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# A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 431:10C-302, Hawaii Revised Statutes,  
2 is amended by amending subsection (a) to read as follows:

3           "(a) In addition to the motor vehicle insurance coverages  
4 described in section 431:10C-301, every insurer issuing a motor  
5 vehicle insurance policy shall make available to the insured the  
6 following optional insurance under the following conditions.

7 Every insurer issuing a commercial motor vehicle insurance  
8 policy shall make available to the insured the following  
9 optional insurance, except for those benefits under paragraphs  
10 (4), (5), (9), (10), and (11) under the following conditions:

11           (1) At the option of the insured, provisions covering loss  
12                resulting from damage to the insured's motor vehicle  
13                with such deductibles, including but not limited to  
14                collision and comprehensive deductibles of \$50, \$100,  
15                \$250, \$500, \$1,000, \$1,500, and \$2,000, at  
16                appropriately reduced premium rates, as the  
17                commissioner, by rule, shall provide;



- 1           (2) At the option of the insured, compensation to the  
2           insured, the insured's spouse, any dependents, or any  
3           occupants of the insured's vehicle for damages not  
4           covered by personal injury protection benefits;
- 5           (3) Additional coverages and benefits with respect to any  
6           injury or any other loss from motor vehicle accidents  
7           or from operation of a motor vehicle for which the  
8           insurer may provide for aggregate limits with respect  
9           to such additional coverage so long as the basic  
10          liability coverages provided are not less than those  
11          required by section 431:10C-301(b)(1) and (2);
- 12          (4) At the option of the insured, an option in writing for  
13          coverage for wage loss benefits for monthly earnings  
14          loss for injury arising out of a motor vehicle  
15          accident. Any change in the wage loss benefits  
16          coverage selected by an insured shall apply only to  
17          benefits arising out of motor vehicle accidents  
18          occurring after the date the change becomes effective.  
19          Coverage shall be offered in multiples of \$500 a  
20          month/\$3,000 per accident per person, from \$500 a  
21          month/\$3,000 per accident to \$2,000 a month/\$12,000  
22          per accident; however, nothing shall prevent an



1 insurer from making available higher limits of  
2 coverage;

3 (5) An option in writing for minimum coverage for death  
4 benefits for death arising out of a motor vehicle  
5 accident in an amount of \$25,000, to be paid to the  
6 surviving spouse, for the benefit of the spouse and  
7 dependent children, or if there are no surviving  
8 spouse or dependent children, then to the estate.

9 Coverage shall also be made available for increased  
10 death benefits in increments of \$25,000 up to  
11 \$100,000; however, nothing shall prevent an insurer  
12 from making available higher limits of coverage. At  
13 the option of the insured, coverage for funeral  
14 expenses of \$2,000 shall be made available;

15 (6) Terms, conditions, exclusions, and deductible clauses,  
16 coverages, and benefits which:

17 (A) Are consistent with the required provisions of  
18 the policy;

19 (B) Limit the variety of coverage available so as to  
20 give buyers of insurance reasonable opportunity  
21 to compare the cost of insuring with various  
22 insurers; and



- 1 (C) Are approved by the commissioner as fair and  
2 equitable;
- 3 (7) At appropriately reduced premium rates, deductibles  
4 applicable only to claims of an insured in the amounts  
5 of \$100, \$300, \$500, and \$1,000 from all personal  
6 injury protection benefits otherwise payable; provided  
7 that if two or more insureds to whom the deductible is  
8 applicable under the contract of insurance are injured  
9 in the same accident, the aggregate amount of the  
10 deductible applicable to all of them shall not exceed  
11 the specified deductible, which amount where necessary  
12 shall be allocated equally among them;
- 13 (8) Every insurer shall fully disclose the availability of  
14 all required and optional coverages and deductibles,  
15 including the nature and amounts, at the issuance or  
16 delivery of the policy; or, for a policy already  
17 issued on January 1, 1998, disclosure shall be made at  
18 the first renewal after January 1, 1998. The insurer  
19 shall also disclose at issuance or renewal, as  
20 applicable, the effect on premium rates and savings of  
21 each option and deductible. Further offers or  
22 disclosures thereafter shall be required to be



1 included with every other renewal or replacement  
2 policy. All elections of coverages, options, and  
3 deductibles by a named insured shall be binding upon  
4 additional insureds covered under the named insured's  
5 policy. The purpose of this paragraph is to inform  
6 insureds or prospective insureds of the coverages  
7 under this article;

8 (9) (A) An insurer may make available, and provide at the  
9 option of the named insured, the benefits  
10 described in section 431:10C-103.5(a) through  
11 managed care providers such as a health  
12 maintenance organization or a preferred provider  
13 organization. The option may include conditions  
14 and limitations to coverage, including  
15 deductibles and coinsurance requirements, as  
16 approved by the commissioner. The commissioner  
17 shall approve those conditions and limitations  
18 which are substantially comparable to or exceed  
19 the coverage provided under section 431:10C-  
20 103.6;

21 (B) An insurer may make available, and provide at the  
22 option of the named insured, deductible and



1 coinsurance arrangements whereby the recipient of  
2 care, treatment, services, products, expenses, or  
3 accommodations shares in the payment obligation;

4 (C) No deductible or coinsurance under a policy  
5 covered under section 431:10C-302(a)(9)(A) or (B)  
6 shall be applied with respect to care, treatment,  
7 services, products, or accommodation provided or  
8 expenses incurred by an insured during the first  
9 twenty-four hours in which emergency treatment  
10 has been provided or until the insured patient's  
11 emergency medical condition is stabilized,  
12 whichever is longer;

