

HB981, HD2

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## Senate Committee on Transportation, International and Intergovernmental Affairs

### HB 981 HD-2, RELATING TO HIGHWAY SAFETY

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

March 18, 2009, 1:45 p.m.

1 **Department's Position:** The Department of Health supports HB 981 HD-2, provided that this measure  
2 does not adversely impact the spending priorities as set forth in our Executive Biennium Budget. The  
3 Department of Health defers to the Department of Transportation regarding the establishment of an  
4 ignition interlock program as the lead agency in this matter.

5 Ignition interlocks are an effective way of increasing the safety of all road users by mechanically  
6 preventing convicted drunk drivers from operating a vehicle with alcohol in their system.

7 **Fiscal Implications:** This bill sets up an ignition interlock special fund for indigents to be administered  
8 by the Director of Transportation. The special fund revenues are from a surcharge that is assessed when  
9 the ignition interlock is installed. All other violators pay for their own ignition interlock installation and  
10 maintenance.

11 **Purpose and Justification:** HB 981 HD-2 addresses the key recommendations that were made by the  
12 Ignition Interlock Task Force, which was established after the legislature passed Act 171 in 2008. Act  
13 171 requested the Department of Transportation develop an Ignition Interlock Task Force to study issues  
14 identified in Act 171 during the interim and make recommendations for additional legislation necessary  
15 to implement use of the ignition interlock devices. Recommendations from the Ignition Interlock Task

1 Force include creating interlock laws with mandatory sentencing for all convicted impaired driving  
2 offenders, establishing penalties for tampering and circumvention of interlock devices, and stricter laws  
3 and increased enforcement to deter those who would try to avoid installation.

4 Alcohol related traffic fatalities remain tragically high in Hawaii; in 2007, 50 percent (69  
5 drivers) of all drivers involved in traffic fatalities tested positive for alcohol. Among drivers involved in  
6 fatal crashes, those who tested positive for alcohol were at least 3 times (6% vs. 2%) more likely than  
7 other drivers to have had a previous conviction for DUI (Fatal Analysis Reporting System, National  
8 Highway Traffic Safety Administration - NHTSA). In 2008, there were 6,975 DUI arrests in Hawaii.  
9 Based on a study conducted in 2005 by the City and County of Honolulu, over one fourth (28%) of DUI  
10 arrestees have been previously arrested for a DUI. NHTSA and the Centers for Disease Control and  
11 Prevention (CDC) conclude, when installed and in use, ignition interlocks are effective for reducing  
12 alcohol related arrests and crashes.

13 Thank you for the opportunity to testify.

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
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DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

March 18, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION  
HOUSE BILL NO. 981 HD 2  
COMMITTEE ON TRANSPORTATION, INTERNATIONAL  
AND INTERGOVERNMENTAL AFFAIRS

On behalf of the Hawaii Ignition Interlock Implementation Task Force, the Department supports the passage of House Bill 981 HD 2. The Task Force was established by Act 171 of the 2008 Legislative Session, and met monthly from July to December 2008 to address the issues designated by Act 171.

This committee heard Senate Bill 716, the companion bill to House Bill 981, and unanimously passed out on February 4<sup>th</sup>. The following additional recommendations were incorporated into this measure:

- Allowing the Director of Transportation to express authority to create and promulgate administrative rules [beyond that stated in Sec. 291E-6(e)].
- Extending the Ignition Interlock Implementation Task Force existence until January 1, 2011 to provide a smooth transition of the implementation of the ignition interlock program.

Costs associated with establishing an ignition interlock program in the state are unknown at this time and will be included in legislative bills prepared for the 2010 session.

A strong ignition interlock bill will prevent alcohol related crashes and reduce fatalities in the state. The Task Force strongly recommends the passage of HB981 HD 2.



