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TO THE HOUSE COMMITTEE ON CONSUMER
PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, January 29, 2009
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 264 – RELATING TO INSURANCE.

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
 (“Department”). The purpose of this bill is to limit assigned claims coverage in Hawaii
 Revised Statutes (“HRS”) § 431:10C-408(a).

The Department supports this bill and offers the following comments.

Act 14, Session Laws of Hawaii 2001, added language to HRS § 431:10C-408(a)
 that broadened the scope and cost of the assigned claims program beyond its original
 intent. See *Neumann v. Ramil*, 6 Haw. App. 377 (1986).

The motor vehicle insurance law in HRS § 431:10C-301(b) mandates that all
 drivers obtain minimum levels of coverage: \$20,000 per person with \$40,000 per
 accident in liability coverage for bodily injury, \$10,000 in property damage, and \$10,000
 per person in personal injury protection benefits.

At the insured’s option, an insured may decline uninsured motorist (“UM”)
 coverage. Since liability insurance is mandated, including a reference to liability
 insurance in HRS § 431:10C-408(a) is redundant.

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Public policy is not served by allowing insureds who have declined UM coverage to file claims through the assigned claims program because it provides a disincentive for insureds to add this optional coverage, despite its relatively low cost.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

January 29, 2009

House Bill 264 Relating to Motor Vehicle Insurance

Chair Herkes and members of the House Committee on Consumer Protection & Commerce, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports House Bill 264 Relating to Motor Vehicle Insurance.

State Farm requests the deletion of an amendment made several years ago. We have been informed that insured drivers who have turned down uninsured motorists coverage, who have subsequently been hit by an uninsured driver, are claiming uninsured motorist coverage through the assigned claims program. This was never the intent behind the amendment. While the number of claims has been relatively small, this was never the intent of the assigned claims program. The deletion of this amendment will return the assigned claims program to its original purpose which was to cover those who do not have insurance coverage.

Enacted in 2001 in Act 14, the additional wording has resulted in claims for uninsured and underinsured motorist coverage through the joint underwriting plan. The following table shows the number of applications received for the Assigned Claims Program for the past three years.

<u>Year</u>	<u>Total Applications</u>	<u>Assigned Applications</u>	<u>UM/UIM Issue</u>
2005	102	74	8
2006	107	86	2
2007	84	73	17

Each UM/UIM assignment represents an exposure of up to \$20,000.

The result is that a person who has insurance coverage is now able to decline or select a lower uninsured or underinsured motorist coverage and seek coverage through the Assigned Claims Program and recover for these benefits which are then placed as an additional cost on other insured drivers.

For these reasons we support House Bill 264. Thank you for the opportunity to present this testimony.

Testimony of Robert Toyofuku
On behalf of Hawaii Association for Justice
In OPPOSITION to
H.B. No. 264

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Opposition to H.B. No. 264.

The law in its current form properly effectuates the purpose of the JUP (joint underwriting plan) assigned claims program to provide minimum liability protection to those injured by uninsured motorists who have no other applicable liability or uninsured motorist coverage. The law was amended to effectuate this purpose in 2001 with the support of the Insurance Division. A copy of Standing Committee Report No. 1125, issued by this committee, is attached.

The proposed amendment would reinstitute the very inequities that were corrected by the legislature in 2001. The amendment would disqualify those injured by uninsured motorists if there was any type of insurance applicable, even if the applicable insurance was only for medical coverage, by eliminating the words "liability or uninsured motorist" in Section (a)(1) and the word "such" in Section (a)(2). Section (a)(2) would require that "No insurance benefits applicable to the accidental harm can be identified." Thus if PIP (medical) coverage exists, the injured person would not be entitled to benefits even if there was no liability nor uninsured motorist benefits available.

This would result in no recovery whatsoever for many innocent victims of uninsured motorists. For example, an elderly person riding on a bus who owns no car would be disqualified if the bus is struck by an uninsured motorist because the bus provides PIP medical coverage but not uninsured motorist benefits. This is because there would be some type of insurance (PIP medical) applicable which would disqualify the elderly person under the proposed amendment to section (a)(2) which would require that there would be "No insurance" applicable. This is why the current law specifically references "liability or uninsured motorist benefits" so as to avoid the inequity of disqualifying a person from receiving liability benefits because they are entitled to medical benefits. The person who does not own a car could not even purchase uninsured motorist benefits and would thus be left completely unprotected by the proposed amendment.

Others such as children could also be left unprotected. A child riding in a car with full legal coverage (PIP medical, property damage liability and bodily injury liability) would be disqualified under the proposed amendment to section (a)(2) which requires that there be no insurance, yet be left unprotected because there is no uninsured motorist benefits required by the motor vehicle insurance code. Many others would also be unfairly disqualified - - indeed everyone who does not have access to uninsured motorist benefits would be left unprotected by the proposed amendment.

Uninsured motorist benefits would have to become a mandatory coverage in order to avoid the (perhaps unintended unfair results) of the proposed amendment. Although the owner of a car could purchase uninsured motorist benefits, that coverage is currently not required. And of course, those who do not own cars do not even have the opportunity to buy uninsured motorist benefits. Similarly, children, other family members and unrelated passengers in the car have no input in the decision to purchase uninsured motorist coverage and are by default bound by the decision of the owner. The proposed amendment does not adequately take their situations into account.

Because the number of assigned claims that would be affected by the proposed amendment is relatively small, there would be no significant impact on insurance premiums to justify the drastic impact on those few who would be disqualified by the amendment. There is no compelling reason to change the statute that this legislature fixed in 2001.

Thank you for this opportunity to testify in Opposition to H.B. No. 264.

* CLH has changed its name to conform to the name of its national organization the American Association for Justice.