

SB 2011

RELATING TO MOTOR VEHICLE INSURANCE.

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



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
DIRECTOR

TO THE SENATE COMMITTEES ON TRANSPORTATION AND INTERNATIONAL
AFFAIRS AND COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Friday, February 10, 2012
1:00 p.m.

**REVISED TESTIMONY ON SENATE BILL NO. 2011 – RELATING TO MOTOR
VEHICLE INSURANCE.**

TO THE HONORABLE J. KALANI ENGLISH AND ROSALYN H. BAKER, CHAIRS,
AND MEMBERS OF THE COMMITTEE:

My name is **Gordon Ito, State Insurance Commissioner** (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”). The **Department opposes this bill.**

The purpose of this bill is to allow driver exclusion endorsements to exclude
specified persons from being covered under a motor vehicle insurance policy.

The Department has concerns that this bill would curtail the benefits of the broad
coverage currently offered for Hawaii motor vehicle insurance policies. The underlying
purpose of Hawaii's motor vehicle insurance law is to encourage participation of all of
Hawaii's drivers, not to pick and choose which drivers to include or exclude. This bill
may increase the number of uninsured drivers on the road or force excluded drivers into
the joint underwriting plan.

We thank this Committee for the opportunity to present testimony.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2011

Date: Friday, February 10, 2012

Time: 1:00 pm

To: Chairpersons Kalani English and Rosalyn Baker; and Members of the Senate Committee on Transportation and International Affairs and the Senate Committee on Commerce and Consumer Protection:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION to S.B. No. 2011**, relating to Motor Vehicle Insurance. Our opposition relates to the limitation on providing HJUP protection for all innocent victims of excluded drivers who nonetheless drive the car and injure others found on page 9, lines 8 -11. We have no opposition if this provision is deleted from the bill.

The prevailing practice among major automobile insurers is to base premiums upon all of the drivers in the household not just the named insured. This can cause considerable financial hardship to innocent family members if there are one or more irresponsible drivers in the household. Some innocent family members may find that they cannot afford the higher premiums and may be forced to drive uninsured. This bill seeks to afford relief in these situations by allowing insurers to exclude the irresponsible drivers from coverage which would allow them to offer lower premiums; and avoid paying benefits when an excluded driver "borrows" the car and gets into an accident.

HAJ is not unsympathetic to the plight of innocent family members caught in this situation. The reality of the situation, however, must be considered. These excluded

drivers are going to continue to drive these cars, just as they do now, because they are, well, irresponsible. These are the same people who continue to drive with suspended or revoked licenses, drive uninsured, or have their cars registered in the names of family or friends because their own traffic records are so bad that they cannot buy their own insurance at rates they can afford. They will get into accidents. They will damage other peoples' cars and injure innocent drivers, passengers and pedestrians. The insurance company will be off-the-hook and will walk away. Ultimately the innocent people they hit will be left holding the bag and will have to bear the entire financial losses caused by accidents with excluded drivers.

If, as a matter of public policy, insurers will be permitted to exclude these irresponsible drivers from coverage, then there should be access to the Joint Underwriting Plan (JUP) assigned risks program for all who are injured by excluded drivers. This will permit an equitable spreading of the risk among the entire driving population and not result in a random imposition of financial hardship on the victims of excluded drivers.

We ask that lines 8 through 11 be deleted on page 9 to allow uniform application of JUP benefits to all persons harmed by excluded drivers. As currently drafted, this bill would not provide JUP benefits to someone who rejected optional uninsured motorist benefits on their own policy. Particularly in these difficult economic times, drivers should not be forced to pay extra for optional uninsured motorist benefits in order to protect themselves from excluded drivers. Rather, the damage done by excluded drivers should be spread fairly and evenly through the JUP assigned risks program to everyone. That way, everyone will pay a very small amount and no single person (including family members of the excluded driver) will suffer a large loss.

Thank you very much for allowing me to testify in OPPOSITION to this measure.

