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**House Committee on Transportation**  
Room 309, State Capitol  
Monday, February 7, 2011, 9:00 a.m.  
**HB 158 - RELATING TO UNINSURED VEHICLES**

**Chairman Souki, Vice-Chair Ichiyama, and Members of the Committee:**

My name is Timothy Dayton, General Manager for GEICO. GEICO is Hawaii's largest motor vehicle insurer. **GEICO supports House Bill Number 158.**

This measure limits the right of the operator of a motor vehicle which is uninsured to sue for damages for his or her injuries or death arising out of an accident ("No Pay/No Play").

However, a passenger may maintain an action against the operator of the vehicle. The measure as written does allow for the owner of the uninsured vehicle to sue for damages to the vehicle.

The Legislature may wish to consider whether or not that is consistent with your intent.

GEICO believes that this measure will both encourage Hawaii motor vehicle operators to maintain insurance as is required under the law and close a legal loophole that currently allows a person who has failed or refused to abide by the legal requirements to maintain insurance on his or her vehicle to recover from a person who has properly maintained motor vehicle insurance in this state. The current situation leads to unfair results. This bill rectifies the unfairness and only allows those who have participated in the insurance system to benefit from it.

Further, a no pay/no play approach results in no enforcement or administrative costs, because the law would be self-executing. The only costs are placed directly on those who break the law.

8 states currently have a law on the books similar to HB 158; they are Alaska, California, Iowa, Louisiana, Michigan, New Jersey, North Dakota, and Oregon. No Pay/No Play is currently under consideration in Colorado, Kansas, Oklahoma, Tennessee and Montana. .

**GEICO respectfully urges the committee to pass House Bill 158.**

Thank you for the opportunity to submit this testimony.

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

Timothy M. Dayton, CPCU

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 158**

February 7, 2011

To: Chair Souki and Members of the House Committee on Transportation:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 158, relating to Uninsured Motor Vehicles.

HAJ supports reasonable measures to encourage compliance with Hawaii's mandatory motor vehicle insurance requirement and to penalize those who flagrantly disregard the law. H.B. No. 158, however, is not reasonable, fair or constitutional.

The motor vehicle insurance code currently contains penalties consisting of fines of up to \$10,000, license suspensions of up to one year, community service of up to 275 hours, imprisonment of up to 30 days, impoundment and sale of uninsured vehicles, and revocation of vehicle license plates and registration. If these penalties are deemed by the legislature to be insufficient, then they should be adjusted to better accomplish their purpose.

It is a basic principle that similar violations should receive similar penalties. The current penalty structure does that. This measure, however, would result in widely disparate consequences for the same violation. For example, an uninsured driver who is paralyzed by a drunk driver that runs a red light would forfeit a claim worth millions, while another uninsured driver who sustains a minor whiplash would receive a minimal penalty for the same violation. This is not logical or fair. The penalty must be rationally related to the violation, in other words, the punishment must fit the crime.

In addition, there is no discretion for the court to tailor penalties to the circumstances. For example, under this measure, you would be barred from suing a drunk driver for your injuries if you borrowed a friend's car that was uninsured, even if you didn't know it was uninsured. Punishing you in this circumstance is neither reasonable nor fair.

This measure prohibits passengers from recovering from a reckless driver who causes an accident while purporting to give passengers the right to sue the uninsured driver of the car they are in. This makes no sense. Passengers can already sue the uninsured driver of the car they are in if that driver caused the accident. Under this measure, if you were a passenger in a friend's car that was uninsured, you would not be able to recover from a drunk driver that runs a red light and cripples you. The bill's option for you to sue your own driver is worthless and illusory because he/she did not cause the accident and is therefore not liable. Similarly, if parents who have lost their jobs because of the poor economy are unable to buy insurance, their children who are passengers are penalized by being barred from recovering from another driver who caused the accident. Children have no say in or ability to pay for insuring the family car. What is the justification for penalizing innocent children? This is unfair and irrational. Laws must, at a minimum, have a rational basis to be constitutional. This bill has no rational basis.

Under this measure, a worker who drives a company car, for which unbeknownst to him/her the company has not paid the insurance premium, and is injured by a reckless driver is barred from recovering through no fault of his/her own. Furthermore, since the innocent worker was the driver, this bill appears to allow a passenger to sue the innocent

worker who was driving. There is no rational relationship between punishing the innocent worker and encouraging the employer to pay for insurance.

Finally, given the very difficult economic situation working families have found themselves in for the past few years, this measure has a (perhaps unintended) discriminatory effect on the working class. Many construction workers have now been out of work for over two years and many visitor industry workers are just now beginning to be recalled from long layoffs. For many in the working class, it is not a matter of choosing to violate the mandatory motor vehicle requirement, but a matter of surviving during desperate economic times. This measure is legally flawed. It should be held.

Thank you for this opportunity to testify in OPPOSITION to H.B. No. 158.