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TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION  
& COMMERCE AND JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, March 30, 2009  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 58, S.D. 2, H.D. 1 – RELATING TO MOTOR  
VEHICLE INSURANCE.**

TO THE HONORABLE ROBERT HERKES AND JON RIKI KARAMATSU, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”). The Department offers the following comments on this bill.

The purpose of this version of the bill is to amend the Hawaii motor vehicle  
insurance law in Hawaii Revised Statutes (“HRS”) chapter 431:10C by: (1) creating a  
driver exclusion endorsement which must be signed by the named insured and the  
excluded driver; (2) allowing anyone who is injured by an excluded driver to be entitled  
to an assigned claim, unless the injured party rejected uninsured motorist coverage; (3)  
deeming the assigned claim as primary where there are no liability or uninsured motorist  
insurance benefits applicable to the injured party; (4) creating additional penalties in  
HRS § 431:10C-117(a) for an excluded driver who operates a vehicle from which the  
driver was excluded and for an owner who allows an excluded driver to operate the  
vehicle; and (5) making the driver exclusion endorsement applicable to any vehicle  
insured under the policy, rather than expressly identifying each vehicle.

The driver exclusion endorsement allows a named insured to exclude specified persons from being covered under a motor vehicle policy, specifically overruling the Hawaii Supreme Court's ruling in *Mikelson v. United Services Automobile Association*, 107 Haw. 192 (2005).

In *Mikelson*, an uninsured motorcyclist who was hit by motor vehicle sued for underinsured motorist benefits under a California motor vehicle liability policy issued to the motorcyclist's father. The motorcyclist had recovered the \$20,000 policy limit from the at-fault motor vehicle driver, but the \$20,000 was insufficient to cover his medical expenses. The insurer denied coverage for the injuries, on the grounds that the motorcycle did not qualify as a "covered auto" under the policy because it had less than four wheels. The Hawaii Supreme Court ruled that Hawaii law (rather than California law) applied and that three of the policy's exclusions were inapplicable (including the "less than four wheels exclusion").

The Department supports an insured's right to limit coverage where there is a corresponding decrease in premium. However, this bill may likely result in an increase in the number of uninsured drivers and in the number of assigned claims. The cost of the assigned claims program is borne by insured drivers.

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



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**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON CONSUMER PROTECTION  
Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice Chair

HOUSE COMMITTEE ON JUDICIARY  
Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair

Monday, March 30, 2009  
2:00 p.m.

### **SB 58, SD2, HD1**

Chair Herkes, Chair Karamatsu and members of the Committees, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes Section 2, subsection (c)** of this bill and has **technical comments** on Section 2 subsections (a) and (b) of this bill. This bill combines two complex concepts into a single bill that seeks to allow insurers to offer a named driver exclusion and makes amendments to the assigned claims plan. Subsection (c) in Section 2 of the bill expands the assigned claims plan by allowing additional coverage and excess coverage for only those injured by an excluded driver. This creates an inequity in coverage the injured may seek based on whether they are hit by an uninsured motorist or an excluded driver, who is uninsured. The expansion of coverage in the assigned claims plan will cost more and those costs are borne by all

who purchase auto insurance, but will benefit only a narrow class of injured. We ask that this subsection be deleted from the bill.

Subsections (a) and (b) of the bill make provisions for an insurer to offer a named driver exclusion. While we take no position on the concept of a named driver exclusion since it is optional to the insurer, we point out that if there is an exclusion where signatures are required, all named insureds should be required to sign. If only one named insured signs the document, there may be future litigation as to who knew the existence of an excluded driver.

Finally, Hawaii Insurers Council was asked to provide input to amendments to this bill following the House Transportation Committee's hearing. We have done so and our concerns have been addressed in the draft attached to the March 24, 2009 letter to Representatives Souki, Herkes, and Karamatsu.

Thank you for the opportunity to testify.

**HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

**and**

**HOUSE COMMITTEE ON JUDICIARY**

March 30, 2009

Senate Bill 58, SD 2, HD 1 Relating to Motor Vehicle Insurance

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection and Commerce, and members of the House Committee on Judiciary, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders.

State Farm supports Senate Bill 58, SD 2, HD 1 with additional amendments which have been crafted with the assistance of the Hawaii Insurers Council, and the Hawaii Association for Justice (fka the Consumer Lawyers of Hawaii). We are proud to be able to tell this committee that we have reached agreement on the measure and have attached a proposed HD 2 for your consideration and approval.