## *THE JUDICIARY, STATE OF HAWAII*

**Testimony to the Twenty-Fifth Legislature, Regular Session of 2009**  
Senate Committee on Transportation, International and Intergovernmental Affairs  
The Honorable J. Kalani English, Chair  
The Honorable Mike Gabbard, Vice Chair

Wednesday, March 18, 2009, 1:45 p.m.  
State Capitol, Conference Room 224

by  
Walter M. Ozawa  
Deputy Administrative Director of the Courts

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**Bill No. and Title:** House Bill No. 981, H.D. 2, Relating to Highway Safety

**Purpose:** Makes amendments to Hawaii Revised Statutes and Act 171, Session Laws of Hawaii 2008, reflecting recommendations of Ignition Interlock Implementation Task Force.

### **Judiciary's Position:**

The Judiciary takes no position on this measure but will monitor ongoing ignition interlock implementation task force recommendations to determine fiscal and other impacts on program operations.

Of particular note are the provisions in this bill that authorize the court to place a criminal defendant on probation. Currently, the Adult Client Services Branch (adult probation) supervises over 19,000 probationers in the State of Hawaii. We try to ensure public safety by focusing our resources on the highest risk offenders, which include sex offenders, domestic violence offenders, and serious drug offenders, so they do not re-offend. Due to the current economic situation, the probation office is already operating with numerous vacant positions and probation officers are being taxed to their limits. This provision will require that the probation office supervise approximately 3,000 more adult offenders, which will strain our already overburdened personnel and resources, necessitating an increase in staff and funding. It is estimated that 3,000 new offenders would require an additional 10 probation officers who would be carrying caseloads of 300 clients. If these offenders are supervised by the Adult Client Services Branch, adequate funding will be required.



House Bill No. 981, H.D. 2, Relating to Highway Safety.  
Senate Committee on Transportation, International and Intergovernmental Affairs  
March 18, 2009  
Page 2

The Judiciary is pleased to continue to work with the task force to address all concerns and supports the amendments made by the House Committee on Finance to 1) extend the task force until January 1, 2011; and 2) change the effective date to July 1, 2020 to encourage further discussion.

Thank you for the opportunity to comment on House Bill No. 981, H.D. 2.



**Office of the Public Defender  
State of Hawaii  
Timothy Ho, Chief Deputy Public Defender**



**Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on  
Transportation, International and Governmental Affairs  
March 18, 2009 1:45 p.m.**

H.B. No. 981, HD2: RELATING TO HIGHWAY SAFETY

Chair English and Members of the Committee:

The Office of the Public Defender supports the intent of this measure, but has concerns about specific portions of this bill.

The installation of an ignition interlock device would allow a person charged with operating a vehicle under the influence of an intoxicant to immediately regain his or her driving privileges and rather than suffer from a license suspension or revocation. The ignition interlock device would “force” this person to change his or her behavior by requiring the driver to either be sober or utilize a designated driver (friend, relative, taxicab or public transportation). The requirement of a digital camera would also protect against using a sober “proxy” blowing into the device for an intoxicated driver, and protect an innocent driver from being blamed for being “locked out” by another person who blew into his device.

**CONCERNS:**

Indigency Criteria:

H.B. 981, HD2 defines an indigent person as an individual whose income is less than a fixed percentage of the official poverty line as set by the U.S. Department of Human Services, or an individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act. An inflexible income limit tied to the official poverty line does not take into account the higher cost of living in Hawaii and special circumstances (high debt and expenses) for each individual. The court and/or ADLRO administrator should be able to declare a defendant an indigent for the purposes of the ignition interlock on a case-by-case basis. Assuming we adopt one hundred and twenty-five percent of the poverty line as our fixed percentage, a defendant with a family of four earning more than \$26,500.00 will have to pay for the ignition interlock out of his or her own pocket. If this person has circumstances which either places him in negative income or high debt each month (medical expenses, etc.), a judge or hearings officer should be able to make an exception to the income limit and declare an individual an indigent for the purposes of this act. The failure to make such exceptions will create a class of people who will be unable to install ignition interlock devices on their automobiles.