Please feel free to contact me should you have any questions or desire additional information.



Hawaii Independent Insurance Agents

ASSOCIATION

February 7, 2012

To: Senator J. Kalani English, Chair
Senator Will Espero, Vice Chair
Committee on Transportation & International Affairs

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice-Chair
Committee on Commerce & Consumer Protection

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

Re: SB 2011 Relating to Motor Vehicle Insurance
Hearing: Friday, February 10, 2012 1:00 pm Conference Room 224

The Hawaii Independent Insurance Agents Association (HIIA) is submitting testimony in **opposition** to SB2011 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 requires all owners and operators of motor vehicles 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:

- 1) 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.
- 2) 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.**
- 3) This bill requires the primary named insured to sign the driver exclusion as well as the excluded driver. The bill in its current form only lists signature of named insured but there may be problem if there are multiple named insured i.e. husband and wife. There may also be a problem if the high risk driver is a minor and cannot sign as an excluded driver.
- 4) **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 a non profit trade association of independent insurance producers dedicated to assisting the insurance buying public with their insurance needs.

We ask the Committee on Transportation & International Affairs and Committee on Commerce And Consumer Protection prevent this bill from moving forward.

**SENATE COMMITTEE ON
TRANSPORTATION AND INTERNATIONAL AFFAIRS**

and

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 10, 2012

Senate Bill 2011 Relating to Motor Vehicle Insurance

Chair English, Chair Baker, members of the Senate Committee on Transportation and International Affairs 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 2011 with additional amendments which have been crafted with the assistance of the Hawaii Insurers Council. A copy of which is attached.

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 respectfully ask for your support and approval of the proposed SD 1. Thank you for the opportunity to present this testimony.

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 purpose of this Act is to establish a named
2 operator exclusion in the Hawaii motor vehicle insurance code.

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

6 "§431:10C- . Exclusion of designated operators. (a)

7 An insurer shall have the right to exclude, cancel, or refuse to
8 renew coverage under a motor vehicle insurance policy as to
9 designated operators. Any such exclusion shall be acknowledged
10 by the signature of all named insureds. Any acknowledgment by
11 signature of the excluded operator shall constitute prima facie
12 proof that the operator knew he or she was excluded from
13 coverage under the motor vehicle insurance policy.

14 (b) In the event that a person operates a vehicle from
15 which the person is excluded from insurance coverage pursuant to
16 this section, and does not otherwise have applicable motor
17 vehicle insurance coverage, and causes property damage or

1 accidental harm to another person, that excluded operator shall
2 be deemed uninsured for purposes of this article.

3 (c) No motor vehicle policy premium shall be increased in
4 any manner, whether by surcharge, loss of discount or any other
5 underwriting factor, related to any claim by a person who
6 sustains property damage or accidental harm resulting from a
7 motor vehicle accident caused by an excluded operator; provided
8 that this subsection shall not apply to any policy that does
9 provide coverage to an excluded operator, or to any policy that
10 provides liability coverage to other persons or entities as a
11 result of a claim involving the operation of any motor vehicle
12 by the excluded operator.

13 (d) No person shall operate a motor vehicle that is
14 insured by a policy from which the person is excluded from
15 insurance coverage, unless the excluded operator is otherwise
16 covered by an applicable motor vehicle insurance policy.

17 (e) No owner of a motor vehicle insured by a policy that
18 excludes a person from coverage shall permit the excluded
19 operator to operate the insured motor vehicle, unless the
20 excluded operator is otherwise covered by an applicable motor
21 vehicle insurance policy."

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

1 "Insured" means:

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

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

6 (A) A spouse or reciprocal beneficiary or other
7 relative of a named insured; and

8 (B) A minor in the custody of a named insured or
9 of a relative residing in the same household
10 with a named insured.

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

15 Notwithstanding paragraphs (2)(A) and (2)(B), "insured"
16 shall not include operators who are named and excluded under a
17 valid endorsement pursuant to section 431:10C- ."

