

ACT 203

H. B. NO. 637

A Bill for an Act Relating to the Hawaii Motor Vehicle Accident Reparations Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
THE HAWAII MOTOR VEHICLE  
ACCIDENT REPARATIONS ACT**

**PART I. NO-FAULT INSURANCE**

**Sec. -1 Purpose.** The purpose of this chapter is to create a system of reparations for injuries and loss arising from motor vehicle accidents, to compensate these damages without regard to fault, and to limit tort liability for these accidents.

**Sec. -2 Definitions.** As used in this chapter:

- (1) “Accidental harm” means bodily injury, death, sickness, or disease caused by a motor vehicle accident while in or upon or entering into or alighting from, or through being struck by a motor vehicle or object drawn or propelled by a motor vehicle.

- (2) "Commissioner" means the State Commissioner of motor vehicle insurance as defined in section 431-31(c).
- (3) "Criminal conduct" means: the commission of an offense punishable by imprisonment for more than one year; or the operation or use of a motor vehicle with the specific intent of causing injury or damage; or the operation or use of a motor vehicle as a converter without a good faith belief by the operator or user that he is legally entitled to operate or use such vehicle.
- (4) (Reserved.)
- (5) "Injury" means accidental harm not resulting in death.
- (6) "Insured motor vehicle" means a motor vehicle (A) which is insured under a no-fault policy, or (B) the owner of which is a self-insurer with respect to such vehicle.
- (7) "Insurer" means any person engaged in the business of issuing or delivering motor vehicle insurance policies.
- (8) "Monthly earnings" means:
  - (A) In the case of a regularly employed person, one-twelfth of the average annual compensation before state and federal income taxes at the time of injury or death;
  - (B) In the case of a person regularly self-employed, one-twelfth of the average annual earnings before state and federal income taxes at the time of injury or death;
  - (C) In the case of an unemployed person or a person not regularly employed or self-employed, one-twelfth of the anticipated annual compensation before state and federal income taxes of such person paid from the time such person would reasonably have been expected to be regularly employed;
- (9) "Motor vehicle" means any vehicle required to be registered under chapter 286, including a vehicle with less than four wheels or a trailer.
- (10) "Motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a motor vehicle.
- (11) "No-fault benefits" with respect to any injury or death shall be subject to an aggregate limit of \$15,000 per person or his survivor and means:
  - (A) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, x-ray and any federally recognized religious remedial care and treatment;
  - (B) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
  - (C) Monthly earnings loss measured by an amount equal to the lesser of:
    - (i) \$800 per month, or
    - (ii) The monthly earnings for the period during which the in-

- jury or death results in the inability to engage in available and appropriate gainful activity, or
- (iii) A monthly amount equal to the amount, if any, by which the lesser of (i) or (ii) exceeds any lower monthly earnings of the person sustaining injury at the time he resumes gainful activity.
- (D) All appropriate and reasonable expenses necessarily incurred as a result of such injury or death, including, but not limited to,
- (i) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed for the benefit of himself or his family up to \$800 per month,
- (ii) funeral expenses not to exceed \$1,500, and (iii) attorney's fees and costs to the extent provided in section -30(a).
- (12) "Operation, maintenance, or use" when used with respect to a motor vehicle includes loading or unloading the vehicle, but does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining vehicles unless the conduct occurs outside the premises of such business.
- (13) "Owner" means a person who holds the legal title to a motor vehicle; except that in the case of a motor vehicle which is the subject of a security agreement or lease with option to purchase with the debtor or lessee having the right to possession, such term means the debtor or lessee. Whenever transfer of title to a motor vehicle occurs, the seller shall be considered the owner until delivery of the executed title to the buyer, from which time the buyer holding the equitable title shall be considered the owner.
- (14) "Person" means, when appropriate to the context, not only individuals, but corporations, firms, associations, and societies.
- (15) "Regulation" means any rule and regulation promulgated by the commissioner pursuant to chapter 91.
- (16) "Without regard to fault" means irrespective of fault as a cause of injury or death, and without application of the principle of liability based on negligence.

**Sec. -3 Right to no-fault benefits.** (a) If the accident causing injury or accidental harm occurs in this State, every person, insured under this chapter, suffering loss from injury or death arising out of maintenance or use of a motor vehicle has a right to no-fault benefits.

(b) If the accident causing injury occurs outside this State, the following persons and their survivors suffering loss from injury arising out of maintenance or use of a motor vehicle have a right to no-fault benefits:

- (1) No-fault insureds; and
- (2) The driver and other occupants of an insured vehicle, other than (A) a vehicle which is regularly used in the course of the business of transporting persons or property and which is one of five or more vehicles under common ownership.
- (c) "Maximum limit." The aggregate limit payable, regardless of the

number of motor vehicles involved or insured, to each person or to his survivors for no-fault benefits shall not exceed \$15,000.