Hawaii insurance laws do not provide the option of excluding drivers from a household. For example, if one driver in a household of six insured drivers is convicted of operating a vehicle under the influence of an intoxicant, the insurance for that household would be increased because of that one driver. In other states that allow Driver Exclusion agreements, State Farm has been able to minimize the impact on the remaining household drivers by allowing the named driver to be excluded from the other policies. As a result of Hawaii's insurance laws, insureds are faced with two choices: retain the household with an adverse driver or cancel the entire household and seek other insurance. This problem is magnified when considering Hawaii's multigenerational housing characteristics. The household members with acceptable risk profiles are faced with the additional time and expense necessary to transfer insurance to a company willing to insure high-risk individuals; since they are insuring in a pool with higher risk characteristics, they may be unable to find affordable insurance.

This measure will allow households to continue to purchase affordable insurance. The measure has been amended as follows:

- 1) A statutorily mandated form of the exclusion has been deleted to allow individual insurers the ability to tailor the form of the exclusion to their specific needs and circumstances.
- 2) Language relating to the processing of assigned risks pursuant to section 431:10C-408 has been deleted to more accurately reflect the legislative intent that excluded drivers be treated as uninsured for purposes of uninsured motorist benefits, or if none, then for assigned risks. It is the

underlying intent that a person harmed by an excluded driver should be in the same position as the person would have been if the excluded driver were an uninsured driver.

- 3) Specific language has been added to ensure that innocent persons do not suffer any increase in their insurance premiums because of damage or harm caused by an excluded driver. However, the premiums of the excluded driver or insured who allows an excluded driver to drive their car (from which the driver is excluded) are not subject to this limitation.

We respectfully ask for your support and approval of the proposed HD 2.

SENATE BILL 58, SD2, HD 1  
PROPOSED HD 2

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to establish a named driver exclusion in the Hawaii motor vehicle insurance code.

SECTION 2. Chapter 431:10C, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**"§431:10C- Exclusion of designated persons.** (a)An insurer shall have the right to exclude, cancel, or refuse to renew coverage under a motor vehicle insurance policy as to designated individuals. Any such exclusion shall be acknowledged by the signature of all named insureds. Any acknowledgment by signature of the excluded driver shall constitute prima facie proof that the driver knew he or she was excluded from the motor vehicle insurance policy covering the vehicle."

(b) In the event that a person operates a vehicle from which the person is excluded from insurance coverage pursuant to this section, and does not otherwise have applicable motor vehicle insurance coverage, and causes property damage or accidental harm to another person, that excluded driver shall be deemed uninsured for purposes of this article, including but not limited to section 431:10C-408.

(c) No motor vehicle policy premium shall be increased in any manner, whether by surcharge, loss of discount or any other underwriting factor, related to any claim by a person who sustains property damage or accidental harm resulting from a motor vehicle accident caused by an excluded driver; provided that this subsection shall not apply to any policy covering the excluded driver or any policy from which the driver was excluded.

(d) No person shall operate a motor vehicle that is insured by a policy from which the person is excluded from insurance coverage, unless the excluded person is otherwise covered by an applicable motor vehicle insurance policy.

(e) No owner of a motor vehicle insured by a policy that excludes a person from coverage shall permit the excluded person to operate the insured motor vehicle, unless

the excluded person is otherwise covered by an applicable motor vehicle insurance policy."

SECTION 3. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of "insured" to read as follows:

"Insured" means:

- (1) The person identified by name as insured in a motor vehicle insurance policy complying with section 431:10C-301; and
- (2) A person residing in the same household with a named insured, specifically:
  - (A) A spouse or reciprocal beneficiary or other relative of a named insured; and
  - (B) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household if the person usually makes the person's home in the same family unit, which may include reciprocal beneficiaries, even though the person temporarily lives elsewhere.

Notwithstanding paragraphs (2)(A) and (2)(B), "insured" shall not include persons who are named and excluded under a valid endorsement pursuant to section 431:10C- ."

SECTION 4. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle operated in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the traffic violations bureau of the district court of the first circuit;

(2) Notwithstanding any provision of the Hawaii Penal Code:

(A) Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B); ~~and~~

(B) If the person is convicted of not having had a motor vehicle insurance policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior offense; provided that the judge:

(i) Shall have the discretion to suspend all or any portion of the fine if the defendant provides proof of having a current motor vehicle insurance policy; provided further that upon the defendant's request, the judge may grant community service in lieu of the fine, of not less than seventy-five hours and not more than one hundred hours for

the first offense, and not less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and

(ii) May grant community service in lieu of the fine for subsequent offenses at the judge's discretion;

(C) If the person is convicted of operating a motor vehicle from which the person was excluded from insurance coverage pursuant to section 431:10C- , the fine shall be \$3,000 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior offense; and

(D) If the person is convicted of being an owner who has permitted an excluded person to operate a motor vehicle in violation of section 431:10C- , the fine shall be \$3,000 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior offense;

(3) In addition to the fine in paragraph (2), the court shall either:

(A) Suspend the driver's license of the driver or of the registered owner for:

(i) Three months for the first conviction; and

(ii) One year for any subsequent offense within a five-year period from a previous offense;

provided that the driver or the registered owner shall not be required to obtain proof of financial responsibility pursuant to section 287-20; or

(B) Require the driver or the registered owner to keep a nonrefundable motor vehicle insurance policy in force for six months;

(4) Any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:

(A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving;

(B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or

(C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured;

(5) In the case of multiple convictions for driving without a valid motor vehicle insurance policy within a five-year period from any prior offense, the court, in addition to any other penalty, shall impose the following penalties:

(A) Imprisonment of not more than thirty days;

(B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;

(C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or

(D) Any combination of those penalties; and

(6) Any violation as provided in subsection (a)(2)(B) shall not be deemed to be a traffic infraction as defined by chapter 291D."