### Probationary Periods:

The Office of the Public Defender opposes probationary terms and favors a proof of compliance model for OVUII offenses for the following reasons:

1. Currently, OVUII offenders are not placed on probation, but are monitored by the court at proof of compliance hearings. These hearings are attended by the offender, without the appearance of a Deputy Public Defender. Defendant's who are required to attend probation review hearings and motions to modify and/or revoke probation are entitled to written notice of any motion to modify or revoke probation, an evidentiary hearing and legal representation. The effect of placing OVUII offenders on probation will be to substantially increase the caseload of the courts, prosecutors and public defenders.

2. Cost. There will be a financial cost to implementing a probationary system to monitor OVUII cases. The Office of the Public Defender will have to add attorneys. The Judiciary will have to add a significant number of probation officers and support staff. Additional office space may be required to house the probation officers, as the district court currently does not supervise OVUII cases.

3. Implementation. The task force proposed maximum jail terms of five, fourteen and thirty days for first, second and third offenses, and making OVUII a petty misdemeanor. However, the maximum jail allowed as a condition of probation for a petty misdemeanor is five days. The court would not be able to sentence a second-time offender to a fourteen day jail term and probation.

### Refusals:

The Office of the Public Defender opposes criminalizing refusals (refusing to be tested for breath or blood alcohol content) and allowing refusals as evidence in an OVUII trial. We believe that doubling the license revocation for refusals (as proposed by the task force) and an SR-22 violation are sufficient deterrents to discourage refusals. Furthermore, the addition of a criminal penalty will increase the amount of contested cases in court and result in an increased caseload for the courts and the Office of the Public Defender.

The ignition interlock legislation will drastically change the DUI climate in Hawaii. Penalties will be increased, and a probationary model introduced. Such change will not come cheap. An entirely new probationary division will have to be created, with additional probation officers and support staff. There will be an increase in court congestion, which may require adding judges, court staff and attorneys to handle the increased caseload.

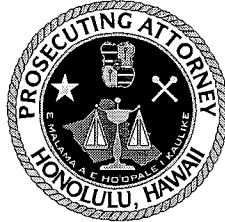
Ignition interlock devices may help to reduce drunk driving fatalities, but it will not eliminate them entirely. Thank you for the opportunity to testify on this measure.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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1060 RICHARDS STREET, HONOLULU, HAWAII 96813  
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PETER B. CARLISLE  
PROSECUTING ATTORNEY



DOUGLAS S. CHIN  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**THE HONORABLE J. KALANI ENGLISH, CHAIR  
SENATE TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS COMMITTEE**

**Twenty-fifth State Legislature  
Regular Session of 2009  
State of Hawai`i**

March 18, 2009

**RE: H.B. 981, H.D. 2; RELATING TO HIGHWAY SAFETY.**

Chair English and members of the House Committee on Transportation, International and Intergovernmental Affairs, the Department of the Prosecuting Attorney submits the following testimony in general support of H.B. 981, H.D. 2 but with a suggested amendment.

The purpose of this bill is to create a statutory framework for the imposition of an ignition interlock device upon vehicles owned or driven by person arrested for impaired driving. To this end, the legislature established a task force which was mandated to review this issue and to make recommendations for the implementation of an ignition interlock program. A wide range of stakeholders were included in the task force including our department, which was given the opportunity to participate in and give input to the task force.

We are in strong support of the use of ignition interlock devices which prevent a person from operating a vehicle when the person has measurable amounts of alcohol in their system. While community education, increased enforcement and stiffer sanctions for impaired driving have made some impact, Hawaii still has an unacceptably high number of alcohol related fatal crashes. We believe that technologies which would prevent people from driving drunk need to be examined and tried in order to reduce traffic fatalities.

