AAICP
AMERICAN ASSOCIATION OF
INDEPENDENT CLAIMS PROFESSIONALS

April 11, 2016

Hon. Kansen Chu
California State Assembly
State Capitol, 5th Floor
Sacramento, CA 94249-0025

RE: AB 2588 (Chu) -- OPPOSE, UNLESS AMENDED

Dear Assembly Member Chu:

On behalf of the American Association of Independent Claims Professionals (AAICP), I am writing to respectfully oppose your AB 2588, unless it is amended to address our concerns.

AAICP was formed in 2002 as the only national association representing the interests of independent claims professionals. AAICP members employ thousands of claims specialists and other professionals across the country and handle millions of property and casualty, workers' compensation, disability, and other liability claims annually. Membership is comprised of independent claims adjusters and third-party administrator organizations, many of whom handle claims administration responsibilities for California insureds and their carriers. AAICP represents companies with hundreds of adjusters in this state.

AAICP provides the following comments on AB 2588:

The Legislative Process:

As you are likely aware, in 2015, the California Department of Insurance (CDI), working with Senator Marty Block, proposed SB 488, which would have revised the licensing requirements for both "public" and independent adjusters in this state. At the time, the CDI noted that the legislation was needed based upon the volume of consumer complaints it had received. When pressed, however, the CDI was only able to identify consumer complaints related to public adjusters and none related to independent adjusters.

Nonetheless, we worked with the CDI and Senator Block to separate the two adjustor licensing schemes (we understand the public adjuster licensing bill continues to move through the Legislature in SB 488), as well as to provide extensive comments on the substantive provisions of the CDI's proposal. This not only included written comments to Senator Block, but also an extensive exchange of letters and conference calls with the CDI staff.

After this significant exchange of information and ideas, the CDI committed to AAICP that it would share any new drafts of the legislation with us for comment before any legislative text was introduced. This was supposed to occur during the Fall Interim prior to the Legislature reconvening in January. However, this never occurred and we were quite surprised to learn of your legislation given that we had not heard from the CDI for several months.

The Need for AB 2588 – Independent Adjuster Licensing:

As we have discussed with the CDI at length, we continue to believe that there is no reason for the CDI or the Legislature to change the current statutory and regulatory independent adjuster licensing provisions. We are unaware of any flaw or failure in the current regime and find California's licensing regime to be appropriate and protective of consumers. While we appreciate that the CDI has claimed that the proposed legislation will align California with other state licensing regimes and create a more uniform national system, AB 2588 moves in the wrong direction as explained below.

AAICP has previously suggested to the CDI that "if it is not broken, don't fix it" -- that the CDI instead pursue legislation to address public adjuster concerns and not take on wholesale changes to an independent licensing regime that we strongly believe is working. While we welcome working with your office and CDI to discuss independent adjuster licensing issues of concern, legislation is not warranted at this time. To be clear, we are not opposed to legislation that we and the CDI can support. As noted above, however, AB 2588 was drafted without input from the regulated community and is not in a form that we can support at this time.

Business Entity Licensure:

The CDI has previously advised that it is particularly interested in dismantling the "company adjuster" regime in California as being inconsistent with other state licensing and AB 2588 proposes to do precisely that. (*See* Section 19 of the bill). The CDI claims that California is unique in providing companies with the ability to obtain a license under which its employee adjusters can operate.

We have previously advised the CDI, however, that the NAIC and multiple states have adopted company license protocols in numerous other instances (e.g., in the NAIC TPA Model Act). California currently has such a similar regime at Cal. Ins. Code Div. 1, Pt. 2, Ch. 5A. This business entity level license allows life/health adjusting without each individual adjuster being licensed. Other states, such as Utah and Montana, similarly permit company-level licensure. *See* Utah 31A-26-201(i) and Montana Code 33-17-102(1)(a)(iv).

In addition to being the law of several jurisdictions, the business entity license recognizes the reality that it is the companies for whom most adjusters work that are responsible to the consumer, the CDI, and to the adjusters for coordinating their licensure, paying for the license fees, arranging for continuing education, and every other aspect of the licensure process.

Moreover, the process is efficient for both the adjusting companies and for the CDI. And we are unclear regarding how the CDI would be able to actually handle the flood of license applications it would need to process in order to ensure that adjusters remain available in California to meet consumers' needs.[1] Existing law recognizes the business reality and works within it, while at the same time meeting consumers' needs. Although we have raised this issue on multiple occasions with the CDI, we have yet to hear a reason why individual licensure provides any greater level of consumer protection than does business entity licensure. And that is because both are equally protective of the consumer, wherein one approach (business entity licensure) is efficient and functional, while the other approach (individual licensure) is disruptive to industry and consumers alike and inefficient for industry and the CDI alike.

We would welcome working with your office to address any issues of concern related to business entity licensure that you have. However, simply eliminating the process because the CDI feels (without evidence) that individual licensure would be better is unnecessary.

