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February 27, 2014

Senator Mike Dunleavy
Chairman, Senate Labor and Commerce Committee
State Capitol, Room 510
Juneau, Alaska 99801-1182

Re: State Farm Support for Senate Bill 167

Dear Senator Dunleavy:

On behalf of State Farm Insurance Companies,¹ I write to express support for SB 167 and to explain how it will correct an unintended loophole in Alaska's uninsured/underinsured motorist statutes harmful to consumer cost, choice and predictability.

1. Background and Legislative Limitation on "Stacking".

Some brief background is essential to understanding SB 167. In 1984 our Legislature mandated that consumers must be offered uninsured/underinsured motorist insurance ("U/UIM"). Many Alaskans find this a necessary component of their personal insurance to protect against an accident caused by an uninsured or underinsured driver.

To help keep this coverage affordable and predictable, Alaska like most states restricted, and still restricts, the combining or "stacking" of multiple U/UIM coverages. When a consumer insures more than one vehicle with the same insurer, the U/UIM coverages on all the vehicles are not combined. Only the highest coverage on any one vehicle applies, regardless of which vehicle is in an accident. This restriction applies whether the vehicles are insured (a) under one policy; or (b) under separate policies with the same insurer. The 1984 statute provided:

If an insured is entitled to uninsured or underinsured motorists coverage under more than one policy of motor vehicle insurance, or under more than one coverage if two or more vehicles are insured under one policy, the maximum amount an insured may recover may not exceed the highest limit of any one policy or coverage.

In 1990 the Legislature made changes to U/UIM coverage so that consumers would have more coverage options, would know exactly what coverage they would get and could make better choices.² One change increased the mandated offers to a variety of amounts ranging from \$50,000 to \$1M per person, so that "the named insured would use their own judgment in selecting the amount of coverage that they need or can afford." [Attachment, p. 1]

¹ State Farm is the largest auto insurer in Alaska and in the United States.

² See detailed legislative history and intent in *Progressive v Simmons*, 953 P.2d 510, at 514-5 (1998).

The Legislature also made it clear again in 1990, that stacking U/UIM coverages was restricted, for both multiple-vehicle policies and single-vehicle policies from the same insurer. The final committee version of HB 429 prohibited stacking under multi-vehicle policies, but failed to address single-vehicle policies. The omission was corrected through a Senate Floor amendment to close the “loophole in the language that allows ‘stacking’ on single-car policies.” [Attachment, p. 2] The Senate Floor Statement explained that the amendment:

Allows single vehicle motor vehicle insurance policies to be treated the same as multiple vehicle motor vehicle insurance policies for the purposes of “stacking” under and uninsured coverages. Multiple [vehicle] policies are already covered in the bill. This amendment simply extends the same provisions for single vehicle policies. [Id., p. 3]

Unfortunately, as demonstrated below the amendment language as drafted did not entirely and consistently accomplish the stated purpose.

2. The Unintended, Inconsistent Discrepancy Harmful to Consumers.

For a multi-car policy, the language currently prohibits stacking for any “person”:

If a *person* is entitled to uninsured or underinsured motorists coverage under more than one coverage when two or more vehicles are insured under one policy, the maximum amount payable may not exceed the highest limit of any one coverage under the policy.³ [emphasis added]

But for single-car policies, the next sentence, (added with the Senate Floor Amendment discussed above), prohibits stacking only for the “named insured”:

If a person is entitled *as a named insured* to uninsured or underinsured motorists coverage under more than one motor vehicle policy issued by the same insurer, the maximum amount payable may be limited to the highest limit of any one coverage under the policies. [emphasis added]

Prohibiting stacking only for the “named insured” means stacking is required for all other persons, including household and non-household members occupying the car.⁴

The discrepancy in the language creates unintended inconsistencies in coverage: (1) between consumers who choose multi-car policies and consumers who choose single-car policies; and (2) between named insureds and everyone else. The following example demonstrates the resulting inconsistent coverages, in a typical situation where the consumer

³ AS 28.20.445(c). Identical language is contained in AS 28.22.221.

