

ACT 137

H. B. NO. 1645-72

A Bill for an Act Relating to Mass Merchandising of Motor Vehicle Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Purpose. The purpose of this act is to authorize the sale of private passenger motor vehicle insurance in the State by mass merchandising.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part, reading as follows:

“MASS MERCHANDISING OF MOTOR VEHICLE INSURANCE

Sec. 431- . Definitions. As used in this part:

- (1) ‘Employees’ includes compensated officers, managers, and employees of a firm, corporation, partnership, sole proprietor, trust, estate, or members of unincorporated association or organization. A mass merchandising agreement may provide that the term ‘employees’ shall include retired employees and the individual proprietor, partners, or trustees, if the employer is an individual proprietor, partnership, trust, or estate.
- (2) ‘Employer’ includes any firm, corporation, partnership, sole proprietor, trust, estate, and unincorporated association or organization; it also includes the State, any county, and any municipal corporation, and any governmental unit, agency, or department thereof.
- (3) ‘Insurer’ means an insurer authorized to transact the business of motor vehicle insurance in the State.
- (4) ‘Mass merchandise’ means to sell and ‘mass merchandising’ means a sale of insurance wherein (A) the insurance is offered to employees of particular employers or to members of particular established associations or organizations and (B) the employer, association, or organization has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or members.
- (5) ‘Mass merchandising plan’ or ‘plan’ means a program, design, or scheme of the insurance to be mass merchandised, including terms, coverages, and premiums.
- (6) ‘Mass merchandising agreement’ means an agreement between an insurer and an employer, association, or organization for the sale of insurance to the employees of the employer or to the members of the association or organization on a mass merchandising basis.
- (7) (a) ‘Private passenger motor vehicle’ (or motor vehicle) means a motor vehicle of the private passenger, station wagon or jeep type, motorcycle, motorized bicycle, power cycle, motor scooter and any other similar vehicles of the private passenger type including trailers and semi-trailers used in connection therewith, but shall not include any of the foregoing which are used as a public or livery conveyance for passengers or rented to others without a driver or used primarily in the business of the insured.
 (b) ‘Private Passenger motor vehicle’ shall also include a motor vehicle with a pick-up or similar body, a delivery sedan or a panel truck which is not customarily used in the occupation, profession or business of the insured other than in the course of driving to and from work if such vehicle shall have a load capacity of 1500 pounds or less.
- (8) ‘Private Passenger motor vehicle insurance’, ‘insurance’ or ‘motor

vehicle insurance' means insurance against loss or expense, or liability for loss or expense resulting from injury to persons or loss of or damage to property arising from the ownership, operation, maintenance, or use of a private passenger motor vehicle.

Sec. 431- . Applicability. This part shall apply only to private passenger motor vehicle insurance and to policies which become effective on or after October 1, 1972. The provisions of this part are in addition to, and not in substitution for, other applicable requirements of law relating to motor vehicle insurance and the rules and regulations of the insurance commissioner adopted pursuant thereto. The requirements of this part do not apply to methods of merchandising other than mass merchandising as defined in Section 431- .

Sec. 431- . Mass merchandising authorized. An insurer may mass merchandise private passenger vehicle insurance to the employees of any employer or to the members of any association or organization under a mass merchandising plan audited by the insurance commissioner; provided that such mass merchandising is agreed to by the employer, association, or organization. An employer, association, or organization may contract with one or more insurers for mass merchandising of private passenger motor vehicle insurance to its employees or members.

Sec. 431- . Mass merchandising prohibited when. (a) No insurer shall mass merchandise motor vehicle insurance to members of any association or organization formed principally for the purpose of obtaining the benefits of mass merchandising.

(b) No insurer shall mass merchandise motor vehicle insurance to employees of any employer or to members of any association or organization which requires the purchase of or participation in insurance sold on a mass merchandising basis as a condition of employment or membership, or which subjects any employee or member to any penalty for failure to purchase or participate in insurance sold on a mass merchandising basis.

Sec. 431- . Mass merchandising requirements. Mass merchandising of motor vehicle insurance and every mass merchandising plan shall be subject to the following conditions:

- (1) The insurance offered shall be open to participation by or be available to every employee of the employer or to every member of the association or organization who meets the underwriting requirements of the insurer.
- (2) The insurance shall be offered without discrimination against any employee or member as to rates, forms, or coverages. Nothing herein shall preclude the establishment of different classes of risks.
- (3) Upon the termination of employment or membership or upon the termination of the mass merchandising agreement, an insured employee or member shall have the option of continuing his participation in a group policy or his individual policy then in force for a period of one year upon payment of the applicable premium; provided that the employee or member shall exercise his option within thirty days following the date of such termination.

