

JAN 23 2009

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 legislature finds that broad motor vehicle
2 insurance coverage is generally consistent with public policy.
3 The Hawaii supreme court has construed Hawaii law to the effect
4 that a relative of a named insured, even if temporarily absent
5 and living elsewhere, is nevertheless a resident of the named
6 insured's household and therefore is covered under the named
7 insured's policy. *See Mikelson v. United Services Automobile*
8 *Ass'n*, 107 Hawai'i 192, 111 P.3d 601 (2005). This broad
9 interpretation of coverage may from time to time result in
10 severe hardship to certain consumers. In this regard, an
11 insured with a good driving record may be unable to find
12 affordable insurance coverage, if the insured resides with a
13 relative who has an extensive history of serious moving
14 violations or costly insurance claims.

15 A named driver exclusion would enable insurers to provide
16 coverage at reasonable rates to applicants with good driving



1 records, and to offer coverage to drivers with extensive
2 negative history at premiums more reflective of the risk.

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

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

8 "§431:10C- Exclusion of designated persons. (a) An
9 insurance policy covering a motor vehicle may exclude from
10 coverage any person specifically designated as excluded by the
11 named insured. Any exclusion shall be acknowledged between an
12 insurer and the named insured, by the signature of the named
13 insured on a written endorsement. The endorsement shall be
14 effective for each renewal of the policy and shall remain in
15 effect until the insurer and named insured agree in writing to
16 provide coverage for the person who was excluded from coverage
17 or the endorsement is removed from the policy.

18 (b) The endorsement to exclude coverage under subsection
19 (a) shall be substantially similar to the following form:

20 "DRIVER EXCLUSION ENDORSEMENT

21 Nothing herein contained shall alter, vary, waive, or
22 extend any of the terms, conditions, agreements, or



1 limits of the under-mentioned policy other than as
2 stated herein below. Effective 12:01 a.m., Standard
3 Time. Attached hereto and forming part of Policy
4 No. _____ issued to (name of insured) by (name of
5 insurance company). In consideration of the premium
6 for which the policy is written, it is agreed that the
7 company shall not be liable, and no liability or
8 obligation of any kind shall be attached to the
9 company, for losses, injuries, or damages sustained
10 after the effective date of this endorsement while any
11 motor vehicle is operated or used by (insert name of
12 excluded driver(s)).

13 Date:
14 (signature of named insured)"

15 SECTION 3. Section 431:10C-103, Hawaii Revised Statutes,
16 is amended by amending the definition of "insured" to read as
17 follows:

18 "Insured" means:

- 19 (1) The person identified by name as insured in a motor
20 vehicle insurance policy complying with section
21 431:10C-301; and



1 (2) A person residing in the same household with a named
2 insured, specifically:

3 (A) A spouse or reciprocal beneficiary or other
4 relative of a named insured; and

5 (B) A minor in the custody of a named insured or of a
6 relative residing in the same household with a
7 named insured.

8 A person resides in the same household if the person
9 usually makes the person's home in the same family unit, which
10 may include reciprocal beneficiaries, even though the person
11 temporarily lives elsewhere.

12 Notwithstanding paragraphs (2) (A) and (2) (B), "insured"
13 shall not include persons who are named and excluded under a
14 valid endorsement pursuant to section 431:10C- ."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 5. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on July 1, 2009.

20

INTRODUCED BY: Randy H. Park

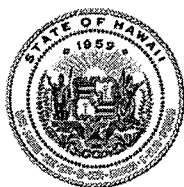
Report Title:

Motor Vehicle Insurance

Description:

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





LINDA LINGLE
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TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Friday, February 13, 2009
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 58 – RELATING TO MOTOR VEHICLE
INSURANCE.**

TO THE HONORABLE ROSALYN BAKER, 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 create a driver exclusion endorsement which 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 result in an increase in the number of uninsured drivers and in the number of assigned claims.

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

GOODSILL ANDERSON QUINN & STIFEL

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MEMORANDUM

TO: Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection

FROM: Anne T. Horiuchi

DATE: February 12, 2009

RE: S.B. No. 58 – Relating to Motor Vehicle Insurance
Hearing: Friday, February 13, 2009 at 8:30 a.m.

Dear Senator Baker and Members of the Committee on Commerce and Consumer Protection:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C. and has representatives in every state. All AIA news releases are available at www.aiadc.org.

S.B. No. 58 creates a driver exclusion endorsement to enable a named insured to exclude specified persons from being covered under a policy.

AIA supports S.B. No. 58. Named driver exclusions allow insurers to continue to provide coverage, or to provide more affordable coverage, to other family members. Without the exclusions, the entire family group would be subject to possible adverse underwriting decisions (i.e., non-renewals) and potentially much higher rates.

Thank you very much for the opportunity to submit testimony on this measure.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER

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Senate Committee on Commerce and Consumer Protection
Conference Room 229 State Capitol
Friday, February 13, 2009, 8:30 a.m.
SB 58 – Relating to Motor Vehicle Insurance

Chair Baker, Vice-Chair Ige and Members of the Committee:

My name is Timothy Dayton, General Manager of GEICO in Hawaii.