We do have a concern with one aspect of this bill, primarily with recommendation of the Ignition Interlock Implementation Task Force to eliminate the lifetime revocation of driver's license for drivers that have had four or more arrests for Operating a Vehicle Under the Influence of an Intoxicant during a ten year period; a five to ten year revocation period with an ignition interlock is proposed in place of the lifetime revocation.

Our concerns are that these drivers have repeatedly chosen to drive while impaired despite escalating sanctions for their behavior and multiple opportunities for assessment and treatment for their substance abuse issues. Due to their repeated inability or unwillingness to modify their behavior and refrain from drinking and driving, these drivers are extremely dangerous and pose a significant risk of injury or death to others. We are concerned that the ten year revocation period as proposed by the task force does not provide sufficiently stringent safeguards for preventing the relicensing, after the ten year revocation is completed, of those drivers who have: 1) not had a consistent and extended record of sobriety; or 2) who not reliably refrained from driving after use of an intoxicant. For these reasons, we have chosen to respectfully dissent from the majority's recommendation that the lifetime revocation of driver's license for repeat impaired drivers be eliminated and replaced with a five to ten year revocation period with ignition interlock.

We strongly support the concept of ignition interlocks and respectfully request your favorable consideration of this bill. Thank you for the opportunity to testify.

HB 981 HD2

**Ralph S. Blackman**  
*President & CEO*

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THE  
**CENTURY COUNCIL**  
DISTILLERS FIGHTING DRUNK DRIVING  
& UNDERAGE DRINKING

**Board of Directors**

Bacardi U.S.A., Inc.

March 16, 2009

Beam Global Spirits and Wine, Inc.

The Honorable J. Kalani English

Brown-Forman

Senate Transportation, International and Intergovernmental Affairs Committee

Constellation Brands, Inc.

Hawaii State Capitol, Room 205

DIAGEO

415 South Beretania Street

Hood River Distillers, Inc.

Honolulu, Hawaii 96813

Sidney Frank Importing Co., Inc.

Dear Chairman English:

**Advisory Board**

Douglas A. Fox  
*Chairman, National Alcohol Beverage  
Control Association (NABCA)*

The Century Council was founded in 1991 and is an independent, national not-for-profit organization headquartered in Arlington, Virginia. Funded by America's leading distillers (Bacardi U.S.A., Inc.; Beam Global Spirits and Wine, Inc.; Brown-Forman; Constellation Brands, Inc.; DIAGEO; Hood River Distillers, Inc.; and Sidney Frank Importing Co., Inc.), the Council is dedicated to developing and implementing programs that fight drunk driving and underage drinking. To date, we have hosted nearly 2,200 community events to launch our programs across the nation bringing them to millions of parents, youth, educators, law enforcement officials and traffic safety professionals.

Patrick B. Harr, M. D.  
*Former Chairman of the Board of  
Directors, American Academy of Family  
Physicians*

Through the years, The Century Council has worked extensively throughout the nation on anti-drunk driving efforts. Responding to a growing body of research that points to high BAC and repeat offenders as the source of a large and disproportionate share of highway crashes, in 1997 the Council created The National Hardcore Drunk Driver Project. The Project serves as a single, comprehensive resource to assist state legislators as well as highway safety officials, law enforcement officers, judges, prosecutors, community activists and treatment professionals in developing programs to reduce hardcore drunk driving.

The Honorable Heidi Heitkamp  
*Former North Dakota Attorney General*

Lisa Graham Keegan, CEO  
*Western Academy of Virtual Education  
Former Superintendent of Public  
Instruction, State of Arizona*

At the national level, The Century Council supports MADD's *Campaign to Eliminate Drunk Driving*. The Council, along with the National Transportation Safety Board, AAA, Nationwide Insurance and the National District Attorney's Association, comprise the Coalition to Fight Hardcore Drunk Driving that supports state legislative proposals to enact comprehensive and effective solutions to the hardcore drunk driving problem.

