in some other place convenient to the parties designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

NAMIC believes that this NAIC language, which was extensively evaluated, debated, and intentionally included in the model act by insurance commissioners from states throughout the country to address reasonable and appropriate confidentiality and intellectual property rights protection concerns of insurers, should be incorporate into SB 1072.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian J. Rataj". The signature is fluid and cursive, with a small circular mark at the beginning.

Christian J. Rataj, Esq.
NAMIC's Western State Affairs Manager