GEICO provides jobs for 170 associates at its Hawaii Branch office and is Hawaii's largest motor vehicle insurer. GEICO offers a Named Driver Exclusion (NDE) to our customers in 41 other States. GEICO supports having an NDE in Hawaii and **we support adoption of SB 58 with a suggested change.**

In general terms, GEICO's policies typically cover anyone driving the insured vehicle and also household relatives when they borrow or rent a vehicle for a short period of time. This broad coverage is consistent with public policy and works well in most circumstances. However, there are situations where the record of one driver is bad enough that GEICO will either refuse to insure the entire risk or will offer to insure it at a premium too high to be affordable for that consumer. When this occurs it often results in the entire family going uninsured. The primary public policy question to consider is whether this legislation will result in a higher or lower percentage of vehicles on the road at any given time being

uninsured. GEICO believes that the percentage will be lower. We recognize that if this proposal is enacted there will be some situations where the excluded driver is operating the insured vehicle and there will be no coverage for a loss that occurs. We believe that these relatively rare situations are preferable to the situation today where entire families are uninsured and operating a vehicle on a regular basis and have uninsured losses.

There may be those who suggest that this proposal is a way for an insurer to collect premiums and not pay the claims. This theory is not well thought out. We already have the option of not insuring someone with a poor driving history and if we do provide coverage, we are able to charge a premium that we believe is high enough to take on that risk. This measure would allow an insurer to place the driver with a poor history on a separate policy, thereby allowing the financial burden of living with a relative with a poor history to be lifted from the entire household.

The NDE will allow some consumers to be able to afford to purchase insurance who are not able to do so today. I have personally been asked by customers on several occasions why a relative with a poor record must be included in the coverage (and especially in the rate) if they don't drive the insured vehicle. The answer that I have always given is that our policy provides broad coverage and

Hawaii Law does not allow us to exclude specific drivers as is done in most other states.

The measure would also allow the insurer to have the conversation about the exclusion at the time of application, thereby allowing the consumer to make informed decisions about whether a poor risk driver should be covered or excluded by the policy, who should be allowed to drive the vehicle, and, what the ramifications would be if an excluded driver were allowed to drive, and became involved in an accident.

GEICO supports this bill, but suggests one change which is to require the excluded driver to also sign the endorsement of exclusion. This would provide clarity, in the event of an excluded driver's claim that he or she did not know that he or she was excluded from coverage under a policy and should limit situations where an excluded driver is operating a vehicle assuming that there is coverage.

I very much appreciate the opportunity to testify and am happy to answer any questions.

A handwritten signature in black ink, reading "Timothy M. Dayton", with a long horizontal flourish extending to the right.

Timothy M. Dayton

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. No. 58.

February 13, 2009

To: Chairperson Rosalyn Baker Members of the Senate Committee on Commerce and Consumer Protection:

My name is Bob Toyofuku and I am testifying on behalf of the Hawaii Association for Justice (formerly known as CLH*) in Opposition to S.B. No. 58.

The purpose and effect of S.B. No. 58 is to allow reckless drivers whose traffic and accident records result in the highest premiums to legally drive uninsured by simply driving cars from which they have been excluded under a named driver exclusion.

The *Mikelson* case has been cited as the justification for this bill, however, that decision has nothing to do with the practical impact of this bill. The *Mikelson* decision merely upheld the common sense conclusion that a college student temporarily going to school away still remains a family member covered by the family's automobile insurance policy. This is exactly what the insurance code provides in § 431:10C-103 which provides that a family member who normally lives with the family continues to be a covered family member "even though the person temporarily lives elsewhere."

The situation this bill actually applies to is where one member of the family has an extensive record of serious traffic infractions and/or history of accidents caused by their reckless driving which results in increases in the family automobile insurance premium. The worse the traffic record gets the higher the premiums become. At some point, the premium becomes unaffordable for a reckless driver with multiple extreme speeding citations, DUI's, and/or multiple at-fault accidents. This bill would permit the

reckless driver to be excluded from the policy yet continue to drive the insured car. Because the policy will exclude them from coverage, these reckless drivers will be permitted to legally drive uninsured.

This makes absolutely no sense from a public policy standpoint or a practical standpoint. The most reckless drivers will be rewarded for their irresponsibility by being permitted to drive uninsured. Good drivers will be penalized because there will be no insurance to cover the injuries to persons and damages to cars that these reckless drivers will invariable inflict on the innocent public.

There is a reason that insurance premiums for the most reckless of drivers are very high. That is because their irresponsible driving, disregard of traffic laws and history of causing accidents has been actuarially proven to result in a significantly higher propensity to cause future injury to persons and damage to other cars. Increasing premiums serve as a reflection of their higher risk, an incentive for responsible people who wish to maintain affordable premiums and a deterrent or apt consequence for those who insist on driving recklessly and creating a hazard for other drivers and pedestrians.