⁴ “Named insured” is not defined. Legislative memoranda explaining the 1990 revisions reference the “named insured” as the person that chooses and purchases the coverage. [Attachment, p. 1]

insures 4 vehicles intending \$50K of U/UIM coverage per person.

4 Cars Under 1 Multi-Car Policy		4 Cars Under 4 Single-Car Policies	
Stacking Prohibited for any Person	Coverage Amount	Stacking Prohibited Only for Named Insured	Coverage Amount
Named Insured [No stacking]	\$50,000	Named Insured [No stacking]	\$50,000
Non-named Insured [No stacking]	\$50,000	Non-named insured [Stacking required]	\$200,000 (4 x \$50,000)

In the multi-car policy situation, consumers select and pay for the amount of coverage best suited to their needs and finances, at any of the various amounts insurers are mandated to offer, in the example above \$50,000 per person. This is consistent with the Legislative policy of limiting stacking, improving affordability and enhancing consumer choice.

In contrast, in the single-car policies situation consumers cannot select and pay for coverage limited to \$50,000. Instead all 4 coverages must stack to provide \$200,000 for every person, except the named insured who ironically bought the insurance. There is no logical reason for these discrepancies. No other state prohibits stacking for multi-car policies while allowing it for single-car policies. No other state prohibits stacking for the named insured while allowing it for all other persons.

Consumers pay for this additional, unwanted coverage every time they buy or renew their U/UIM coverage. The additional cost is even higher when more vehicles are insured or when the consumer wants to insure one or more vehicles at higher levels. This additional cost is unnecessary because with the range of mandated offers, among the highest in the country, consumers can and should be able to select the exact amount of coverage they desire.

3. **SB 167 Corrects the Unintended Discrepancy.**

SB 167 makes the following simple language changes:

If a person is entitled [AS A NAMED INSURED] to uninsured or underinsured motorists [MOTORIST] coverage under more than one motor vehicle policy issued by the same insurer in the same household, the maximum amount payable may be limited to the highest limit of any one coverage under the policies.

The reference to “as a named insured” is deleted. However, removing that reference by itself would also preclude non-household persons (e.g., friends occupying the vehicle) from applying their own U/UIM insurance they may have purchased separately on their own car from the same insurer. Adding the phrase “in the same household” ensures that the stacking limitation

applies only to policies purchased within the household.⁵ [The change in “motorists” to “motorist” is non-substantive and only for statutory consistency.]

SB 167 will accomplish the following:

- Insurance rates for many consumers will be positively influenced.
- Consumer choice and predictability will be improved because consumers can choose a predictable level of coverage they deem appropriate. Consumers will not be forced to pay for coverage they do not want or need.
- Consumers who insure their vehicles in separate policies will have the same options as, and be treated the same as, consumers who insure their vehicles under one multi-car policy, consistent with the stated legislative intent and policy in 1984 and 1990.

There is no negative impact to consumers. State Farm thanks the sponsor, Senator Huggins, and co-sponsor Senator Micciche for this simple yet important legislation for Alaska insurance consumers. We appreciate your consideration and encourage your support. Please contact me at any time should you have any questions.

Sincerely,

By: 
Sheldon Winters
State Farm Retained Counsel

cc: Members of Senate Labor and Commerce Committee

⁵ AS 28.20.445(c) establishes an order of priority for applying coverages in situations where multiple policies would apply, for example where a person occupying a vehicle he does not own had also purchased his own separate U/UIM coverage on his own vehicle. SB 167 does not change this priority.

CS FOR HOUSE BILL NO. 429 (JUDICIARY)

The current committee substitute amends existing uninsured and underinsured motor vehicle coverage options for Alaskan consumers by requiring insurers to offer initially and at each renewal several coverage limits. The minimum limit an insurer must offer would be the same limit as the named insured selected for their liability coverage. Other limits required to be offered, when in excess of the liability limit, would be \$100,000/\$300,000; \$300,000/\$500,000; \$500,000/\$1,000,000; and \$1,000,000/\$2,000,000 (any one person/two or more persons). An insurer may also offer additional policy limits to the required options. The named insured would use their own judgement in selecting the amount of coverage that they need or can afford. As a result, the bill would allow Alaskans to cover themselves against uninsured or underinsured motorists in amounts greater than currently available.