18 SECTION 4. Section 431:10C-117, Hawaii Revised Statutes,
19 is amended by amending subsection (a) to read as follows:

20 "(a) (1) Any person subject to this article in the
21 capacity of the operator, owner, or registrant of a motor
22 vehicle operated in this State, or registered in this State, who
23 violates any applicable provision of this article, shall be
24 subject to citation for the violation by any county police

1 department in a form and manner approved by the traffic
2 violations bureau of the district court of the first circuit;

3 (2) Notwithstanding any provision of the Hawaii Penal
4 Code:

5 (A) Each violation shall be deemed a separate
6 offense and shall be subject to a fine of
7 not less than \$100 nor more than \$5,000
8 which shall not be suspended except as
9 provided in subparagraph (B); [~~and~~]

10 (B) If the person is convicted of not having had
11 a motor vehicle insurance policy in effect
12 at the time the citation was issued, the
13 fine shall be \$500 for the first offense and
14 a minimum of \$1,500 for each subsequent
15 offense that occurs within a five-year
16 period from any prior offense; provided that
17 the judge:

18 (i) Shall have the discretion to suspend
19 all or any portion of the fine if the
20 defendant provides proof of having a
21 current motor vehicle insurance policy;
22 provided further that upon the
23 defendant's request, the judge may
24 grant community service in lieu of the

1 fine, of not less than seventy-five
2 hours and not more than one hundred
3 hours for the first offense, and not
4 less than two hundred hours nor more
5 than two hundred seventy-five hours for
6 the second offense; and

7 (ii) May grant community service in lieu of
8 the fine for subsequent offenses at the
9 judge's discretion;

10 (C) If the person is convicted of operating a
11 motor vehicle from which the person was
12 excluded from insurance coverage pursuant to
13 section 431:10C- , the fine shall be a
14 minimum of \$500 up to \$3,000 for the first
15 offense and a minimum of \$1,500 for each
16 subsequent offense that occurs within a five
17 year period from any prior offense; and

18 (D) If the person is convicted of being an owner
19 who has permitted an excluded person to
20 operate a motor vehicle in violation of
21 section 431:10C- , the fine shall be a
22 minimum of \$500 up to \$3,000 for the first
23 offense and a minimum of \$1,500 for each
24 subsequent offense that occurs within a five

1 year period from any prior offense;

2 (3) With the exception of a conviction under paragraph
3 (2)(D) of this section, the court [~~It~~]in addition to the fine in
4 paragraph (2), [~~the court~~] shall either:

5 (A) Suspend the driver's license of the driver
6 or of the registered owner for:

7 (i) Three months for the first conviction;
8 and

9 (ii) One year for any subsequent offense
10 within a five-year period from a
11 previous offense;

12 provided that the driver or the registered
13 owner shall not be required to obtain proof
14 of financial responsibility pursuant to
15 section 287-20; or

16 (B) Require the driver or the registered owner
17 to keep a nonrefundable motor vehicle
18 insurance policy in force for six months;

19 (4) Any person cited under this section shall have an
20 opportunity to present a good faith defense, including but not
21 limited to lack of knowledge or proof of insurance. The general
22 penalty provision of this section shall not apply to:

- 1 (A) Any operator of a motor vehicle owned by
2 another person if the operator's own
3 insurance covers such driving;
- 4 (B) Any operator of a motor vehicle owned by
5 that person's employer during the normal
6 scope of that person's employment; or
- 7 (C) Any operator of a borrowed motor vehicle if
8 the operator holds a reasonable belief that
9 the subject vehicle is insured;
- 10 (5) In the case of multiple convictions for driving
11 without a valid motor vehicle insurance policy within a five-
12 year period from any prior offense, the court, in addition to
13 any other penalty, shall impose the following penalties:
- 14 (A) Imprisonment of not more than thirty days;
- 15 (B) Suspension or revocation of the motor
16 vehicle registration plates of the vehicle
17 involved;
- 18 (C) Impoundment, or impoundment and sale, of the
19 motor vehicle for the costs of storage and
20 other charges incident to seizure of the
21 vehicle, or any other cost involved pursuant
22 to section 431:10C-301; or
- 23 (D) Any combination of those penalties; and

1 (6) Any violation as provided in subsection (a)(2)(B)
2 shall not be deemed to be a traffic infraction as defined by
3 chapter 291D."