Reciprocity with "Designated Home State" Licensees:

We have previously identified for the CDI how the proposed new definition of a "home state" in SB 488, which you have carried over to AB 2588, harms reciprocity and is in direct conflict with the NAIC Guidelines. More specifically, the NAIC's Model Guideline defines a "home state," in relevant part, as follows:

> …If the resident state does not license independent adjusters for the line of authority sought, the independent adjuster shall designate as his, her or its home state any state in which the independent adjuster is licensed and in good standing.

NAIC Model Guideline, Section 2.E. In practice, many adjusters in states like Tennessee and Illinois (which do not license adjusters) designate and obtain licenses in Texas (which has a high standard) and use their designated home state of Texas license to reciprocate with other states for licensing purposes.

In contrast, AB 2588 provides: "If the resident state does not license independent insurance adjusters, the independent insurance adjuster may designate California as his, her, or its home state, provided that the independent insurance adjuster is licensed and in good standing." Proposed Section 14001(e). In other words, adjusters in approximately fifteen states must come to California, and California only, to become licensed.

[1] As but one example, we note that in Section 27 of AB 2588 that it now requires each individual adjuster to seek approval for their badge or cap insignia, rather than having the company for whom that adjuster works seek one approval for all employees' badges or cap insignia. We cannot imagine that the CDI wants to do a separate review of each badge worn by each adjuster in the state and would not prefer to do one approval per adjusting company for each of the adjuster's working for that business entity.

We appreciate the CDI's concern that there may be a "race to the bottom" with non-resident adjusters who wish to work in California and whose home state does not license taking the exam and becoming qualified in the easiest state possible. However, under the proposed legislation, California would reciprocate with such an "easy" state for its home state adjusters; it makes no sense to refuse some states' licenses for non-resident adjusters.

Similarly, there are hundreds, if not thousands, of adjusters residing in states that do not provide a home state license and that are doing business in California today (under appropriate business entity licenses) that have already chosen a state other than California as their "designated home state." These adjusters cannot change that designation and shift their designated home state to California without having to change every license they hold (and the typical adjuster holds between 8-12 licenses).

Implementation of AB 2588 as written would create a consumer access crisis in the state, as many adjusters would need to simply withdraw from California and never work in the state again since they could not change their designated home state to California from the state they already use. This further argues for allowing reciprocity with any designated home state, rather than requiring that adjusters in states that do not license must use California only.

We urge you to consider alternative text to provide that: "…if the resident state does not license independent adjusters for the line of authority sought, the independent adjuster shall designate as his, her or its home state either California or any state in which the independent adjuster is licensed following an examination and in good standing…" This would assist in making California reciprocal with other states consistent with the NAIC Guideline.[2]

Definition of Adjuster:

It is unclear from the definitions in AB 2588 whether or not adjusters handling workers' compensation claims only would be required to be licensed by the CDI. We urge you to make clear that workers' compensation adjusters are exempt from the provisions of the legislation given that they are otherwise licensed. However, to the extent that AB 2588 intends to include workers' compensation adjusters, we urge you to eliminate that requirement.

Workers' compensation (WC) benefits are prescribed by statute unlike other lines of property and casualty insurance. The adjustment of WC claims takes place under the procedural rules of the California Workers' Compensation Appeals Board (WCAB). Injured workers who have differences with their WC insurer as to their entitlements under the statute have informal and formal recourse. As such, if an injured worker is not satisfied with how his/her case is being handled, there is a remedy available by way of appeal to the WCAB. The WCAB employs Information and Assistance Officers who are a free service available to injured workers at any time to discuss their cases and help them navigate through the system.

[2] California already struggles with reciprocity. Currently Florida, New York, Arizona, Oklahoma, Oregon, Hawaii, and Alaska do not have reciprocal agreements with California.

Similarly, there is an extensive regulatory protocol for any disagreements with medical treatment through which a claimant can file an appeal to an Independent Medical Review (IMR), which is a new function established by SB 863 in January 2013. Injured workers have legal remedies that are available at no cost to them. Also, many claimants choose to be represented by attorneys. As part of any settlement or award, a provision is made for attorneys' fees. Furthermore, settlement of WC cases requires the approval of a Worker's Compensation Appeals Board Judge.

AB 2588 should be clarified to recognize the significant differences between adjusting property and liability insurance claims and workers' compensation claims. It is unclear as written whether workers' compensation independent adjuster training, experience and licensing requirements in the legislation is in addition to and not in place of the training, experience and certification requirements long in effect by the CDI, the California Department of Industrial Relations (DIR) Worker's Compensation division, and the Office of Self-Insured Plans (OSIP), which regulates self-insured adjusting. AB 2588, if it includes workers' compensation adjusting, is duplicative of those applicable (and more appropriate) regulations currently in effect through the DIR, adding layers of unnecessary regulation.

NAIC Independent Adjuster Licensing Guideline 10/08, Section 4 Exceptions to License Requirement and under Section 7. B License, discourages redundancy in qualifying and/or licensing WC adjusters, and instead recommends that states leave regulation of workers' compensation adjusting to a state Department of Labor or Industrial Relations, similar to the DIR here. AB 2588 could be read to provide the opposite. We urge you to clarify this point.

