

ACT 181

H.B. NO. 557

A Bill for an Act Relating to Motor Vehicle Reparations.

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

SECTION 1. Section 294-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [The commissioner shall accumulate experience data on a yearly basis for all motor vehicle accidents in the State resulting in accidental harm, and shall tabulate the amounts of benefits paid or reserved, hereinafter collectively termed “claims”, for expenses specified in section 294-2(10)(A) and (B) for each of these accidents. He shall perform such actuarial evaluations of this data necessary to determine, annually, that specific figure in dollar value, below which ninety percent of all non-zero motor vehicle accident medical-rehabilitative claims arising from motor vehicle accidents occurring during the next no-fault policy term year are expected to fall. This specific figure shall be utilized annually as the medical-rehabilitative limit for all accidents occurring during the next no-fault policy term year for the purpose of section 294-6(a)(2).] The commissioner shall annually revise the medical-rehabilitative limit in the following manner. The commissioner shall determine the percentage change in the medical care category of the consumer price index for all urban consumers for the Honolulu metropolitan area as published by the bureau of labor statistics from April of the previous year to April of the current year. The medical-rehabilitative limit for the next no-fault policy term year shall be the current medical-rehabilitative limit increased or decreased by the product of the current medical-rehabilitative limit multiplied by the percentage change in the medical

care index. The medical-rehabilitative limit shall then be rounded to the nearest \$100 for actual use, but the exact value shall be used in subsequent determinations under this section. The commissioner shall use the amount of \$5,000 as the initial threshold base on which calculations shall be made in accordance with this section for the purpose of determining the medical-rehabilitative limit for the next no-fault policy term year."

SECTION 2. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of "no-fault benefits" to read as follows:

- "(10) "No-fault benefits" with respect to any accidental harm 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 may include any non-medical remedial care and treatment rendered in accordance with the teachings, faith or belief of any group which depends for healing upon spiritual means through prayer;
 - (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] \$900 a month[.]; or
 - (ii) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity.
 - (D) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to, (i) expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but 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 294-30(a);
- provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section 294-24(b)(2), shall not include benefits under subparagraphs (A), (B), and (C) for any person receiving public assistance benefits."

SECTION 3. Section 294-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 294-4, insurance to pay on behalf of the owner or any operator of the insured motor vehicle using the motor vehicle with the express or implied permission of the named insured, sums which the owner or operator may legally be obligated to pay for injury, death, or damage to property of others, except property owned by, being transported by, or in the charge of the insured, which arise out of the ownership, operation, maintenance, or use of the motor vehicle:

- (1) Liability coverage of not less than [\$25,000] \$35,000 for all damages arising out of accidental harm sustained by any one person as a

- result of any one accident applicable to each person sustaining accidental harm 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, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle."

SECTION 4. Section 431-448, Hawaii Revised Statutes, is amended to read as follows:

"§431-448 Automobile liability; coverage for damage by uninsured or underinsured motor vehicle. (a) No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered, issued for delivery, or renewed in this State, with respect to any motor vehicle registered or principally garaged in this State, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 287-7, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom, provided[, however,] that the coverage required under this section shall not [be applicable] apply where any insured named in the policy shall reject the coverage in writing.

(b) Each insurer shall offer to each policyholder or applicant for a motor vehicle liability policy optional additional insurance coverage for loss resulting from bodily injury or death suffered by any person legally entitled to recover damages from owners or operators of underinsured motor vehicles.

(c) The term "underinsured motor vehicle," as used in this section, means a motor vehicle with respect to the ownership, maintenance, or use of which the sum of the limits of liability of all bodily injury liability insurance coverage applicable at the time of loss to which coverage afforded by such policy or policies applies is less than the liability for damages imposed by law. A motor vehicle shall also be deemed uninsured within the meaning of this section if, after the occurrence of a loss described in this section, the owner or operator thereof is unknown."

SECTION 5. Section 294-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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] sections 431-694 and [section] 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not [be applicable herein;] apply;
 - (C) To afford all interested persons an opportunity to be heard the commissioner [shall], after notice is published pursuant to chapter 91, shall hold a public hearing whenever rates are to be increased;
 - (D) The initial rates shall be reviewed prior to September 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."

SECTION 6. This Act shall not apply to any case in which a settlement was reached or final adjudication occurred prior to its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 1986, except that section 1 shall take effect upon approval of this Act.

(Approved June 1, 1985.)