SECTION 5. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each person sustaining accidental harm, or such person's legal representative, may, except as provided in subsection (b), obtain the motor vehicle insurance benefits through the plan whenever:

(1) No liability or uninsured motorist insurance benefits under motor vehicle insurance policies are applicable to the accidental harm;

(2) No such insurance benefits applicable to the accidental harm can be identified; [or]

(3) The only identifiable insurance benefits under motor vehicle insurance policies applicable to the accidental harm will not be paid in full because of financial inability of one or more self-insurers or insurers to fulfill their obligations[-]; or

(4) Notwithstanding the foregoing, a named insured that has rejected in writing the offer of uninsured motorist coverage under a motor vehicle insurance policy shall not be entitled to an assigned claim under this section."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

GOODSILL ANDERSON QUINN & STIFEL

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**MEMORANDUM**

**TO:** Representative Robert N. Herkes  
Chair, Committee on Consumer Protection & Commerce  
  
Representative Jon Riki Karamatsu  
Chair, Committee on Judiciary  
  
**Via e-mail: CPCtestimony@capitol.hawaii.gov**

**FROM:** Anne T. Horiuchi

**DATE:** March 28, 2009

**RE:** **S.B. 58, SD2, HD1 – Relating to Motor Vehicle Insurance  
Hearing: Monday, March 30, 2009 at 2:00 p.m., Room 325**

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Dear Chairs Herkes and Karamatsu and Members of the Joint Committees:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C. and has representatives in every state. All AIA news releases are available at [www.aiadc.org](http://www.aiadc.org).

S.B. 58, SD2, HD1 creates a driver exclusion endorsement to enable a named insured to exclude specified persons from being covered under a policy.

AIA supports S.B. 58, SD2, HD1. \*Named driver exclusions allow insurers to continue to provide coverage, or to provide more affordable coverage, to other family members. Without exclusions, the entire family group would be subject to possible adverse underwriting decisions (i.e., non-renewals), and potentially much higher rates.

Thank you very much for the opportunity to submit testimony on this measure.



# HIIA

## ***Hawaii Independent Insurance Agents Association***

March 28, 2009

To: Representative Robert N. Herkes, Chair  
Representative Glenn Wakai, Vice-Chair  
Committee on Consumer Protection & Commerce

Representative Jon Riki Karamatsu, Chair  
Representative Ken Ito, Vice Chair  
Committee on Judiciary

From: Sonia M. Leong, Executive Director

Hawaii Independent Insurance Agents Association

Re: SB 58 S.D.2, H.D. 1 – Relating to Motor Vehicle Insurance

Hearing: Monday, March 30, 2009 2:00 pm Conference Room 325

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The Hawaii Independent Insurance Agents Association (HIIA) is submitting testimony in **opposition** to SB58, S.D.2, H.D.1 which creates a driver exclusion endorsement to enable a named insured to exclude specified persons from being covered under a policy.

The exclusion of specified drivers from an automobile policy goes directly against the basic tenets of the No Fault Auto Insurance Law established in 1974 where it requires all owners and operators of motor vehicles to be insured.

The Named Driver Exclusion of specified drivers will create more confusion to the consumer and has the potential to increase the number of uninsured drivers.

Other points of concern that HIIA has with this bill are:

- The auto insurance law does not differentiate between drivers of personal vehicles and drivers of commercial vehicles. Therefore, if passed, this change will affect drivers of both personal and business vehicles.
- The law and this bill also does not differentiate between an insurance company that writes insurance directly for consumers and those who use independent insurance agents, who are required to communicate the nuances of every insurance coverage.
- This bill requires the primary named insured to sign the driver exclusion as well as the excluded driver. The bill in its current form only lists signature of named insured but there may be problem if there are multiple named insured i.e. husband and wife. There may also be a problem if the high risk driver is a minor and cannot sign as an excluded driver.
- The underlying assumption that auto insurance follows the vehicle, will no longer hold true and the auto identification cards shared at the time of the accident will not indicate to the wronged party that this particular driver may not be insured.

HIIA is non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs.

We ask the Committee on Consumer Protection & Commerce & the Committee on Judiciary prevent this bill from moving forward.