4 SECTION 5. Section 431:10C-408, Hawaii Revised Statutes,
5 is amended by amending subsections (a) and (b) to read as
6 follows:

7 "(a) Each person sustaining accidental harm, or such
8 person's legal representative, may, except as provided in
9 subsection (b), obtain the motor vehicle insurance benefits
10 through the plan whenever:

11 (1) No liability or uninsured motorist insurance benefits
12 under motor vehicle insurance policies are applicable
13 to the accidental harm;

14 (2) No such insurance benefits applicable to the
15 accidental harm can be identified; or

16 (3) The only identifiable insurance benefits under motor
17 vehicle insurance policies applicable to the
18 accidental harm will not be paid in full because of
19 financial inability of one or more self-insurers or
20 insurers to fulfill their obligations.

21 Notwithstanding the foregoing, a named insured who has
22 rejected in writing the offer of uninsured motorist coverage
23 under a motor vehicle insurance policy shall not be entitled to
24 the rights of claim and action against the insurer, assigned

1 under section 431:10C-403, with reference to the mandatory
2 bodily injury liability policy for accidental harm."

3 " (b) A person, or such person's legal representative,
4 shall be disqualified from receiving benefits through the plan
5 if:

6 (1) Such person is disqualified for criminal conduct under
7 section 431:10C-305(d) from receiving the motor
8 vehicle insurance benefits; or

9 (2) Such person was:

10 (A) The owner or registrant of the motor vehicle at
11 the time of the motor vehicle's involvement in
12 the accident out of which such person's
13 accidental harm arose;

14 (B) The operator or any passenger of such a vehicle at
15 such time with reason to believe that such
16 vehicle was an uninsured motor vehicle~~;~~ or

17 (C) The operator of a motor vehicle from which the
18 person was excluded from insurance coverage under
19 section 431:10C- at the time of the motor
20 vehicle's involvement in the accident out of
21 which such excluded operator's accidental harm
22 arose.

1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.



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1003 Bishop Street
Honolulu, Hawaii 96813
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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON TRANSPORTATION AND INTERGOVERNMENTAL AFFAIRS

Senator J. Kalani English, Chair
Senator Will Espero, Vice Chair

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Friday, February 10, 2012
1:00 p.m.

SB 2011

Chair English, Chair Baker, and members of the Committees, 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **submits comments** on SB 2011. The bill would add a new section to exclude certain operators from motor vehicle insurance policies. HIC is neutral on the issue of operator exclusions because it is optional to the insurer. However, if a law is passed, the language should be clear and workable. We have been working with State Farm Mutual Insurance Company on an amendment to this bill should the Legislature decide this concept should move forward. HIC and State Farm have agreed to the following amendments as outlined in the attached SB 2011, proposed SD1.

In addition to amending language in the operator exclusion sections of the bill, we believe it is important to clarify that insured operators who chose to reject uninsured

motorist coverage should not be eligible for assigned claims benefits. This specific language is contained in Section 5 of the attached SB 2011, proposed SD1.

Thank you for the opportunity to testify.

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8 renew coverage under a motor vehicle insurance policy as to
9 designated operators. Any such exclusion shall be acknowledged
10 by the signature of all named insureds. Any acknowledgment by
11 signature of the excluded operator shall constitute prima facie
12 proof that the operator knew he or she was excluded from
13 coverage under the motor vehicle insurance policy.

14 (b) In the event that a person operates a vehicle from
15 which the person is excluded from insurance coverage pursuant to
16 this section, and does not otherwise have applicable motor
17 vehicle insurance coverage, and causes property damage or

1 accidental harm to another person, that excluded operator shall
2 be deemed uninsured for purposes of this article.