- (4) The insurer shall issue a certificate or other evidence of participation to every member covered under a group policy and a policy of insurance to every member insured under an individual policy.
- (5) The insurance offered shall not be contingent upon the purchase of any other insurance, product, or service; nor shall the purchase of any other insurance, product, or service be contingent upon the purchase of the motor vehicle insurance offered.

Sec. 431- . Disclosure. Every insurer selling motor vehicle insurance on a mass merchandising basis shall, prior to sale, make full and fair disclosures to prospective insureds of all features of the plan, including but not limited to premium rates, claims procedure, benefits, duration of coverage, and policyholder services.

Sec. 431- . Payroll deductions and premium collections. A mass merchandising agreement may provide for the collection of premiums from employees or members by payroll deductions, assessments, or otherwise, and the remittance of the same to the insurer by the employer, association, or organization. No such collection and remittance of premiums by the employer, association, or organization shall constitute collection of premium within the meaning of this chapter; no act of furnishing information about such collection method by the employer, association, or organization to its employees or members shall constitute solicitation of applications for insurance; and neither the collection and remittance of premiums nor the furnishing of information about such collection method shall constitute the employer, association, or organization an agent, subagent, or solicitor of insurance.

Sec. 431- . Employer's failure to remit premiums. If any employer, association, or organization is required under a mass merchandising agreement to collect the premiums from its employees or members and remit the same to the insurer, its failure to so collect and remit as to any employee or member for any reason, including termination of the employee's employment or the member's membership in the association, or organization, shall not be regarded by the insurer as nonpayment of premium by such employee or member, unless the insurer gives written notice of such failure to remit to the employee or member and the employee or member fails to pay the required premium by the later of (1) thirty days after the mailing or delivery of the notice to the address of the employee or member last known to the insurer, or (2) the due date of the premium.

Sec. 431- . Cancellation and nonrenewal. Except as provided in the previous section, no policy of an individual employee or member of participation of an employee or member in a group policy shall be cancelled or its renewal denied unless a thirty-day written notice of cancellation or renewal is given the employee or member. All such notices shall set forth the reasons for the cancellation or nonrenewal. The insurer will, prior to the expiration of said thirty-day period, afford the employer, association, or organization a reasonable opportunity to consult with the insured and to present facts in opposition to cancellation or non-renewal.

Sec. 431- . Premium rates. Premium rates for private passenger motor

vehicles insurance sold on a mass merchandising basis shall comply with the standards in Section 431-693 and 431-713 including the standards that rates not be excessive, inadequate or unfairly discriminatory.

Rates shall not be deemed to be unfairly discriminatory because different premiums result for policyholders with like loss exposure but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates shall not be deemed to be unfairly discriminatory if they are averaged broadly among persons insured under a mass merchandising plan.

Sec. 431- . Underwriting standards. Every plan of mass merchandising and all rules and standards applicable to mass merchandising of motor vehicle insurance shall be subject to audit by the insurance commissioner by written request to the insurer. No underwriting standard for risk selection or otherwise under a mass merchandising plan shall be more restrictive than the standards used for insurance sold by methods other than mass merchandising.

Sec. 431- . Statistics. Every insurer mass merchandising motor vehicle insurance shall keep and maintain data on its experience under each plan, including data on premium income, losses, and expenses. The data shall be kept and maintained separately from any experience data on motor vehicle insurance sold by means other than mass merchandising.

Sec. 431- . Licenses. No person shall act as an insurance agent, sub-agent, or solicitor, in connection with mass merchandising of motor vehicle insurance, unless he is licensed as such under Sections 431-361, 431-362, or 431-363.

Sec. 431- . Establishment and maintenance of office. Every insurer selling motor vehicle insurance on a mass merchandising basis shall establish and maintain at all times an office in the State to conduct the administration of its business and handle claims.

Sec. 431- . Rules and regulations. The insurance commissioner shall promulgate rules and regulations necessary to effectuate the purposes of this part.

Sec. 431- . Scope of mass merchandising. Nothing in this part shall authorize the mass merchandising of motor vehicle insurance other than private passenger motor vehicle insurance as defined herein.”

SECTION 3. Effective date. This act shall take effect upon its approval.

(Approved May 30, 1972.)