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TO THE SENATE COMMITTEE ON COMMERCE,
CONSUMER PROTECTION, AND AFFORDABLE HOUSING

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Thursday, February 14, 2008
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2367 – RELATING TO MOTOR VEHICLE
INSURANCE.**

TO THE HONORABLE RUSSELL KOKUBUN, 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 supports the intent of this bill.

The purpose of this bill is to add a new section to part III of the Motor Vehicle
Insurance Law, Article 10C, Hawaii Revised Statutes chapter 431, prohibiting the
recovery of noneconomic damages from an insured driver, where the other driver is
uninsured or driving an uninsured vehicle and either under the influence or in the course
of committing a felony.

The Department generally supports defining “economic damages” to provide
better recompense to motor vehicle accident victims.

Also, the Insurance Code does not require insurers to file data on noneconomic
damages paid to uninsured claimants in bodily injury claims. Therefore, this bill’s
impact on motor vehicle insurance premiums is unknown.

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



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON CONSUMER PROTECTION AND HOUSING
Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair

Thursday, February 14, 2008
9:00 a.m.

SB 2367

Chair Kokubun, Vice Chair Ige, 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 **supports** SB 2367, **with amendments**. This bill would prohibit recovery of noneconomic damages in tort if the injured person was operating an uninsured vehicle at the time of the accident. The current system allows for the recovery of noneconomic damages, from the insurance of others, by those who have failed to comply with Hawaii's mandatory insurance law and were uninsured at the time of the accident. Scofflaws that do not pay in to the system should not be the beneficiary of the premiums paid by those who comply with the law.

While we support this principle, SB 2367 should provide protection and insurance benefits for those whom are not in violation of the mandatory insurance law. It appears that this bill could potentially exclude passengers riding in uninsured vehicles that do not have their own motor vehicle insurance policies.

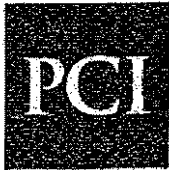
It is possible that an injured person is not required by law to purchase motor vehicle insurance. For example, they may not own a car, such as would be the case with children. We believe that the bill as currently worded may exclude more injured people from recovery of non-economic damages than intended and encourage a careful review to ensure that this is not the result.

We are also confused by paragraph (b) of SB 2367. This paragraph seems to be duplicative as all operators of uninsured motor vehicles appear to be accounted for under paragraph (a). If it is the author's intent to exclude noneconomic damages from those operating a vehicle while under the influence or in the course of committing a felony, this section would need to be rewritten.

Currently, there are five states that have some sort of "no pay no play" statute that limits uninsured motorists from recovering noneconomic damages – Alaska, California, Louisiana, Michigan and New Jersey.

SB 2367 is representative of the type of proactive legislation put forth by the Hawaii Legislature that has improved both the availability and affordability of auto insurance for Hawaii drivers. The Hawaii Insurers Council encourages your favorable consideration of this bill, with amendments.

Thank you for the opportunity to testify.



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Russell S. Kokubun, Chair
Senate Committee on Commerce, Consumer
Protection, and Affordable Housing

From: Samuel Sorich, Vice President

RE: **SB 2367 – Relating to Motor Vehicle Insurance**
PCI Position: Support

Date: Thursday, February 14, 2008
9:00 a.m.; Conference Room 229

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for 62 percent of the private passenger automobile premiums written in Hawaii.

PCI supports SB 2367 because the bill is fair and judicious, and the bill has the potential to reduce insurance costs.

Drivers who purchase automobile insurance protect themselves and others who may be injured in auto accidents. SB 2367 recognizes the fairness of the principle that those who contribute to the insurance system by purchasing insurance deserve the benefits of the system. But those drivers who choose to ignore their responsibility to purchase insurance should not be allowed to gain full benefits from the system that they rejected.

SB 2367 also affirms the fairness of the idea that drivers who are committing felonies or who are drunk when they are injured in auto accidents should not be allowed to recover the same damages as innocent accident victims.

SB 2367 is judicious. The bill does not prohibit uninsured drivers, felons or drunk drivers from recovering all damages. The bill only restricts the recovery of non-economic damages. The bill would allow uninsured drivers, felons and drunk drivers who are injured in auto accidents to recover medical costs, wage loss and other economic damages.

SB 2367 may reduce liability insurance costs. It is difficult to predict how any reduction in costs would be reflected in liability insurance premiums. It will take a period of time to determine how SB 2367's potential cost savings may affect auto insurance rates. In 1996, California voters approved a proposition that included SB 2367's general "no pay/no play" concept. Thirty months after the proposition's approval, the California insurance commissioner found that auto insurance rates in California were reduced by 5.5 percent.