3 (c) No motor vehicle policy premium shall be increased in
4 any manner, whether by surcharge, loss of discount or any other
5 underwriting factor, related to any claim by a person who
6 sustains property damage or accidental harm resulting from a
7 motor vehicle accident caused by an excluded operator; provided
8 that this subsection shall not apply to any policy that provides
9 coverage to an excluded operator, or to any policy that provides
10 liability coverage to other persons or entities as a result of a
11 claim involving the operation of any motor vehicle by the
12 excluded operator.

13 (d) No person shall operate a motor vehicle that is
14 insured by a policy from which the person is excluded from
15 insurance coverage, unless the excluded operator is otherwise
16 covered by an applicable motor vehicle insurance policy.

17 (e) No owner of a motor vehicle insured by a policy that
18 excludes a person from coverage shall permit the excluded
19 operator to operate the insured motor vehicle, unless the
20 excluded operator is otherwise covered by an applicable motor
21 vehicle insurance policy."

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

9 (A) A spouse or reciprocal beneficiary or other
10 relative of a named insured; and

11 (B) A minor in the custody of a named insured or
12 of a relative residing in the same household
13 with a named insured.

14 A person resides in the same household if the person
15 usually makes the person's home in the same family unit, which
16 may include reciprocal beneficiaries, even though the person
17 temporarily lives elsewhere.

18 Notwithstanding paragraphs (2) (A) and (2) (B), "insured"
19 shall not include operators who are named and excluded under a
20 valid endorsement pursuant to section 431:10C- ."

21 SECTION 4. Section 431:10C-117, Hawaii Revised Statutes,
22 is amended by amending subsection (a) to read as follows:

1 "(a) (1) Any person subject to this article in the
2 capacity of the operator, owner, or registrant of a motor
3 vehicle operated in this State, or registered in this State, who
4 violates any applicable provision of this article, shall be
5 subject to citation for the violation by any county police
6 department in a form and manner approved by the traffic
7 violations bureau of the district court of the first circuit;

8 (2) Notwithstanding any provision of the Hawaii Penal
9 Code:

10 (A) Each violation shall be deemed a separate
11 offense and shall be subject to a fine of
12 not less than \$100 nor more than \$5,000
13 which shall not be suspended except as
14 provided in subparagraph (B); [and]

15 (B) If the person is convicted of not having had
16 a motor vehicle insurance policy in effect
17 at the time the citation was issued, the
18 fine shall be \$500 for the first offense and
19 a minimum of \$1,500 for each subsequent
20 offense that occurs within a five-year
21 period from any prior offense; provided that
22 the judge:

1 (i) Shall have the discretion to suspend
2 all or any portion of the fine if the
3 defendant provides proof of having a
4 current motor vehicle insurance policy;
5 provided further that upon the
6 defendant's request, the judge may
7 grant community service in lieu of the
8 fine, of not less than seventy-five
9 hours and not more than one hundred
10 hours for the first offense, and not
11 less than two hundred hours nor more
12 than two hundred seventy-five hours for
13 the second offense; and

14 (ii) May grant community service in lieu of
15 the fine for subsequent offenses at the
16 judge's discretion;

17 (C) If the person is convicted of operating a
18 motor vehicle from which the person was
19 excluded from insurance coverage pursuant to
20 section 431:10C- , the fine shall be a
21 minimum of \$500 up to \$3,000 for the first
22 offense and a minimum of \$1,500 for each

1 subsequent offense that occurs within a five
2 year period from any prior offense; and

3 (D) If the person is convicted of being an owner
4 who has permitted an excluded person to
5 operate a motor vehicle in violation of
6 section 431:10C- , the fine shall be a
7 minimum of \$500 up to \$3,000 for the first
8 offense and a minimum of \$1,500 for each
9 subsequent offense that occurs within a five
10 year period from any prior offense;

