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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. 508 – 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 Department takes no position on this bill and offers the following
comments.

The purpose of this bill is to add a new section under the Hawaii Motor Vehicle
Insurance Law, Hawaii Revised Statutes (“HRS”) chapter 431, Article 10C, by requiring
businesses that employ delivery persons (who use their personal motor vehicle to make
deliveries for the business) to provide commercial motor vehicle insurance coverage or
self-insurance for non-owned vehicles.

This bill is likely to impose increased costs on businesses and may deter
employers from operating businesses that depend upon use of their employees’ private
vehicles or from hiring delivery persons as employees.

This bill would also be very difficult to monitor and enforce as jobs for local
delivery are often transitory and may change significantly.

As for self-insurance, self-insureds must comply with HRS § 431:10C-105, including Part VI of Article 10C and related rules to obtain a certificate of self-insurance from the Insurance Division.

As for implementation, the Department requests that the bill's effective date be delayed to allow adequate time for the adjustment of rates and forms for both commercial and personal motor vehicle insurance.

We thank this Committee for the opportunity to present testimony on this matter.

Testimony of Robert Toyofuku
On behalf of Hawaii Association for Justice
In SUPPORT of
H.B. No. 508

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Support of H.B. No. 508.

Many, though not all, personal automobile policies exclude coverage while the driver is engaged in any activity related to their employment or while engaged in any business activity. Attached is a copy of a policy used by a major Hawaii insurer which contains a typical employment or business use exclusion (Exclusion A. 7.).

This results in a problem if an employee uses their own car and the business does not provide commercial automobile coverage because their personal automobile policy may exclude coverage. Employees may find themselves exposed to liability without any coverage. Similarly, those injured may find themselves without coverage. Most consumers are not aware of this potential gap in coverage - - until it is too late.

Although a business is generally liable for injuries caused by its employees, the typical commercial general liability policy excludes automobiles and requires that commercial automobile coverage be purchased as a rider or separate policy. This measure closes the loophole that can exist under current insurance policy provisions and protects both employees who must use their own cars in the course of their work as well as those they may injure.

This measure does not specify a required minimum policy limit, but requires a "commercial" automobile policy. The majority of commercial automobile policies are typically sold with limits of \$300,000 to 1,000,000 (a few insurers offer more or less). It is suggested that the minimum limit of at least \$300,000 be specified to avoid any ambiguity or confusion regarding the minimum limits of the intended coverage.

Thank you for this opportunity to testify in SUPPORT of H.B. No. 508.

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

4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

- a. Breakdown;
- b. Repair;
- c. Servicing;
- d. Loss; or

e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

K. "U-Drive motor vehicle" means a motor vehicle which is rented, leased or offered for rent or lease to you or any "family member" for a period of six months or less from an operator of a U-Drive rental business.

PART A - LIABILITY COVERAGE

INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. "Insured" as used in this Part means:

- 1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
- 2. Any person using "your covered auto".
- 3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
- 4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

SUPPLEMENTARY PAYMENTS

In addition to our limit of liability, we will pay on behalf of an "insured":

- 1. Up to \$250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under this policy.

2. Premiums on appeal bonds and bonds to release attachments in any suit we defend.

3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.

4. Up to \$50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

5. Other reasonable expenses incurred at our request.

EXCLUSIONS

A. We do not provide Liability Coverage for any person:

1. Who intentionally causes "bodily injury" or "property damage".

2. For "property damage" to property owned or being transported by that person.

3. For "property damage" to property:

a. Rented to;

b. Used by; or

c. In the care of;

that person.

This Exclusion (A.3.) does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that person during the course of employment. This Exclusion (A.4.) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.

5. For that person's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This Exclusion (A.5.) does not apply to a share-the-expense car pool.
6. While employed or otherwise engaged in the "business" of:
 - a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This Exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:

 - a. You;
 - b. Any "family member"; or
 - c. Any partner, agent or employee of you or any "family member".
7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion A.6. This Exclusion (A.7.) does not apply to the maintenance or use of a:
 - a. Private passenger auto;
 - b. Pickup or van that you own; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
8. Using a vehicle without a reasonable belief that that person is entitled to do so.
9. For "bodily injury" or "property damage" for which that person:
 - a. Is an insured under a nuclear energy liability policy; or
 - b. Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

 - a. American Nuclear Insurers;
 - b. Mutual Atomic Energy Liability Underwriters; or
 - c. Nuclear Insurance Association of Canada.

- B. We do not provide Liability Coverage for the ownership, maintenance or use of:
 1. Any motorized vehicle having fewer than four wheels.
 2. Any vehicle, other than "your covered auto", which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
 3. Any vehicle, other than "your covered auto", which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".

However, this Exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

 - a. Owned by a "family member"; or
 - b. Furnished or available for the regular use of a "family member".

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident.

Subject to this limit for each person, the limit of liability shown in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The limit of liability shown in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the auto accident.

OUT OF STATE COVERAGE

If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:

- A. If the state or province has:

1666 St. Louis Drive
Honolulu, HI 96816-1923

27 Jan 09

Rep. Robert Herkes
State Capitol
fax 586-8404

Dear Sir:

I am writing in support of HB No. 508 in re commercial motor vehicle insurance coverage for delivery persons. There is a need for a legal requirement that an employer provide his/her employee with automobile insurance coverage if the employee is required to transport clients or merchandise in the employee's own vehicle.

An employee is often unaware that his/her own personal automobile insurance may not cover business-related deliveries. Unless the employer provides automobile insurance for his/her employee, the employee is driving an uninsured vehicle while performing employer-required deliveries.

If the employee is involved in an accident, that person is without automobile insurance

Gau to Herkes

27 Jan 09

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coverage and personally liable, while his/her employer can walk away from any responsibility.

Yours truly,

Tel. 737-5654

Rt. Rev. Wayne W. Gau