(d) "No-fault insured" means:

- (1) Person identified by name as an insured in a no-fault policy complying with section -10; and
- (2) While residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of no-fault policy complying with this chapter: a spouse or other relative of a named insured; and a minor in the custody of a named insured or of a relative residing in the same household with a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

**Sec. -4 Obligation to pay no-fault benefits.** Every no-fault and self-insurer shall provide no-fault benefits for injury and death as follows:

- (1) Except as otherwise provided in section -5(c):
  - (A) In the case of injury arising out of a motor vehicle accident to any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian struck by said vehicle, the insurer shall pay, without regard to fault, to such person an amount equal to the no-fault benefits payable to such person as a result of such injury; or
  - (B) In the case of death arising out of a motor vehicle accident of any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian struck by said vehicle, the insurer shall pay, without regard to fault, to the legal representative of such person, for the benefit of the surviving spouse and any dependent, as defined in section 152 of the Internal Revenue Code of 1954, of such person, an amount equal to the no-fault benefits payable to such spouse and dependent as a result of the death of such person.
- (2) Payments for no-fault benefits shall be made as such benefits accrue except that in the case of death, payment for such benefits may, at the option of the beneficiary, be made immediately in a lump sum payment. Amounts of benefits accrued unpaid thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof shall, after the expiration of such thirty days, bear interest at the rate of one and one-half per cent per month.
- (3) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which such benefits are paid. The insurer shall pay, subject to section -30, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit, necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute

an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any such contract.

**Sec. -5 Payment from which insurer.** (a) A claim for no-fault benefits based upon injury to or death of a person who is not an occupant of any motor vehicle involved in an accident may be made against the no-fault insurer of any involved vehicle. The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but such insurer shall thereafter be entitled to recover from the no-fault insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

(b) All no-fault benefits shall be paid secondarily and net of any benefits a person receives because of the injury from social security laws, workmen's compensation laws, public assistance laws, and any medical or health insurance policy applicable.

(c) No payment of no-fault benefits may be made to the occupants of a motor vehicle other than the insured motor vehicle or to the operator or user of a motor vehicle engaging in criminal conduct which causes any loss.

**Sec. -6 Abolition of tort liability.** (a) Tort liability of the owner, operator or user of an insured motor vehicle, or the operator or user of an uninsured motor vehicle who operates or uses such vehicle without reason to believe it to be an uninsured motor vehicle, with respect to motor vehicle accidents occurring in this State, is abolished, except as to the following persons or their administrators, executors, or legal guardians, and in the following circumstances:

- (1) Death occurs to a person in such a motor vehicle accident; or injury occurs which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or injury occurs which consists of a permanent and serious disfigurement which results in subjection of the injured person to mental or emotional suffering;
- (2) Injury occurs to a person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section -10(b);
- (3) Injury occurs to a person in such an accident and as a result of such injury the maximum no-fault benefits are exhausted.

(b) No provision of this chapter shall be construed to exonerate, or in any manner to limit, the liability of any person in the business of manufacturing, retailing, repairing, servicing, or otherwise maintaining motor vehicles, arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle in the course of his business.

(c) No provision of this section shall be construed to exonerate, or in any manner to limit the criminal or civil liability of any person who, in the maintenance, operation, or use of any motor vehicle:

- (1) Causes damage to property; or
- (2) Intentionally causes injury or damage to a person or property; or
- (3) Engages in criminal conduct which causes injury or damage to person or property; or

(4) Engages in conduct resulting in punitive or exemplary damages.

**Sec. -7 Rights of subrogation.** Whenever any person effects a tort liability recovery, whether by suit or settlement, the no-fault insurer shall be subrogated to fifty per cent of the amount of all no-fault benefits paid.

**Sec. -8 Conditions of operation and registration. (a)**

(1) No person may register any motor vehicle in this State or operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured under a no-fault policy, containing the requirements of this chapter and pursuant to such regulations, including those determining the manner and term of proof of such insurance as the commissioner shall prescribe.

(2) The requirements of this subsection may be satisfied by any owner of a motor vehicle if:

(A) Such owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a no-fault policy, as determined and approved by the commissioner under regulations, and

(B) The commissioner is satisfied that in case of injury or death or property damage, any claimant would have the same rights against such owner as the claimant would have had if a no-fault policy had been applicable to such vehicle.

(b) Any person who knowingly violates the provisions of subsection (a) of this section shall be guilty of a misdemeanor.

**Sec. -9 Obligations upon termination of insurance. (a)** An owner of a motor vehicle registered in this State who fails to maintain insurance as required by section -8, shall immediately surrender the registration certificate and license plates for the vehicle to the county director of finance and may not operate or permit operation of the vehicle in this State until insurance has again been provided and proof of the insurance furnished as required by this chapter.

