

JAN 18 2012

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INSURANCE.

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

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

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

6 "~~§431:10C-~~ **Exclusion of designated persons.** (a) An
7 insurer shall have the right to exclude, cancel, or refuse to
8 renew coverage under a motor vehicle insurance policy as to
9 designated individuals. Any exclusion endorsement shall be
10 acknowledged by the signature of all named insureds. Any
11 acknowledgment by the signature of an excluded driver shall
12 constitute prima facie proof that the driver knew that the
13 driver was excluded from the motor vehicle insurance policy
14 covering the vehicle.

15 (b) In the event that a person operates a vehicle from
16 which the person is excluded from insurance coverage pursuant to
17 this section, does not otherwise have applicable motor vehicle
18 insurance coverage, and causes property damage or accidental



1 harm to another person, that excluded driver shall be deemed
2 uninsured for purposes of this article, including but not
3 limited to section 431:10C-408.

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

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

16 (e) No owner of a motor vehicle insured by a policy that
17 excludes a person from coverage shall permit the excluded person
18 to operate the insured motor vehicle, unless the excluded person
19 is otherwise covered by an applicable motor vehicle insurance
20 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- ."



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

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

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

13 (A) Each violation shall be deemed a separate offense
14 and shall be subject to a fine of not less than
15 \$100 nor more than \$5,000 which shall not be
16 suspended except as provided in subparagraph (B);
17 [and]

18 (B) If the person is convicted of not having had a
19 motor vehicle insurance policy in effect at the
20 time the citation was issued, the fine shall be
21 \$500 for the first offense and a minimum of
22 \$1,500 for each subsequent offense that occurs



1 within a five-year period from any prior offense;
2 provided that the judge:

3 (i) Shall have the discretion to suspend all or
4 any portion of the fine if the defendant
5 provides proof of having a current motor
6 vehicle insurance policy; provided further
7 that upon the defendant's request, the judge
8 may grant community service in lieu of the
9 fine, of not less than seventy-five hours
10 and not more than one hundred hours for the
11 first offense, and not less than two hundred
12 hours nor more than two hundred seventy-five
13 hours for the second offense; and

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

17 (C) If the person is convicted of operating a motor
18 vehicle from which the person was excluded from
19 insurance coverage pursuant to section
20 431:10C- , the fine shall be not less than \$500
21 nor more than \$3,000 for the first offense and a
22 minimum of \$1,500 for each subsequent offense



1 that occurs within a five-year period from any
2 prior offense; and

3 (D) If the person is convicted of being an owner who
4 has permitted an excluded person to operate a
5 motor vehicle in violation of section 431:10C- ,
6 the fine shall be not less than \$500 nor more
7 than \$3,000 for the first offense and a minimum
8 of \$1,500 for each subsequent offense that occurs
9 within a five-year period from any prior offense;

10 (3) In addition to the fine in paragraph [~~42~~], (2)(A),
11 (B), or (C), the court shall either:

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

14 (i) Three months for the first conviction; and

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

17 provided that the driver or the registered owner

18 shall not be required to obtain proof of

19 financial responsibility pursuant to section

20 287-20; 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:



- 1 (A) Imprisonment of not more than thirty days;
- 2 (B) Suspension or revocation of the motor vehicle
- 3 registration plates of the vehicle involved;
- 4 (C) Impoundment, or impoundment and sale, of the
- 5 motor vehicle for the costs of storage and other
- 6 charges incident to seizure of the vehicle, or
- 7 any other cost involved pursuant to section
- 8 431:10C-301; or

9 (D) Any combination of those penalties; and

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

13 SECTION 5. Section 431:10C-408, Hawaii Revised Statutes,

14 is amended by amending subsection (a) to read as follows:

15 "(a) Each person sustaining accidental harm, or such

16 person's legal representative, may, except as provided in

17 subsection (b), obtain the motor vehicle insurance benefits

18 through the plan whenever:

- 19 (1) No liability or uninsured motorist insurance benefits
- 20 under motor vehicle insurance policies are applicable
- 21 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.

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.

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S.B. NO. 2011

Report Title:

Motor Vehicle Insurance

Description:

Creates a driver exclusion endorsement to enable a named insured to exclude specified persons from being covered under a motor vehicle insurance policy.

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