11 (3) With the exception of a conviction under paragraph
12 (2) (D) of this section, the court [H]in addition to the fine in
13 paragraph (2), [the court] shall either:

14 (A) Suspend the driver's license of the driver
15 or of the registered owner for:

16 (i) Three months for the first conviction;
17 and

18 (ii) One year for any subsequent offense
19 within a five-year period from a
20 previous offense;

21 provided that the driver or the registered
22 owner shall not be required to obtain proof

1 of financial responsibility pursuant to
2 section 287-20; or

3 (B) Require the driver or the registered owner
4 to keep a nonrefundable motor vehicle
5 insurance policy in force for six months;

6 (4) Any person cited under this section shall have an
7 opportunity to present a good faith defense, including but not
8 limited to lack of knowledge or proof of insurance. The general
9 penalty provision of this section shall not apply to:

10 (A) Any operator of a motor vehicle owned by
11 another person if the operator's own
12 insurance covers such driving;

13 (B) Any operator of a motor vehicle owned by
14 that person's employer during the normal
15 scope of that person's employment; or

16 (C) Any operator of a borrowed motor vehicle if
17 the operator holds a reasonable belief that
18 the subject vehicle is insured;

19 (5) In the case of multiple convictions for driving
20 without a valid motor vehicle insurance policy within a five-
21 year period from any prior offense, the court, in addition to
22 any other penalty, shall impose the following penalties:

1 (A) Imprisonment of not more than thirty days;

2 (B) Suspension or revocation of the motor
3 vehicle registration plates of the vehicle
4 involved;

5 (C) Impoundment, or impoundment and sale, of the
6 motor vehicle for the costs of storage and
7 other charges incident to seizure of the
8 vehicle, or any other cost involved pursuant
9 to section 431:10C-301; or

10 (D) Any combination of those penalties; and

11 (6) Any violation as provided in subsection (a) (2) (B)
12 shall not be deemed to be a traffic infraction as defined by
13 chapter 291D."

14 SECTION 5. Section 431:10C-408, Hawaii Revised Statutes,
15 is amended by amending subsections (a) and (b) to read as
16 follows:

17 "(a) Each person sustaining accidental harm, or such
18 person's legal representative, may, except as provided in
19 subsection (b), obtain the motor vehicle insurance benefits
20 through the plan whenever:

1 (1) No liability or uninsured motorist insurance benefits
2 under motor vehicle insurance policies are applicable
3 to the accidental harm;

4 (2) No such insurance benefits applicable to the
5 accidental harm can be identified; or

6 (3) The only identifiable insurance benefits under motor
7 vehicle insurance policies applicable to the
8 accidental harm will not be paid in full because of
9 financial inability of one or more self-insurers or
10 insurers to fulfill their obligations.

11 Notwithstanding the foregoing, a named insured who has
12 rejected in writing the offer of uninsured motorist coverage
13 under a motor vehicle insurance policy shall not be entitled to
14 the rights of claim and action against the insurer, assigned
15 under section 431:10C-403, with reference to the mandatory
16 bodily injury liability policy for accidental harm."

17 "(b) A person, or such person's legal representative,
18 shall be disqualified from receiving benefits through the plan
19 if:

20 (1) Such person is disqualified for criminal conduct under
21 section 431:10C-305(d) from receiving the motor
22 vehicle insurance benefits; or

1 (2) Such person was:

2 (A) The owner or registrant of the motor vehicle at
3 the time of the motor vehicle's involvement in
4 the accident out of which such person's
5 accidental harm arose;

6 (B) The operator or any passenger of such a vehicle at
7 such time with reason to believe that such
8 vehicle was an uninsured motor vehicle; or

9 (C) The operator of a motor vehicle from which the
10 person was excluded from insurance coverage under
11 section 431:10C- at the time of the motor
12 vehicle's involvement in the accident out of
13 which such excluded operator's accidental harm
14 arose.

15 SECTION 6. 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 7. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 8. This Act shall take effect upon its approval.
21

22