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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, March 16, 2009
9:00 a.m.

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

TO THE HONORABLE JOSEPH SOUKI, 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 offers the following comments on this bill.

The purpose of this 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; (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) excluding a named insured who has rejected uninsured motorist coverage from the assigned claims program.

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

Testimony of Robert Toyofuku
On behalf of Hawaii Association for Justice
(Formerly Known as Consumer Lawyers)
In SUPPORT Of
S.B. No. 58, S.D. 2

My name is Robert Toyofuku. I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Support of S.B. No. 58, SD 2.

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 current draft of this measure 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 current 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 S.B. No. 58, S.D. 2.

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



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON TRANSPORTATION
Representative Joseph M. Souki, Chair
Representative Karen Leinani Awana, Vice Chair

Monday, March 16, 2009
9:00 a.m.

SB 58, SD2

Chair Souki, Vice Chair Awana and members of the Committee, 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 victims of an excluded driver. This creates an inequity in the coverage a victim 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 victims. 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 endorsement where signatures are required, the named insured's spouse should be required to sign in addition to the named insured. If the named insured only signs the document, there may be future litigation as to who knew the existence of an excluded driver. In addition, the specific endorsement language in this bill requires an endorsement to be executed for each vehicle the excluded person is prohibited from driving. This provision places an unnecessary burden on all involved to execute new forms each time a vehicle was added or sold in the household. The exclusion should be per policy, not per vehicle.

Thank you for the opportunity to testify.

**HOUSE COMMITTEE ON
TRANSPORTATION**

March 16, 2009

Senate Bill 58, SD 2 Relating to Motor Vehicle Insurance

Chair Souki and members of the House Committee on Transportation, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports Senate Bill 58, SD 2 Relating to Motor Vehicle Insurance.

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.

Following the hearing on this bill in the previous committee we have been working with the Hawaii Association for Justice (fka the Consumer Lawyers of Hawaii) and reached agreement on the senate draft 2 (SD2) which is here before your committee today.

We understand that the Hawaii Insurers Council has concerns about this measure, and State Farm stands ready to address those concerns and to review proposed language. We do wish to point out that this measure is historical given the opposing viewpoints of both State Farm and the trial bar on many issues in the past, and that we have reached an agreement on this measure by conceding points on both sides in the interest of assisting affordability for these drivers. In this time of economic uncertainty we believe this bill will assist those who would otherwise be unable to afford insurance.

Thank you for the opportunity to present this testimony, and we ask your support for and passage of this bill.