
A BILL FOR AN ACT

RELATING TO NAMED OPERATOR EXCLUSION.

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 operator. (a) An
7 insurer shall have the right to exclude, cancel, or refuse to
8 renew coverage under a motor vehicle insurance policy as to a
9 designated operator. Any exclusion shall be acknowledged by the
10 signature of all named insureds. The signature of an excluded
11 operator is not required; however when that signature is
12 obtained it shall constitute prima facie proof the operator knew
13 that the operator was excluded from coverage under the motor
14 vehicle insurance policy.

15 (b) No person shall knowingly operate a motor vehicle that
16 is insured by a policy from which the person is excluded from
17 insurance coverage, unless the excluded operator is otherwise
18 covered by an applicable motor vehicle insurance policy."



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

4 "Insured" means:

5 (1) The person identified by name as insured in a motor
6 vehicle insurance policy complying with section
7 431:10C-301; and

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

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

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

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

19 Notwithstanding paragraph (2)(A) and (B) of the definition
20 of "insured", "insured" shall not include operators who are
21 named and excluded under a valid endorsement pursuant to section
22 431:10C- ."



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

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

- 8 (1) No liability or uninsured motorist insurance benefits
9 under motor vehicle insurance policies are applicable
10 to the accidental harm;
- 11 (2) No such insurance benefits applicable to the
12 accidental harm can be identified; or
- 13 (3) The only identifiable insurance benefits under motor
14 vehicle insurance policies applicable to the
15 accidental harm will not be paid in full because of
16 financial inability of one or more self-insurers or
17 insurers to fulfill their obligations.

18 Notwithstanding the foregoing, a named insured who has
19 rejected in writing the offer of uninsured motorist coverage
20 under a motor vehicle insurance policy, or who has knowingly
21 allowed the operation of a motor vehicle by a person excluded as
22 a designated operator under 431:10C- , shall not be entitled to



1 the rights of claim and action against the insurer, assigned
2 under section 431:10C-403, with reference to the mandatory
3 bodily injury liability policy for accidental harm.

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



H.B. NO. 125

1 SECTION 5. 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 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

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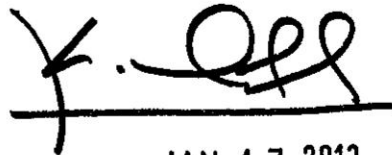
INTRODUCED BY: _____



Nicole E. ...



Tom ...



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H.B. NO. 125

Report Title:

Motor Vehicle Insurance; Named Operator Exclusion

Description:

Authorizes a named operator exclusion to enable a named insured to exclude specified persons from being covered under a motor vehicle insurance policy. Provides that a named insured that has rejected in writing the offer of uninsured motorist coverage under a motor vehicle insurance policy, or who has knowingly allowed the operation of a motor vehicle by a person excluded as a designated operator, shall not be entitled to the rights of claim and action against the assigned insurer, with reference to the mandatory bodily injury liability policy for accidental harm. Disqualifies the coverage to an excluded operator of a motor vehicle for an accident out of which the excluded operator's accidental harm arose.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 125

Date: Monday, February 11, 2013

Time: 10:00 am

To: Chairman Ryan Yamane 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. 125, relating to Motor Vehicle Insurance.

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 move or ask the irresponsible driver to move out of the house. 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 line 18 on page 3 through line 3 on page 4 be deleted to allow uniform application of JUP benefits to all persons harmed by excluded drivers. HAJ has no objection to the disqualification of the irresponsible excluded driver on page 4, lines 17 through 22.

As currently drafted, this bill would disqualify benefits to a responsible person who bought full coverage required by law but did not purchase optional uninsured motorist benefits on their own policy. The basic principle of our mandatory insurance law is that if everyone buys the required coverage then there is no need for uninsured motorist benefits. A driver does their part when they purchase the required coverage. Drivers who buy insurance should not be forced to pay extra for optional uninsured motorist benefits in order to protect themselves from excluded drivers. This would in effect make uninsured motorist benefits a mandatory coverage.

The purpose of the JUP assigned risks program is to spread the loss caused by uninsured motorists fairly and evenly through the JUP assigned risks program to all vehicles. That way, everyone will pay a very small amount and no single person will suffer a large loss. Irresponsible uninsured owners are already disqualified from receiving JUP benefits. A responsible person who buys the required insurance should not be excluded.

Thank you very much for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.