Robert L. King  
*President & CEO, Arizona Community  
Foundation  
Former Chancellor, The State University  
of New York*

Colonel Lonnie J. Westphal  
*Chief (Ret.) Colorado State Patrol  
Former Vice President of IACP*

Hardcore drunk drivers are those who drive with a high blood alcohol concentration (BAC) of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment or education efforts.

Anthony E. Wolf, PhD.  
*Clinical Psychologist and Best Selling  
Author*

Hardcore drunk drivers account for the majority of alcohol-involved traffic fatalities. Crash data shows that drivers with a BAC of .15 or above are 380 times more likely to be involved in a fatal crash than the average non-drinking driver. According to the National Highway Traffic Safety Administration, in 2007, drivers

with a BAC of .15 or above accounted for approximately 51 percent of the alcohol-involved fatal crashes in Hawaii.

While The Century Council is neutral regarding the mandatory installation of ignition interlocks for first-time, non-hardcore offenders, we support judicial discretion on a case by case basis. The Century Council does strongly support the sanction of ignition interlock devices for hardcore offenders and for any offender who refuses to submit to a BAC test. The Council also favors tiered systems that mandate more severe penalties, treatment, and aftercare for hardcore drunk drivers.

Several factors influence our stance regarding support of mandatory interlocks for hardcore drunk drivers including:

- Our extensive work with the judiciary has revealed that many offenders who are required to install an interlock simply do not do so. In fact, only about 20% of the offenders ordered to install interlocks in the United States have actually complied with this order. This scenario occurs due to inadequate compliance monitoring and poorly administered interlock programs.
- All too often interlocks are not integrated into a comprehensive set of sanctions aimed at rehabilitating a DUI offender. Research shows that interlocks are an effective deterrent while the device is on an offender's car, but unless the interlock device is used in tandem with other solutions such as assessment and treatment, it is unlikely to result in long-term behavior change.

Based on this information, The Century Council believes that improving interlock usage rates among hardcore drunk drivers is a top priority. For that reason, The Century Council remains neutral on H.B. 981 which requires interlocks for all DUI offenders.

The Century Council urges Hawaii legislators to focus on measures designed to ensure increased installation rates among hardcore drunk drivers – the most dangerous on our roadways – and tie the interlock sanction to other, often existing treatment solutions that will lead to behavior change and long term reductions in recidivism.

Based on our research, we believe that strong laws enabling swift identification, certain punishment and effective treatment are critical fundamental elements necessary to reduce the incidence of hardcore drunk driving and believe that these elements must be coordinated into a statewide system to be effective.

Should you have any questions, please feel free to contact Katie Bussewitz in the Council's Government Relations Department at [BussewitzK@CenturyCouncil.org](mailto:BussewitzK@CenturyCouncil.org) or 202-637-0077.

Sincerely,



Ralph Blackman  
President & CEO

***Hawaii Ignition Interlock Implementation Task Force***  
***Established by Act 171 – Twenty-fourth Legislature – Regular session of 2008***

March 18, 2009

To: Senator J. Kalani English, Chair –Senate Committee on Transportation,  
International and Intergovernmental Affairs; Senator Mike Gabbard, Vice Chair;  
and members of the committee

From: Carol McNamee, Vice Chairman – Hawaii Ignition Interlock Implementation  
Task Force

Re: House Bill 981, HD 2 – Relating to Highway Safety

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I am Carol McNamee, Vice Chairman of the Ignition Interlock Implementation Task Force, speaking in support of House Bill 981,HD 2, Relating to Highway Safety.

This bill remains substantially the same as the companion to HB981, Senate Bill 716, which this committee heard and unanimously passed out on February 4th. However, there are a few ways in which it differs.

Several amendments were made to the original House bill at the request of the Office of the Prosecuting Attorney, City and County of Honolulu. These amendments related to legal issues relating to probation and to the section of the statutes relating to driving on a suspended or revoked license.

