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TO THE SENATE COMMITTEE ON COMMERCE  
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, March 2, 2009  
10:30 a.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON SENATE BILL NO. 58, S.D. 1 – 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 likely 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.