PCI believes SB 2367 is good public policy. PCI requests that the Committee vote Yes on the bill.

**SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION AND
AFFORDABLE HOUSING**

February 14, 2008

Senate Bill 2367 Relating to Motor Vehicle Insurance

Chair Kokubun and members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports Senate Bill 2367 Relating to Motor Vehicle Insurance.

Senate Bill 2367 in its purest form would bar uninsured motorists from recovering their non-economic damages, typically for what is called pain and suffering. The uninsured party would recover their out of pocket medical and wage loss. Similar bills have been enacted in California, Alaska, Michigan, New Jersey and Louisiana and are called "no pay, no play". State Farm supports measures such as Senate Bill 2367 which do not require additional regulatory expense or charges to the law abiding insured public and recommends its passage. This is preferable to expensive VIN/registration systems or other proposals which impose additional actions upon government, insurers or those who purchase insurance.

Thank you for the opportunity to present this testimony.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 2367**

February 14, 2008

To: Chairman Russell S. Kokubun and Members of the Senate Committee on Commerce,
Consumer Protection, and Affordable Housing:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer
Lawyers of Hawaii (CLH) in opposition to S.B. No. 2367.

The purpose of this bill is to limit the civil liability of negligent drivers who injure others
who may coincidentally be in violation of insurance, drinking or other criminal provisions, even
if violations of those provisions are unrelated to the accident. CLH opposes this matter because:
(1) violations of State and County laws already have appropriate penalties consistent with the
nature of the violation; (2) the bill confuses principles of the criminal law with principles of the
civil law and may result in unfair and unintended consequences; (3) current civil law already
provides a procedure to account for any violations of criminal laws that relate to the accident;
and (4) there is no need for the proposed legislation.

CLH supports fair and reasonable penalties for failure to comply with automobile
insurance, driving under the influence, and other laws punishable as felonies. Statutory penalties
for violations of these provisions currently range from fines of \$100 to life imprisonment without
parole depending on the felony involved. The criminal law has appropriate penalties to fit the
circumstances of each crime and are the proper penalties for violations of each provision.

In keeping with the basic principle of law that the punishment should fit the crime,
H.R.S. Section 431:10C-117 currently provides penalties for failure to obtain automobile
insurance that include fines of between \$100 to \$5,000, community service of between 75 to
275 hours, suspension or revocation of driver's license, imprisonment of up to 30 days in jail,

suspension or revocation of automobile registration and license plates, impoundment and forfeiture of the vehicle, or any combination of these penalties. These penalties apply uniformly to all owners who fail to insure their vehicles. If the legislature finds that these penalties are not sufficient to serve as appropriate punishment, then these penalties should be amended accordingly to apply uniformly to all uninsured motorists in all situations.

This bill confuses criminal and civil law principles that will result in unfair and unintended consequences. For example, if a husband fails to pay for the car insurance and a wife unknowingly drives uninsured, that wife will be denied a recovery against an insured vehicle that causes an accident even if the driver of the insured vehicle was drunk and ran a red light while fleeing from police at high speed after robbing a bank. In that case, the insured driver that is drunk and driving in the course of committing a felony will be protected by this bill, while the innocent wife who was unknowingly uninsured and not at fault for the accident would be penalized. The same would be true of children driving family cars who may not be aware of the failure to insure the vehicle whether intentionally or by oversight.

Under current law, the court is able to consider the circumstances in determining an appropriate penalty. It is certainly one thing if a driver is habitually uninsured and flaunts the law, yet a completely different matter for a driver who has been insured all their life but fails to make a payment due to an oversight. Responsible citizens who are normally insured may on occasion be late or miss a payment because they have moved and the billing does not reach them in time, they were on vacation when the billing was mailed, their mail may have been lost or stolen, or they may be family members who are not aware that a payment was inadvertently missed. This bill does not take any of those circumstances into consideration and thus has the potential for unfair and unintended consequences.

The current civil law already takes into account the wrongful conduct of the parties. If a driver was uninsured, drunk or driving in the course of committing a crime, the principle of comparative negligence permits the jury to determine under the circumstances an appropriate reduction of both economic and non-economic damages that should be assessed against the driver who has been injured in an automobile accident. This allows the jury to consider the nature of the offense and impose a commensurate penalty in the form of a reduction in recoverable damages that reflects the role of the infraction in the accident and resulting injuries.

Finally, there is no need for this legislation because the civil law already permits consideration of comparative negligence and there is no overriding crises that warrants departure from the current law that separately penalizes statutory violations uniformly among all drivers, not just uninsured drivers, and the civil law that already considers violations by the injured driver asserting a claim.

CLH opposes this bill and requests that it not pass out of this committee.

Thank you for this opportunity to testify.