

ACT 205

H.B. NO. 1695-86

A Bill for an Act Relating to Insurance.

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

SECTION 1. The title preceding sections 431-751 to 431-765, Hawaii Revised Statutes, is amended to read as follows:

“MASS MERCHANDISING OF [MOTOR VEHICLE] INSURANCE”

SECTION 2. Section 431-751, Hawaii Revised Statutes, is amended to read as follows:

“§431-751 Definitions. As used in sections 431-751 to [431-766] ~~431-765~~:

- (1) “Employees” includes compensated officers, managers, and employees of a firm, corporation, partnership, sole proprietor, trust, estate, or members of an unincorporated association or nonprofit 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 nonprofit 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, property and casualty 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, owned by an individual or jointly owned by such individual and his or her spouse or relatives who are members of his or her household, 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. (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.] “Motor vehicle” means a vehicle of a type required to be registered under chapter 286, including a vehicle with less than four wheels or a trailer.
- (8) “[Private passenger motor vehicle insurance”, “insurance” or “motor] 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.] a no-fault insurance policy and optional additional insurance as defined under chapter 294.”

SECTION 3. Section 431-752, Hawaii Revised Statutes, is amended to read as follows:

“[[§431-752[]] **Applicability.** Sections 431-751 to [431-766] 431-765 shall apply [only] to [private passenger] motor vehicle insurance and to [policies which become effective on or after October 1, 1972.] property and casualty insurance as defined in sections 431-11 and 431-8. The provisions of sections 431-751 to [431-766] 461-765¹ are in addition to, and not in substitution for, other applicable requirements of law relating to motor vehicle, property and casualty insurance and the rules and regulations of the insurance commissioner adopted pursuant thereto. The requirements of sections 431-751 to [431-766] 461-765¹ do not apply to methods of merchandising other than mass merchandising as defined in section 431-751.”

SECTION 4. Section 431-753, Hawaii Revised Statutes, is amended to read as follows:

“[[§431-753[]] **Mass merchandising authorized.** An insurer may mass merchandise [private passenger] motor vehicle, property and casualty 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, property and casualty insurance to its employees or members.”

SECTION 5. Section 431-754, Hawaii Revised Statutes, is amended to read as follows:

“[[§431-754[]] **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.”

SECTION 6. Section 431-755, Hawaii Revised Statutes, is amended to read as follows:

“[[§431-755[]] **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, property and casualty insurance offered.”

SECTION 7. Section 431-756, Hawaii Revised Statutes, is amended to read as follows:

“[[]§431-756[]] **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.”

SECTION 8. Section 431-760, Hawaii Revised Statutes, is amended to read as follows:

“[[]§431-760[]] **Premium rates.** Premium rates for [private passenger motor vehicles] insurance sold on a mass merchandising basis shall comply with the standards in sections 294-13, 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.”

SECTION 9. Section 431-761, Hawaii Revised Statutes, is amended to read as follows:

“[[]§431-761[]] **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.”

SECTION 10. Section 431-762, Hawaii Revised Statutes, is amended to read as follows:

“[[]§431-762[]] **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.”

SECTION 11. Section 431-763, Hawaii Revised Statutes, is amended to read as follows:

“[]§431-763[] Licenses. No person shall act as an insurance agent, subagent, 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.”

SECTION 12. Section 431-764, Hawaii Revised Statutes, is amended to read as follows:

“[]§431-764[] 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.”

SECTION 13. Section 431-765, Hawaii Revised Statutes, is amended to read as follows:

“[]§431-765[] Rules [and regulations]. The insurance commissioner shall [promulgate] adopt rules [and regulations] necessary to effectuate the purposes of sections 431-751 to [431-766.] 431-764.”

SECTION 14. Section 431-766, Hawaii Revised Statutes, is repealed.

SECTION 15. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431- **Readjustment of premiums; dividends.** (a) Any mass merchandising agreement may provide for the readjustment of the rate of premium based on experience at the end of the first year or of any subsequent year of insurance, and such readjustment may be made retroactive only for the policy year.

(b) If a policy dividend is hereafter declared or a reduction in rate is hereafter made or continued under any mass merchandising plan, heretofore or hereafter issued, the excess, if any, of the aggregate dividends or rate reductions under the policy and all other group insurance policies of the policyholder over aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer of an insured person, or by a union or association to which an insured person belongs, including expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees or members.”

SECTION 16. Chapter 294, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§294- **U-Drive motor vehicles; specialty insurers not prohibited.** (a) For the purposes of this section “U-Drive motor vehicle” means a motor vehicle which is rented or leased or offered for rent or lease to a customer from an operator of a U-Drive rental business.

(b) For the purposes of this section “U-Drive rental business” means the business of renting or leasing to a customer a motor vehicle for a period of six months or less notwithstanding the terms of the rental or lease if in fact the motor vehicle is rented or leased for a period of six months or less.

(c) Nothing in this chapter shall prevent an insurer from offering no-fault insurance policies for only U-Drive motor vehicles.”

SECTION 17. Section 294-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A joint underwriting plan is established consisting of all insurers authorized to write and engage in writing [automobile] motor vehicle insurance in this State[.] except those insurers writing motor vehicle insurance exclusively under sections 294-12.5 and 294-_____. [Each insurer] All other insurers shall be [a member] members of the plan and shall maintain membership as a condition of its licensure to transact such insurance in this State.

The commissioner shall establish and maintain a joint underwriting plan bureau in the division of motor vehicle insurance to receive, assign, and supervise the servicing of all assigned claims and all applications for joint underwriting plan coverage. The commissioner shall adopt regulations for the operation of the bureau, the assignment of applications for joint underwriting plan coverage and assigned claims, 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 joint underwriting plan bureau and the operation of this plan including administrative, staff, and consultative costs as provided in section 294-15, and claims paid, excepting assigned claims as provided in section 294-23(d), shall, under regulations to be established by the commissioner, be allocated fairly and equitably among the no-fault insurers.”

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 19. This Act shall take effect upon its approval.

(Approved May 27, 1986.)

Notes

1. Probably should read “431-765”.
2. Edited pursuant to HRS §23G-16.5.