(b) Except as provided in subsection (d), an application for a no-fault policy covering a motor vehicle may not be rejected by an insurer authorized to issue such a policy unless:

(1) The principal operator of such vehicle does not have a license which permits him to operate such vehicle, or

(2) The application is not accompanied by a reasonable portion of the premium, as determined under regulations of the commissioner.

(c) A no-fault policy once issued may not be canceled or refused renewal by an insurer except for:

(1) Suspension or revocation of the license of the principal operator to operate a motor vehicle, or

(2) Failure to pay the premium for such policy after reasonable demand therefor.

In any case of cancellation or refusal to renew the insurer shall continue all

no-fault and optional additional coverages in force, to the date of expiration, or for thirty days following notice, whichever date first occurs. Within fifteen days of a cancellation, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. In any case of cancellation or refusal to renew written notice shall be given to the insured, the commissioner, and the county director of the appropriate county of registration not less than thirty days prior to the effective date of such cancellation or refusal to renew.

(d) An insurer may reject or refuse to accept additional applications for, or refuse to renew no-fault policies (1) if the commissioner determines that the financial soundness of such insurer would be impaired by the writing of additional policies of such insurance, or (2) such insurer ceases to write any new policies of insurance of any kind in this State.

(e) Whoever knowingly violates, or conspires to violate, the provisions of subsection (b) or (c) shall be assessed a civil penalty in an amount not to exceed \$1,000 for each separate violation. Each violation of subsection (b) with respect to any policyholder or applicant for insurance shall constitute a separate violation.

**Sec. -10 Required policy coverage.** (a) In order to be a no-fault policy, an insurance policy covering a motor vehicle shall provide, in addition to the coverage specified in section -4, insurance to pay on behalf of the owner or any operator of the insured motor vehicle sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others which arise out of the ownership, operation, maintenance, or use of the motor vehicle:

- (1) Liability coverage of not less than \$25,000 for all damages arising out of bodily injury sustained by any one person as a result of any one accident applicable to each person sustaining injury caused by accident arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles and including the loss of use thereof, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle.

(b) The commissioner shall accumulate experience data for all motor vehicle accidents in the State on a yearly basis commencing January 1, 1973, and shall tabulate the amounts of benefits paid to individual claimants for expenses specified in sections 2-11(A) and (B) for each of these accidents. He shall arrange the claims made by dollar value from maximum to zero and then determine that specific figure in dollar value paid to the individual claim below which are ninety per cent of all motor vehicle accident claims made during the year. This specific figure shall be utilized as the medical-rehabilitative limit during the succeeding year for all accidents occurring during that year for purpose of section -6(a)(2).

**Sec. -11 Required optional additional insurance.** (a) In addition to the no-fault coverages described in section -10 every insurer issuing a no-

fault policy shall make available to the insured the following optional insurance under the following conditions:

- (1) At the option of the insured, every insurer shall offer provisions covering loss resulting from damage to the insured's motor vehicle with such deductibles as the commissioner, by rule, shall provide.
- (2) At the option of the insured, every insurer shall offer to compensate for damage, not covered by no-fault benefits, to the insured, his spouse, any dependents, or any occupants of the insured's vehicle.
- (3) Additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or loss from operation of a motor vehicle; and
- (4) Terms, conditions, exclusions, and deductible clauses consistent with the required provisions of such policy and approved by the commissioner who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.
- (5) At appropriately reduced premium rates, no-fault insurers shall offer each of the following deductibles applicable only to claims of no-fault insureds and, in case of death of a no-fault insured, of his survivors:
  - (A) Deductibles in the amounts of \$100, \$300, and \$500 from all no-fault benefits otherwise payable, except that if two or more no-fault insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them; and
  - (B) Deductibles in the amounts of \$100, \$300, \$500, and \$1,000 per accident from all no-fault benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a motor vehicle with less than four wheels.

(b) Any policy of insurance described in this section shall contain a provision in accordance with regulations of the commissioner specifying the periods within which claims may be filed and actions against the insurer may be brought.

**Sec. -12 Prohibitions, penalty.** (a) No insurer shall issue or offer to issue any policy which he represents is a no-fault policy unless such insurer meets the requirements of this part.

- (b) (1) Any insurer who violates subsection (a) shall be assessed a civil penalty of not to exceed \$5,000 for each policy which the insurer issues or offers to issue in violation of such paragraph.
- (2) Any insurer who knowingly violates subsection (a) shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

**Sec. -13 Motor vehicle insurance rates.** (a) Except as otherwise provided in this chapter, all premium rates for motor vehicle insurance shall com-



ply with the provisions of the casualty rating law contained in chapter 431.