The bill provides a priority of policies when more than one is available to an injured person (current law limits the maximum coverage to the highest limit among the policies). This allows Alaskan consumers to protect themselves under their own policy in the event a non-owned vehicle in which they are an operator or passenger has insufficient coverage. The bill retains existing language that makes clear that only one uninsured or underinsured limit applies per policy.

The bill also provides that uninsured and underinsured motorist coverage is excess of but not duplicative to benefits covered by workers' compensation or motor vehicle medical payments coverage.

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FOR FLOOR FOLDER

BILL NUMBER: HB 429
SPONSOR: HOUSE LABOR & COMMERCE COMMITTEE
BILL TITLE: AN ACT RELATING TO UNINSURED AND UNDERINSURED
MOTOR VEHICLE INSURANCE

According to Dave Walsh, the new director of the Division of Insurance, this bill is supported by the department, and does the following:

It tightens up subrogation recoveries. Subrogation is when I have an accident and the insurance company pays my losses, but in return I have to give the insurance company the right to sue in my name so the insurance company can recover its losses on my accident.

It also clarifies anti-stacking statutes. Stacking is carrying multiple policies on the same cars (e.g., I buy a policy that covers my car, plus Greg's (imaginary) car; plus Greg buys a policy on his car that also covers my car. Then if I have an accident, I submit a claim on my policy, plus on Greg's policy, and thus get paid twice, thereby getting 200% of what I'm owed. Stacking is illegal in Alaska.

The bill does the following:

1) requires insurance companies to *offer* underinsured motorist and uninsured motorist coverage in excess of what the policy offers. In other words, if my insurance policy insures that if I have an accident, the other guy's car is insured for up to \$50,000, then I can't buy UI/UN coverage for any more than what I insure the other guy's car for. So if I own a real expensive car, like a Rolls Royce or something, that is very likely to be more expensive than your average Joe's car, I can't buy more insurance on my car unless I buy more insurance on the other guy's car. This bill changes that so you can carry more on your own car.

2) It sets up a priority in which claims are paid, so if Greg and I both have policies on our own cars, the insurance companies can't point fingers at each other and claim the other guy is the one who's supposed to pay first. The statute will tell them.

Senator Eliason will offer two amendments, both of which are supported by the department:

- a) He will add a January 1, 1991, effective date.
- b) He will address a loophole in the law that allows "stacking" on single-car policies (there's the possibility that somebody could buy multiple policies on a single car and thus make multiple claims). The amendment clarifies that you can't do that, thereby closing the loophole.

Senate Floor Statement

SCS HB 429 (L&C)

By Senator Dick Ellason

HB 429 clarifies existing statutes and make two significant changes in current law:

- 1. Requires insurers to offer consumers under and uninsured motorist coverage in excess of the liability limits under their current policy.**
- 2. Establishes the priority in which claims are applied when an accident or injury involves multiple policies.**

PROPOSED AMENDMENT:

Allows single vehicle motor vehicle insurance policies to be treated the same as multiple vehicle motor vehicle insurance policies for the purposes of "stacking" under and uninsured coverages. Multiple policies are already covered in the bill. This amendment simply extends the same provisions for single vehicle policies.

Effective Date: The amendment provides for a January 1, 1991 effective date in order to give all parties time to "gear up".

*Signed off by Div of Insurance,
Industry, & sponsor*

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 429(L&C)

Page 3, line 14, after "policy.":

Insert "If a person is entitled as a named insured to uninsured or underinsured motorist coverage under more than one motor vehicle policy issued by the same insurer, the maximum amount payable may be limited to the highest limit of any one coverage under the policies."

Page 4, line 21, after "policy.":

Insert "If a person is entitled as a named insured to uninsured or underinsured motorist coverage under more than one motor vehicle policy issued by the same insurer, the maximum amount payable may be limited to the highest limit of any one coverage under the policies."

Page 5, line 24:

Delete "the effective date of this Act"

Insert "January 1, 1991"