Grandfathering Experienced Adjusters:

The fundamental changes in adjuster licensing proposed by AB 2588 stand to disrupt the existing work being performed for California consumers. Moreover, it will be highly problematic to require experienced adjusters operating under the current company license regime who have been working on claims for 10, 15, 20 or even 25 years to have to sit for a new examination. AB 2588 makes no provision for grandfathering in experienced adjusters.

A grandfathering provision is needed as is an appropriate effective date several years from the date of enactment of this bill in order to avoid market and consumer service disruptions. AAICP urges you to consider an amendment to your bill that accommodates experienced adjusters in a manner that does not treat them as "apprentice adjusters" which they are clearly not. Similarly, it makes no sense for experienced adjusters to complete a 20-hour pre-licensing education course and that provision should be waived for experienced adjusters.

Fingerprinting:

We also urge you to evaluate the benefits and risks associated with fingerprint collection.

First, there are numerous categories of adjusters, such as desk adjusters, that never come into contact with consumers, for whom a fingerprint requirement does not make sense. As such, they should not have to be fingerprinted. Second, the cost and "hassle factor" of fingerprinting claims adjusters may not justify the benefit of an additional level of consumer protection. We also urge you to consider the CDI's own internal costs of managing fingerprints and the incremental benefits that the CDI believes will be gained as weighed against the costs of collection and retention. Third, as has been widely reported in the news media, fingerprinting often yields "false positives,"[3] which need to be factored into any legislative proposal.

We also urge you to modify AB 2588 to eliminate non-resident fingerprinting because the home state has already collected the fingerprints. There is no reason to duplicate this effort.

Bad Faith Laws and Financial Interest Laws:

The new provisions in Section 34 of AB 2588, which would add new Section 14079, are inappropriate and should be stricken. There is already an existing body of common law regulating adjuster conduct in California and the addition of these vague and uncertain statutory provisions is both inappropriate and will create extensive litigation, thereby raising costs for consumers. Moreover, Title 10, Chapter 5, Subchapter 7.5 of the Code of California Regulations already includes sufficient regulation to address these issues.

Catastrophe/Emergency Situation Licenses and Registration Requirements:

AB 2588 proposes to create a special class of licensure for emergency or so-called "CAT" claims. However, the duration of these licenses is limited to 90 days. Unfortunately, mudslide, earthquake and fire claims in California typically last longer than 90 days. As such, we urge you to revise Code Section 14022.5(c) and retain the current 180 days permitted by existing law.

Designated Responsible Licensee for Business License §14024 (9)(b)(3):

AB 2588, while eliminating the business entity license, continues to include a provision that individuals still have a designated responsible licensee. Given the change from the entity license, which will give the Commissioner control over the individual, there is no reason for reference to a "designated responsible person." While we urge you not to change the business entity license provisions, if the legislation is not changed, this needs to be amended.

Pre-licensing Course:

AB 2588 requires two years of experience for an adjuster to take the licensing exam and an additional pre-licensing course requirement.

[3] http://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402

First, we urge you to consider reducing any pre-licensing apprenticeship period to one year, which is consistent with most other states that have similar requirements. Second, as noted above, none of the pre-licensing periods or coursework should apply to experienced adjusters. We urge an amendment to AB 2588 to reflect these changes.

Apprentice Adjuster License:

AB 2588 in Section 14 requires an apprentice adjuster license, but this appears to only apply to residents of California. To the extent that a non-resident wishes to designate California as their home state, which is a requirement of the legislation for all non-residents, there is no ability to obtain the apprentice license. We recommend that the apprentice license provisions be expanded to include nonresidents.

Fees:

AB 2588 in Section 37 creates a considerable new fee structure. Industry participants have estimated that the fees for the two-year license, fingerprints, bond, and anticipated 20-hour pre-licensing course to be approximately $648 per individual, which would be one of the highest costs of any of the current adjuster licensing states. In turn, this will impact the availability of adjusters to work in the State of California. We urge you to consult with industry representatives to adjust the propose fees to be more in line with the fees of other states.

Bond Issues:

AB 2588 does not address current bond requirements under Cal. Ins. Code §§14050-14054 which, if the legislation proceeds as drafted, are now moot. Most states no longer have a bonding requirement and there is particularly no reason to retain the provision if the legislation eliminates the business entity license. We urge that the legislation include a provision deleting any bond requirements.

We appreciate your consideration of the above comments on your AB 2588. Again, we urge you and the CDI to engage all independent adjuster stakeholders (including consumer groups whom we believe have a deep interest in having an available pool of adjusters who can meet their needs and adjust their claims) to strike the correct legislative balance. As we are sure you appreciate, we have further line edits on particular provisions of the legislation, but believe that the issues above are so fundamental to restructuring the bill that it would not be appropriate to share other more detailed comments at this time.

Thank you for consideration of our concerns with AB 2588. We look forward to working with you on this important legislation.

Sincerely,

David Farber
Counsel to the AAICP

cc: Josephine Figueroa, Department of Insurance
Chris Micheli, Aprea & Micheli, Inc.