(b) All premium rates for motor vehicle insurance shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within this State, to catastrophe hazards, if any, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective loss experience within the State; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold within the State; past and prospective expenses in the sale and administration of motor vehicle insurance within the State; and, optionally, to past or prospective loss, sales and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates.
- (2) Due consideration shall be given to the investment income from reserves and unearned insurance premiums and other unearned proceeds received on account of motor vehicle insurance sold in this State, and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates.
- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (5) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (6) Rate making and regulation of rates for all insurance subject to this chapter shall be governed by chapter 431; subject, however, to the following:
  - (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with the provisions of section 431-703;
  - (B) Except as provided in subsection (j) the commissioner shall establish rates and shall consider with other relevant factors loss experience in this State and the investment income of the insurers, and insofar as section 431-694 and section 431-695 are in

conflict with this provision, sections 431-694 and 431-695 shall not be applicable herein;

- (C) To afford all interested persons an opportunity to be heard the commissioner shall, after notice is published pursuant to chapter 91, hold a public hearing whenever rates are to be increased;
- (D) The initial rates shall be reviewed prior to July 1, 1975, and thereafter shall be reviewed at least every two years. The commissioner shall issue a public statement or an order approving the rates for the benefit of the public;
- (E) The commissioner shall order insurers to rebate to policyholders any excessive profit realized by insurers from their operations.

(c) Except to the extent necessary to meet the provisions of item (4) of subsection (b) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(d) No manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance shall be effective unless approved by the commissioner. The commissioner shall have the power to set and approve rates under this chapter, pursuant to and following the procedure under chapter 91, except as specifically provided herein. The commissioner shall not set any rates without a public hearing at which all affected and interested parties have a full opportunity to examine and comment on the impact and application of the proposed establishment of, or revision of rates. The commissioner shall publish a notice of the date, time, and place of the public hearing at least once in each of three successive weeks in a newspaper of general circulation.

(e) Any person aggrieved by the application as to him of any classification, rule, standard, rate, or rating plan made, followed, or adopted by an insurer may make written request to the commissioner to review such application and grant the relief requested. If the commissioner finds that probable cause for the complaint exists or that the complaint charges a violation of this chapter or any applicable provisions of the casualty rating law, he shall conduct a hearing on the complaint. The hearing shall be subject to the procedure provided in section 431-705(a).

(f) If the commissioner has good cause to believe that a classification, rule, standard, rate, rating territory, or rating plan made, followed, or adopted by an insurer does not comply with any of the requirements of this chapter or any applicable provisions of the casualty rating law, he shall, unless he has good cause to believe that such noncompliance is wilful, give notice, in writing, to each insurer stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, within which such noncompliance may be corrected. Notices under this subsection shall be confidential as between the commissioner and the parties unless a hearing is held as provided in subsection (g).

(g) If the insurance commissioner has good cause to believe such noncompliance to be wilful, or if, within the period prescribed by the commissioner in the notice, the insurer does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or established to

the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may proceed with a hearing which shall be subject to the hearing procedure provided in section 431-705(a).

(h) If, after a hearing conducted pursuant to subsection (b) or (e), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this chapter or any applicable provisions of the casualty rating law, he shall issue an order granting the complainant's claim for relief or prohibiting the insurer from using such classification, rule, standard, rate, rating territory, or rating plan. The order shall contain the commissioner's finding of facts and conclusions of law, including, as appropriate, a specification of the respects in which a violation of this chapter or any applicable provision of the casualty rating law exists and shall specify a reasonable time period within which the insurer shall comply with the terms of the order. Any such order shall be subject to judicial review in accordance with the provisions of section 431-705(b).

(i) The commissioner shall periodically review and evaluate the motor vehicle insurance program described in this chapter, including an annual review of the premium rates, benefit payments, and insurers' loss experience.

(j) For the period of one year from July 1, 1974, and terminating on June 30, 1975, the commissioner shall be prohibited from setting, maintaining, or in any way fixing the rates charged by motor vehicle insurers for motor vehicle insurance issued in conformity with this chapter as either no-fault insurance or as optional additional insurance except as provided under section

-25. This one-year period shall be a period of open rating. Each firm licensed to underwrite no-fault insurance in the State shall establish its own rate schedule. The commissioner shall, however, monitor and survey the several companies' rate making methods and systems. The commissioner may require of each insurer and of each self-insurer any and all information, data, internal memoranda, studies, and audits, he deems desirable for the purpose of evaluation, comparison, and study of the methods and schedules.

On April 1, 1975, the applicable transition provisions of this chapter shall be effective as to rate making and the commissioner shall perform all acts required by this chapter for the setting and regulation of uniform rates conforming to this chapter to be effective on and after July 1, 1975.

In the establishment of their individual rate schedules, each insurer shall conform fully to paragraphs (b)(1), (2), and (4), during the open rating period.

(k) Notwithstanding any other law to the contrary, no insurer shall agree, combine, or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11.

(l) Notwithstanding subsection (j), commencing with July 1, 1974, the commissioner shall enforce a mandatory reduction of not less than fifteen per cent by each insurer, calculated as a percentage of the insurer's premium for a comparable combination of insurance coverage in effect on January 1, 1973.