Driving is a privilege not a right. The proper response to reckless drivers who can not afford their high premiums is to quit driving, ride the bus or catch a ride with a responsible driver - - not reward them by allowing them to drive uninsured. Premiums do not become unaffordable because of minor traffic infractions or accidents caused by others. Those with excessive premiums deserve them as a consequence of their bad driving record.

Finally, although the introduction to the bill states that insurers will “offer coverage to drivers with extensive negative history at premiums more reflective of the risk,” there is nothing in the bill that requires these reckless drivers to purchase insurance to cover them. Indeed, these reckless drivers will never purchase insurance because all that will be required is to register their cars in the names of other family members with good driving records, be excluded from the policy, then drive uninsured. That is because insurance is required for the vehicle, not the driver.

Thank you for this opportunity to testify in Opposition to S.B. No. 58.

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



HIIA

Hawaii Independent Insurance Agents Association

February 12, 2009

To: Senator Rosalyn Baker, Chair
Senator David Ige, Vice-Chair
Committee on Commerce and Consumer Protection

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: SB 58 – Relating to Motor Vehicle Insurance
Hearing: Friday, February 13, 2009 8:30 am Conference Room 229

The Hawaii Independent Insurance Agents Association (HIIA) is submitting testimony in **opposition** to SB58 which creates a driver exclusion endorsement to enable a named insured to exclude specified persons from being covered under a policy.

The exclusion of specified drivers from an automobile policy goes directly against the basic tenets of the No Fault Auto Insurance Law established in 1974 where it was required all owners and operators of motor vehicles are to be insured.

The Named Driver Exclusion of specified drivers will create more confusion to the consumer and has the potential to increase the number of uninsured drivers.

Other points of concern that HIIA has with this bill are:

- The auto insurance law does not differentiate between drivers of personal vehicles and drivers of commercial vehicles. Therefore, if passed, this change will affect drivers of both personal and business vehicles.
- The law and this bill also does not differentiate between an insurance company that writes insurance directly for consumers and those who use independent insurance agents, who are required to communicate the nuances of every insurance coverage.
- In addition, this bill only requires the primary named insured to sign the driver exclusion, which means the actual excluded driver would not necessarily have first hand knowledge of being excluded from coverage and there will be no officially signed document with that signature.
- The underlying assumption that auto insurance follows the vehicle, will no longer hold true and the auto identification cards shared at the time of the accident will not indicate to the wronged party that this particular driver may not be insured.

HIIA is non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs.

We ask the Committee on Commerce and Consumer Protection prevent this bill from moving forward.

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**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

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

To: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Samuel Sorich, Vice President

Re: **SB 58 – Relating to Motor Vehicle Insurance**
PCI Position: Support with Amendment

Date: Friday, February 13, 2009
8:30 a.m.; Conference Room 229

Aloha Chair Baker and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) supports SB 58 because it allows consumers to choose insurance coverages that best fit with their needs and budgets.

SB 58 gives a family the opportunity to exclude a named driver from the family's auto insurance policy. SB 58 is sound public policy. That is evidenced by the fact that nearly 40 other states allow consumers to exclude named drivers from policies.

SB 58 offers an alternative. The bill helps an insurance company respond to a family's choice to exclude a person from the family's insurance policy so the family's insurance costs can be decreased. For a family whose household includes a high-risk driver, this bill provides an alternative for the policy holder a choice between avoiding paying high insurance premiums and having insurance coverage. This gives the families more alternatives.

SB 58 provides a choice, not a mandate. The insured person must expressly agree in writing to the exclusion of the named driver. The exclusion is clearly set forth so that the policyholder knows exactly the meaning of the policy exclusion. If the consumer has no interest in the exclusion, the insurance company may not force the consumer to accept it.

To assure that SB 58 achieves its purposes and to avoid any uncertainty in the bill's implementation, PCI requests an amendment to the bill to include language providing that the driver exclusion endorsement should be signed by both the named insured and the excluded driver. As introduced, SB 58 only requires the signature of the named insured.

PCI supports SB 58 because it will help families who, because their households include high risk drivers, may have difficulty finding insurance coverage today; the

exclusion of the high risk driver will cause more insurance companies to compete for the family's business. In addition, SB 58 gives families the chance to cut their insurance costs by lowering the riskiness of the drivers who are covered by the family's auto insurance policy.

The concept in SB 58 has proven to be successful in the great majority of other states. The bill is good public policy. SB 58 helps to make auto insurance coverage more available and more affordable for those families who choose the coverage option offered by the bill. PCI recommends that the Committee approve SB 58.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 13, 2009

Senate Bill 58 Relating to Motor Vehicle Insurance

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports Senate Bill 58 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.

We believe that with the recently enacted ignition lock out bill, this will assist insureds in obtaining lower insurance rates, while continuing to protect these families.

Thank you for the opportunity to present this testimony.