



Office of the Public Defender State of Hawaii

Timothy Ho, Chief Deputy Public Defender



Testimony of the Office of the Public Defender, **LATE TESTIMONY** State of Hawaii to the House Committees on Consumer Protection & Commerce and Judiciary

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

S.B. No. 58, S.D.2, H.D.1: RELATING TO MOTOR VEHICLE INSURANCE

Chairs Herkes and Karamatsu, and Members of the Committees:

The Office of the Public Defender opposes S.B. 58, S.D. 2, H.D. 1. More specifically, we oppose the imposition of a mandatory three thousand dollar fine and the license suspension for the registered owner convicted of allowing an excluded person to operate their motor vehicle. Both penalties are extremely excessive and will result in an increase in the ranks of unlicensed and uninsured drivers.

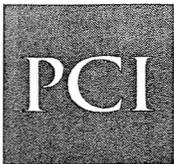
Rather than impose a mandatory three thousand dollar fine, we suggest that the fine imposed in paragraph 2(C) and 2(D) on page 7 of this measure be amended to read as follows: "If the person is convicted of operating a motor vehicle from which the person was excluded from insurance coverage pursuant to section 431:10C- , the fine shall be a minimum of \$500 up to \$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 "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 a minimum of \$500 up to \$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."

As it is currently written, this measure would subject a registered owner who is convicted of allowing an excluded person to operate their motor vehicle under Section 4(2)(D) to a license suspension of three months to a year under Section 4(3)(A). In cases where the registered owner is prosecuted for allowing the excluded person to operate a motor vehicle, the excluded person will also have been prosecuted and subjected to a license suspension. We suggest that H.D. 1 be amended by inserting language that would exclude a person who is convicted under Section 4(2)(D) from the penalties provided for in Section 4(3).

We suggest the following language be inserted in Section 4(3):

"With the exception of a conviction under paragraph (2)(D) of this section, the court in addition to the fine in paragraph (2), shall either:

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



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance
1415 L Street, Suite 670, Sacramento, CA 95814-3972

LATE TESTIMONY

To: The Honorable Robert Herkes, Chair
House Committee on Consumer Protection and Commerce

The Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary

From: Samuel Sorich, Vice President

Re: **SB 58, SD2, HD1 - Relating to Motor Vehicle Insurance**
PCI Position: Support with Amendments

Date: Monday, March 30, 2009
Conference Room 325 – 2 PM

Aloha Chairman Herkes, Chairman Karamatsu and Committee Members:

The Property Casualty Insurers Association of America (PCI) supports legislation that allows a consumer to exclude a named driver from the coverage provided by an automobile insurance policy. Further, PCI supports the attached amendment to SB 58 SD2, HD1, which would clarify the scope of the assigned claims plan.

The assigned claims plan provides benefits to accident victims in cases where there is no applicable motor vehicle insurance policy. The plan does not provide benefits when uninsured motorist (UM) insurance benefits are applicable to the accident.

Therefore, clarifying amendments are needed to support changes to this bill.

PCI respectfully requests the Committee to support amending SB 58 SD2, HD1.

Attachment: 1

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.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE IN SUPPORT OF S.B. No. 58, S.D. 2, H.D. 1**

To: Chairmen Robert Herkes and Jon Riki Karamatsu and Members of the House Committee on Consumer Protection and Commerce and the House Committee on Judiciary:

My name is Bob Toyofuku and I am testifying on behalf of the Hawaii Association for Justice in Support of S.B. No. 58, SD 2, HD 1.

Current law provides that ALL drivers who use a car are covered by the car's insurance policy as long as the driver has permission to use the car. This ensures that there is insurance to protect others who may sustain property damage or personal injury in an accident. This measure creates an exception to the law by allowing an insurance policy to exclude coverage for individuals specified by name in advance of any accident. The "excluded" individual thus becomes uninsured when operating that particular car, unless that excluded person purchases additional insurance.

Current law also provides that those struck by an uninsured driver and have no liability or uninsured motorist benefits available to them, through no fault of their own, may qualify for an assigned risk policy under the JUP (Joint Underwriting Program).

The proposed draft (H.D. 2) of this measure reflects the mutual consensus all involved parties and strikes a fair balance between the risk of uninsured drivers created by the "named driver" exclusion and protection afforded by the JUP assigned risk program. Families who would be burdened with high unaffordable premiums because of a poor driver in the household can "exclude" that driver from the family's policy. While this might potentially result in an uninsured driver, it may prevent the entire family from driving uninsured because of high premiums. Furthermore, the current draft prohibits the "excluded" driver from driving the car uninsured.

Innocent citizens are protected against the uninsured "excluded" driver by having access to JUP coverage. The proposed draft disqualifies a named insured who rejected uninsured motorist benefits from receiving JUP coverage. Thus JUP coverage is reserved only for those who find themselves without liability or uninsured motorist benefits through no fault of their own.

Thank you for this opportunity to testify in Support of the proposed draft (H.D. 2) for S.B. No. 58, S.D. 2, H.D. 1.