There shall be no exception to the requirements of this provision, unless the commissioner shall find that the use of the rates required herein by any insurer will be inadequate to the extent that such rates jeopardize the solvency of the insurer required to use such rates. No rate for the insurance required by this chapter shall be increased prior to July 1, 1975, unless the insurer proposing such rate increase shall show that the rates herein are inadequate as stated above.

(m) Notwithstanding subsection (j), and commencing with July 1, 1974, each insurer shall assess, and the commissioner shall enforce, a premium for any student purchasing a no-fault policy, or for any policyholder becoming a student in the future, not less than ten per cent less than the regular premium each insurer assesses for such policy. A student shall be defined for purposes of this subsection as any person enrolled in any accredited institution of the secondary or higher education level, and defined by the institution as a full-time student for academic purposes, regardless of any extracurricular employment.

**Sec. -14 Insurers' requirements.** (a) Prior to licensing an insurer to transact no-fault or the optional additional motor vehicle insurance business in this State, the commissioner:

- (1) Shall effect a thorough examination of the insurer's business experience, financial soundness and general reputation as an insurer in this and other states. In the discretion of the commissioner, this examination may include an examination of any or all the business records of the insurer, and an audit of all or any part of the insurer's motor vehicle insurance business, each to be performed by the commissioner's staff or by independent consultants. No license shall be issued until the commissioner is satisfied as to the business experience, financial solvency, and the economic soundness of the insurer; and
- (2) Shall require of each insurer, and determine that satisfactory arrangements have been made for, the provision of a complete sales and claims service office in each county in the State.
- (3) Notwithstanding any other requirements of this section or of chapter 431, may require a bond in a reasonable amount and with deposits or sureties determined in his discretion of any applicant for a license hereunder. The commissioner may, at any time, make and enforce such a requirement of any licensed insurer or self-insurer.

(b) The commissioner may, prior to issuing a certificate of self-insurance to any person, require the applicant to provide for a complete claims service office and an officer for purpose of service of process on each island upon which the self-insurer may at any time operate his self-insured vehicles.

(c) The commissioner shall promulgate rules to permit any licensed health insurer to secure a license to engage in the business of motor vehicle insurance to provide only those no-fault benefits described in section -2(15)(A) and (B), and optional additional benefits as described in section -2(15)(A) and (B).

**Sec. -15 Inspection and audit.** Each insurer licensed to transact

motor vehicle no-fault or optional additional insurance businesses in this State shall provide the commissioner with periodic reports on every aspect of the no-fault and the optional additional insurance business the insurer transacts in the State, including, but not limited to, reports on the investment, reserve, reinsurance, loss and profit experience, rate making and schedules, claims received and paid.

The commissioner shall have the right and the duty of visitation, inspection, and audit of all business records, including internal memoranda and correspondence related in any way to the insurer's motor vehicle insurance business in this State.

Each insurer shall, not less frequently than monthly, report to the commissioner the detail of each claim received, claim paid, application for and sale of a motor vehicle insurance policy, each termination and renewal refusal notice posted and of each cancellation and refusal to renew effected on both no-fault and optional additional insurance policy transactions.

The commissioner shall, in his discretion, cause an audit to be made of all or any segment of the motor vehicle insurance books and business records of any insurer by the staff of the division or by an independent auditor. A copy of every audit, internal or external, performed by any insurer of any aspect of its motor vehicle books and business records shall be submitted immediately upon completion to the commissioner.

The commissioner shall assess and collect from each insurer, self-insurer, and from every applicant for a certificate of self-insurance or a license to transact the motor vehicle no-fault and optional additional insurance business in this State such portion of the full costs of every audit, inspection, examination, visitation, and other service related to motor vehicle insurance required by this or any other chapter, or performed by the commissioner in his discretion under this chapter or chapter 431, as he deems equitable in the rendering of such service. The charges shall be collected and paid into the general fund of this State.

Any insurer failing to report information in the manner and within the time required by the commissioner, or failing fully to cooperate with the commissioner and his staff in the fulfillment of their duties under this chapter and chapter 431 shall be subject to the penalty provided in section 431-707.

**Sec. -16 Annual report of the commissioner.** The commissioner shall prepare and submit to the legislature annually, twenty days prior to the convening of each regular session, a report containing his evaluation of the insurance program, with respect to both required and optional coverages. The report shall include a summary of abuses and deficiencies in benefit payments, the complaints made to the commissioner and their disposition, and the extent of compliance and noncompliance by each insurer with the provisions of this chapter and any applicable provision of the Hawaii insurance law.

## PART II. ASSIGNED RISKS AND CLAIMS PLAN

**Sec. -20 Assigned risks and claims plan, establishment.** (a) The commissioner shall establish, direct, and maintain an assigned risks and claims plan in accordance with this part. Every insurer writing motor vehicle no-fault

and optional-additional insurance in this State shall, as a condition precedent to the issuance of his license and the continuation of such licensing, participate in this plan.