In addition, the Task Force asked that the effective date of the Interlock program be delayed by six months, until January 1, 2011. This extension will allow the Task Force time to address any changes which may be made by the 2010 legislature. Through an amendment to HB 981, HD 1, the Task Force has been extended to January 1, 2011 but there is now a proposed defective date of July 1, 2020. Also, the Department of Transportation has been given express authority to create and promulgate administrative rules.

The above amendments are all changes or additions which the Ignition Interlock Task Force finds acceptable, presuming that at some point the effective date will be changed back to January 1, 2011.

The Hawaii Ignition Interlock Implementation Task Force was established by Act 171 of the 2008 Legislative Session. Act 171 provided the first step in establishing a system for increasing highway safety by requiring drivers arrested for operating a vehicle under the influence of an intoxicant (OVUII) to install an ignition interlock device in their vehicle. The interlock device, wired into the vehicle's ignition system, prevents the vehicle from starting when it detects alcohol in the breath of the driver after the person blows into its mouthpiece.

Not only does an ignition interlock system prevent an alcohol impaired person from getting on the road, it records the history of each attempted start – successful or unsuccessful – and each retest the driver is required to take after the vehicle is underway. This information is downloaded on a regular schedule at one of a number of service centers which will be set up throughout the state. Interlock technology prevents impaired drivers from getting on the road while also giving OVUII offenders the privilege of legally driving as long as they are operating an interlock equipped vehicle. This system enhances public safety while allowing the compliant offender to drive anywhere, anytime.

The Interlock Ignition Implementation Task Force was given the job of amending Act 171 to provide additional information necessary for the establishment of a workable interlock system in Hawaii with the original goal of having the interlock system go into effect by July 1, 2010.

Thank you for the opportunity to testify in support of this important legislation which brings Hawaii one step closer to implementing an Ignition Interlock system for identified impaired drivers.



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Phone (808) 532-6232  
Fax (808) 532-6004  
[www.maddhawaii.org](http://www.maddhawaii.org)

March 18, 2009

To: Senator J. Kalani English, Chair –Senate Committee on Transportation,  
International and Intergovernmental Affairs; Senator Mike Gabbard, Vice Chair;  
and members of the committee

From: Arkie Koehl — Chair, Public Policy, MADD - Hawaii

Re: House Bill 981, HD 2 – Relating to Highway Safety

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I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in strong support of HB 981 HD2 which reflects the recommendations of the Interlock Implementation Task Force created in last year's Act 171, the ignition interlock law.

House Draft 2 accurately reflects the consensus within the Ignition Interlock Task Force, with which MADD concurs.

It should be noted that it is critical for the Task Force to continue working during 2009 to address issues which will inevitably arise, particularly during the process of developing administrative rules. It is likely that the 2010 session of the Legislature will be asked to approve further modifications to Act 171, to make sure we optimize this unique opportunity to save lives.

Thank you for the opportunity to testify.



Pauahi Tower, Suite 2010  
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Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND  
INTERGOVERNMENTAL AFFAIRS  
Senator J. Kalani English, Chair  
Senator Mike Gabbard, Vice Chair

Wednesday, March 18, 2009  
1:45 p.m.

### **HB 981, HD2**

Chair English, Vice Chair Gabbard 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 attended many of the Task Force meetings and we are appreciative of the opportunity to participate. While we support efforts to reduce drunk driving, we continue to **oppose provisions** in Act 171 (SLH 2008) and **H.B. 981, HD2** which expand the proof of financial responsibility (SR 22) exemptions to include first offense highly intoxicated drivers. HIC members believe that SR 22s for intoxicated driving should be reinstated as it serves as a tool for the insurance industry to properly price the risk of future bad driving behavior. If bad drivers do not pay their fair share, good drivers will pay more.

In addition, without the SR 22 requirement, insurers may request more traffic abstracts, which will increase insurers' administrative costs and these costs will eventually be passed on to the consumer. The cost of a single traffic abstract is a statutory minimum



of \$7 and as high as \$10 for those insurers that use a vendor to access driving record information.

Thank you for this opportunity to testify.