13 (D) (i) The optional coverage prescribed in section  
14 431:10C-302(a)(9)(A) and (B) shall apply  
15 only to the named insured, resident spouse,  
16 or resident relative; and

17 (ii) "Resident relative" means a person who, at  
18 the time of the accident, is related by  
19 blood, marriage, or adoption to the named  
20 insured or resident spouse and who resides  
21 in the named insured's household, even if  
22 temporarily living elsewhere, and any ward



1                   or foster child who usually resides with the  
2                   named insured, even if living elsewhere;

3           (E) An agreement made under section 431:10C-302(a)(9)  
4           must be a voluntary agreement between the insured  
5           and the insurer, and no insurer shall require an  
6           insured to agree to those policy provisions as a  
7           condition of providing insurance coverage.

8           Requiring an agreement as a precondition to the  
9           provision of insurance shall constitute an unfair  
10          insurance practice and shall be subject to the  
11          provisions, remedies, and penalties provided in  
12          article 13; and

13          (F) An insurer providing the coverages authorized in  
14          section 431:10C-302(a)(9)(A) and (B) shall  
15          demonstrate in rate filings submitted to the  
16          commissioner the savings to the insured to be  
17          realized under the plan;

18          (10) An insurer shall make available optional coverage for  
19          naturopathic, acupuncture, nonmedical remedial care,  
20          and treatment rendered in accordance with the  
21          teachings, faith, or belief of any group which relies  
22          upon spiritual means through prayer for healing; ~~and~~



1 (11) An insurer may make available optional coverage for  
2 chiropractic treatment in addition to chiropractic  
3 treatment provided under section 431:10C-103.6 for not  
4 more than the lesser of the following:

5 (A) Thirty additional visits at no more than \$75 a  
6 visit; or

7 (B) Treatment as defined by the Hawaii Chiropractic  
8 Association guidelines in effect on January 25,  
9 1997[-]; and

10 (12) At the option of the insured, waiver of the right to  
11 claim damages over the threshold for noneconomic  
12 losses as a result of accidental harm sustained in a  
13 motor vehicle accident caused by another.

14 The commissioner shall adopt rules, including policy  
15 limits, terms, and conditions as necessary to implement the  
16 requirements of this section."

17 SECTION 2. Section 431:10C-306, Hawaii Revised Statutes,  
18 is amended by amending subsection (a) to read as follows:

19 "(a) Except as provided in subsection (b), this article  
20 abolishes tort liability of the following persons with respect  
21 to accidental harm arising from motor vehicle accidents  
22 occurring in this State:



1 (1) Owner, operator, or user of an insured motor vehicle;  
2 or

3 (2) Operator or user of an uninsured motor vehicle who  
4 operates or uses such vehicle without reason to  
5 believe it to be an uninsured motor vehicle.

6 (b) Tort liability is not abolished as to the following  
7 persons, their personal representatives, or their legal  
8 guardians in the following circumstances:

9 (1) Death occurs to the person in such a motor vehicle  
10 accident;

11 (2) Injury occurs to the person which consists, in whole  
12 or in part, in a significant permanent loss of use of  
13 a part or function of the body;

14 (3) Injury occurs to the person which consists of a  
15 permanent and serious disfigurement which results in  
16 subjection of the injured person to mental or  
17 emotional suffering[+] unless the person has opted  
18 under section 431:10C-302(a)(12) to waive the right to  
19 claim damages over the threshold for noneconomic  
20 losses as a result of accidental harm sustained in a  
21 motor vehicle accident caused by another; or



1           (4) Injury occurs to the person in a motor vehicle  
2           accident and as a result of such injury that the  
3           personal injury protection benefits incurred by such  
4           person equal or exceed \$5,000; provided that in  
5           calculating this amount:

6           (A) The following shall be included:

7                   (i) Personal injury protection benefits incurred  
8                   by, paid to or payable to, or on behalf of,  
9                   an eligible injured person including amounts  
10                  paid directly by or on behalf of the  
11                  eligible insured because of the accidental  
12                  harm or similar benefits under social  
13                  security, worker's compensation, or public  
14                  assistance laws;

15                  (ii) The applicable amounts of deductible or  
16                  copayment paid or incurred;

17                  (iii) Amounts paid by or on behalf of an injured  
18                  person who is not entitled to personal  
19                  injury protection benefits, by health  
20                  insurance or other funds; provided that  
21                  payment in excess of the charges or services



1                   allowable under this chapter shall not be  
2                   included;  
3                   (iv) Where an eligible injured person receives  
4                   coverage on other than a fee for service  
5                   basis including, but not limited to, a  
6                   health maintenance organization operating on  
7                   a capitation basis, the value of services  
8                   provided shall be determined in accordance  
9                   with the fee schedules allowable under this  
10                  chapter for purposes of threshold  
11                  determination;

12                  (B) When a person has optional coverage, benefits  
13                  received in excess of the maximum basic personal  
14                  injury protection limits set forth in section  
15                  431:10C-103.5 shall not be included~~[-]~~; or

16                  (5) Damages are for noneconomic losses, where the insured  
17                  has opted to waive the right to claim damages for pain  
18                  and suffering as a result of accidental harm sustained  
19                  in a motor vehicle accident caused by another."

20                  SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





**Report Title:**

No Fault; Choice

**Description:**

Authorizes insureds to choose between no-fault and no-fault with a threshold for uncompensated economic loss.