The commissioner shall establish and maintain an assigned risks and claims bureau in the division of motor vehicle insurance to receive, assign and supervise the servicing of all assigned claims and all applications for assigned risk coverage. The commissioner shall adopt rules for the operation of the bureau, the assignment of assigned claims and risks, and the inspection, supervision and maintenance of this service on a fair and equitable basis in accordance with this chapter.

All costs incurred in the operation of the assigned risks and claims bureau and the operation of this plan, including claims paid, shall, under regulations to be established by the commissioner, be allocated fairly and equitably among the no-fault insurers.

(b) The assigned risks and claims bureau shall promptly assign each claim and application and notify the claimant or applicant of the identity and address of the assignee of the claim or application. Claims and applications shall be assigned so as to minimize inconvenience to claimants and applicants. The assignee thereafter has rights and obligations as if he had issued a no-fault policy complying with this chapter applicable to the injury or, in case of financial inability of a no-fault insurer to perform its obligations, as if the assignee had written the applicable basic no-fault insurance, undertaken the self-insurance, or lawfully obligated itself to pay no-fault benefits.

**Sec. -21 Assigned claims.** (a) Each person sustaining injury or death, or his legal representative, may, except as provided in subsection (b) of this section, obtain the no-fault benefits through the assigned risks and claims plan if:

- (1) No insurance benefits under no-fault policies are applicable to the injury or death; or
  - (2) No such insurance benefits applicable to the injury or death can be identified; or
  - (3) The only identifiable insurance benefits under no-fault policies applicable to the injury or death will not be paid in full because of financial inability of one or more insurers to fulfill their obligations.
- (b) A person, or his legal representative, shall be disqualified from receiving benefits through the plan, if:
- (1) Such person is disqualified for criminal conduct under section -6(c)(3) from receiving the no-fault benefits, or
  - (2) Such person was:
    - (A) The owner or registrant of an uninsured motor vehicle at the time of its involvement in the accident out of which such person's injury or death arose, or
    - (B) The operator of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle.

**Sec. -22 Assigned risks.** (a) The commissioner shall establish, implement, and supervise a plan assuring that insurance for motor vehicles will be conveniently and expeditiously afforded, subject only to payment or provision

for payment of the premium, to all applicants for insurance required by this chapter to provide insurance for payment of no-fault and tort liability insurance or optional additional benefits and who cannot reasonably obtain insurance through ordinary methods at rates not in excess of those applicable to applicants under the plan.

(b) The plan shall provide all no-fault benefits and services, and tort liability coverage, to the limits and coverages specified in part I for all classes of persons, motor vehicles, and motor vehicle uses specified in this section upon the payment of premiums as provided in section -23, as follows:

(1) The plan shall provide no-fault benefits and policies for each of the following classes, and each category shall secure a no-fault and tort liability policy through the plan:

- (A) All motor vehicles owned by licensed assigned risk drivers as defined under subparagraph (C).
- (B) All motor vehicles owned by licensed drivers convicted at any time in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
  - (i) Heedless and careless driving,
  - (ii) Driving while license suspended or revoked,
  - (iii) Leaving the scene of an accident,
  - (iv) Manslaughter, if resulting from the operation of a motor vehicle,
  - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marijuana, as provided in section 291-7.

(C) All motorcycles, motor scooters, and vehicles with less than four wheels required to be registered under chapter 286.

(2) The plan shall provide no-fault benefits and policies for all classes of persons, motor vehicles and motor vehicle uses, at the premiums specified under section -23, at the options of the owners, for the following classes, which the commissioner shall, by regulation, further define and regulate:

- (A) All licensed driver-owners receiving any public assistance benefits in any form through the department of social services and housing,
- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver-owner (A) or (B) may secure no-fault coverage through the plan at the individual's option, provided any previous no-fault policy has expired or has been cancelled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid coverage under any no-fault policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible, under rules to be adopted by the commissioner, under subparagraph (B) may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

Any person covered by the plan under subparagraph (A) shall

remain eligible for coverage under the plan for a consecutive period of three months following the month in which eligibility for any public assistance benefits terminate.

- (3) Under the plan, optional additional coverages shall be offered by every insurer, in conformance with section -11 for each class, as the commissioner shall, by regulation, provide.

(c) The commissioner shall, by regulation, define and regulate the class of assigned risk drivers in accordance with the general practice of the industry, the applicable results, if any, of his examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk driver.

**Sec. -23 Rate making for assigned risks and claims plan.** (a) All premium rates for motor vehicle insurance issued under the assigned risks and claims plan shall be made in accordance with the following provisions:

- (1) Consideration shall be given to the plan's past and prospective loss experience within the State; contingencies in the administration of motor vehicle insurance sold; past and prospective expenses in the sale and administration of motor vehicle insurance; income from investments of premiums and other proceeds received on account of motor vehicle insurance sold; and all other factors demonstrated to be relevant by a current actuarially sound study of the definable risks involved, provided, that no premium rate shall exceed the comparable rate not under the plan by a factor of more than two.

- (2) Rating territories may be established and risks may be grouped by classifications for the establishing of rates and minimum premiums. The commissioner may by rule or regulation provide for a uniform classification of risks and rating territories for the various coverages. Classification rates may be modified to produce rates in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks including vehicles, occupations, past traffic violations and involvement in past accidents, provided they are established to have a demonstrably negative effect upon losses or expense. No standard or rating plan shall be based, in whole or in part, directly or indirectly, upon race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, or marital status.

- (3) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) The commissioner shall periodically set rate schedules in accordance with this part and the following criteria, so that the total premium income, from all plan and nonplan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all classes and administration of the plan for each of the following classes:

- (1) Class 1(A), assigned risk drivers as defined by rules made pursuant to section -22(c);
- (2) Class 1(B), driver-owners convicted of an offense specified in section -22(b)(1)(B);



- (3) Class 1(C), motorcycles and motor scooters, which class shall be assessed a premium not in excess of that assessed the same driver for automobile coverage;
- (4) Class 2, public assistance driver as defined in section -22(b)(2)(A), which class shall not be assessed any premium;
- (5) Class 4, physically handicapped drivers as defined in section -22(b)(2)(B).

The commissioner shall set various systems of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses, for each of the enumerated classes except classes 2 and 3, provided that no premium rate under the plan shall exceed the comparable premium rate not under the plan by more than a factor of two.

(c) The commissioner shall, in the same manner as under subsection (b), set rates for any optional additional coverages the plan shall offer.

(d) During any premium year, or in any subsequent premium year, the commissioner may adjust any rate to reflect any excess premiums charged. He may make a refund to any class.

### PART III. GENERAL PROVISIONS

**Sec. -30 Claimant's attorney's fees.** (a) A person making a claim for no-fault benefits may be allowed an award of a reasonable sum for attorney's fee, based upon actual time expended, and all reasonable costs of suit in an action brought against an insurer who denies all or part of a claim of benefits under such policy unless the court determines that the claim was fraudulent, excessive, or frivolous.

(b) A person suing in tort, as permitted under this chapter, may enter into any arrangement with an attorney.

**Sec. -31 Fraudulent claims.** Within the discretion of the court, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee, based upon actual time expended, and all reasonable costs of suit for its defense against a person making claim against such insurer or self-insurer where such claim was fraudulent, and such attorney's fee and all such reasonable costs of suit so awarded may be treated as an offset against any benefits due or to become due to such person.

**Sec. -32 Arbitration.** Any dispute relating to a no-fault policy may be submitted to an arbitrator upon written request filed by a claimant or insurer with the clerk of the circuit court in the circuit where the accident occurred. Any fee or cost of the arbitrator shall be borne equally by the parties unless otherwise allocated by the arbitrator. The administrative judge of each circuit court shall maintain a current list of persons qualified and willing to act as arbitrators and shall, within ten days of the date of filing of a request for arbitration, appoint an arbitrator from such list to hear and determine the claim. Except as otherwise provided herein, the arbitration shall be in accordance with and governed by the provisions of chapter 658. An appeal may be taken from any judgment of the arbitrator to the circuit court in the manner provided for in Rule 72 of the Hawaii Rules of Civil Procedure.

**Sec. -33 Discriminatory practices prohibited.** No insurer shall base any standard or rating plan, in whole or in part, directly or indirectly, upon race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, or marital status.

**Sec. -34 Equitable allocation of burdens among insurers.** (a) Insurers paying no-fault or optional additional benefits are entitled to proportionate reimbursement from other insurers to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Insurers paying no-fault benefits for loss arising from injury to persons, and self-insurers who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from insurers of other involved vehicles.

(b) Insurers shall maintain in accordance with regulations of the commissioner statistical records from which can be determined the propensities of different vehicles to affect probability and severity of injury to persons.

(c) When the commissioner determines that adequate supporting information is available, he may establish by regulation and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all insurers or (2) all insurers except those who are parties to an agreement entered into under this subsection and approved by the commissioner. Two or more insurers, with approval of the commissioner, may enter into an agreement for settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by-case reimbursement.

(d) The commissioner may not approve or establish case-by-case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry ten or fewer passengers.

(e) All claims for case-by-case proportionate reimbursement between insurers, if not settled by agreement, may be settled through litigation.

**Sec. -35 Allocation of burdens until system established.** The commissioner shall within one year after the effective date of this chapter establish a system of proportionate reimbursement as authorized by the provisions on equitable allocation of burdens among insurers under section -34(c). Until the commissioner has adopted by regulation other criteria for proportionate reimbursement consistent with those provisions of section -34(a),

- (1) In accidents involving motor vehicles with a gross weight of more than ten thousand pounds and a vehicle with a gross weight of less than ten thousand pounds, the insurer of the heavier vehicle shall reimburse seventy-five per cent of the no-fault benefits paid by the insurer of the lighter vehicle;
- (2) In accidents involving motor vehicles with four or more wheels and motor vehicles with less than four wheels, the insurer of the motor vehicle with four or more wheels shall reimburse eighty per cent of

the no-fault benefits paid by the insurer of the motor vehicle with less than four wheels.

**Sec. -36 Statute of limitations.** (a) No suit shall be brought on any contract providing no-fault benefits or any contract providing optional additional coverage more than:

- (1) Two years from the date of the motor vehicle accident upon which the claim is based; or
- (2) Two years after the last payment of no-fault or optional additional benefits; or
- (3) Two years after the entry of a final order in arbitration; whichever is the last to occur.

(b) No suit arising out of a motor vehicle accident shall be brought in tort more than:

- (1) Two years after the date of the motor vehicle accident upon which the claim is based; or
- (2) Two years after the date of the last payment of no-fault or optional additional benefits; whichever is the later.

**Sec. -37 Administration.** In order to carry out the provisions and fulfill the purpose of this chapter the commissioner shall:

- (1) Consult with representatives of the private insurance business, and such other persons, public and consumer organizations, and agencies of the federal, state, or local governments as he deems necessary;
- (2) Make, promulgate, amend, and repeal such regulations, pursuant to chapter 91, as he deems necessary; and
- (3) Appoint such personnel as necessary for the performance of his functions under this chapter. All personnel appointed under this section shall be subject to chapters 76 and 77.

**Sec. -38 Jurisdiction.** Any person may bring suit for breach of any contractual obligation assumed by an insurer under a policy of insurance containing such mandatory or optional provisions in any state court of competent jurisdiction.

**Sec. -39 Short title.** This chapter shall be known and may be cited as the "Hawaii no-fault law."

SECTION 2. Chapter 431, the Hawaii Revised Statutes, is amended as follows:

1. Section 431-31 is amended to read as follows:

**"Sec. 431-31 Insurance commissioner, commissioner of motor vehicle insurance.** (a) The director of regulatory agencies shall be the insurance commissioner.

(b) Commissioner, where used in this chapter means the insurance commissioner of this State.

(c) There is established in the department of regulatory agencies for administrative purposes only the office of state commissioner of motor vehicle insurance, separate from and exclusive of all other state officers. Upon the effective date of this section, the commissioner of motor vehicle insurance shall

have and exercise all the powers and duties assigned to the director of regulatory agencies with respect to motor vehicle insurance. No duties shall be assigned the commissioner of motor vehicle insurance other than those arising in the administration of all statutes regulating motor vehicle insurance in this State. The commissioner of motor vehicle insurance shall be appointed by the governor, with the advice and consent of the senate, for a term of six years.”

2. Section 431-33 is amended to read as follows:

“**Sec. 431-33 Salary.** The insurance commissioner shall not receive any salary in addition to his salary as director of regulatory agencies. The motor vehicle insurance commissioner shall receive an annual salary which shall be ninety-five per cent of the salary of the director of regulatory agencies.”

**SECTION 3. Transitional requirement.** (a) During the period between the approval of this Act and July 1, 1974, policies of motor vehicle insurance insuring the insured against liability in tort for bodily injury and property damages arising out of motor vehicle accidents may continue to be issued. Any such policy may be issued for a term expiring beyond June 30, 1974, or for a term expiring on June 30, 1974, provided that if a policy of liability insurance is issued for a term expiring beyond June 30, 1974, on July 1, 1974, such policy of insurance shall provide for compliance with the provisions of this Act.

(b) During the period between the approval of this Act and July 1, 1974, the commissioner shall do all things necessary, for the full implementation of the provisions of this Act on July 1, 1974, including promulgating rules and regulations, approving manuals of classifications, rules, standards, rates, rating territories, and rating plans, and prescribing forms, all in the manner provided in this Act.

(c) After approval of this Act and before July 1, 1974, insurers authorized to transact the business of motor vehicle insurance in this State may sell motor vehicle insurance complying with the provisions of this Act to be effective July 1, 1974, provided that the commissioner has approved all such matters pertaining to such insurance which require his approval under this Act and, for the purpose of securing such approval and effectuating such sale, may take such actions as necessary to formulate plans and determine rates complying with the provisions of this Act.

**SECTION 4. Laws repealed.** All other laws relating to motor vehicle insurance which are inconsistent with this Act are repealed as of July 1, 1974. Chapter 287, Hawaii Revised Statutes, relating to Motor Vehicle Safety Responsibility Act, is hereby repealed as of July 1, 1974.

**SECTION 5.** This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before July 1, 1974.

**SECTION 6. Severability.** If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this Act without such invalid or unconstitutional provision.

SECTION 7. With respect to section 2 of this Act, material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 8. **Effective date.** This Act shall take effect upon its approval.

(Approved May 31, 1973.)

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\*Edited accordingly.