

ACT 317

H.B. NO. 2424-86

A Bill for an Act Relating to No-fault Insurance.

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

SECTION 1. Chapter 294, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§294- Total loss motor vehicle claims. (a) When a no-fault insurance policy provides for the adjustment and settlement of an insured’s motor vehicle’s total losses on the basis of actual cash value or replacement, the insurer shall follow one of the following methods:

- (1) The insurer may elect to offer a replacement vehicle. A replacement vehicle is a specific, comparable, and available vehicle in as good or better overall condition than the total loss vehicle. If the insurer offers a replacement vehicle, it shall comply with the following requirements:
 - (A) The claim file which is maintained by the insurer shall contain a description of the replacement vehicle, including the vehicle identification number and a schedule of options;
 - (B) Replacement vehicles of the current model plus the three previous model years shall be purchased through motor vehicle dealers licensed under chapter 437. This requirement may be waived in writing by the insured. The signed waiver shall be maintained in the insurer’s claim file;
 - (C) If the insured elects a cash settlement instead of a replacement vehicle, the insurer need pay only the amount it would have otherwise paid on the replacement vehicle. As a condition precedent to this method of settlement, the insurer shall first offer the replacement vehicle to the insured and the insured must have rejected the offer. Evidence of the rejection shall be apparent in the file;
 - (D) If the insured rejects the replacement vehicle and wants another vehicle substantially similar in value, this option may be exercised; provided the insurer has the insured’s written waiver in the claim file that the acceptance of another vehicle is of the insured’s own free will and choice. The insurer need pay only the amount it would have otherwise paid on the replacement vehicle.

- (2) The insurer may elect a cash settlement. A cash settlement shall be based upon the retail value of the motor vehicle as determined from a source or sources which are reflective of the market value of the total loss vehicle. If the insurer offers a cash settlement, the following shall apply:
- (A) The use of dealer quotations (when the vehicle is available at the quoting dealer's lot) and newspaper advertisements may be used in lieu of the source generally used by the insurer if the file reflects that the vehicle was not quoted in the source generally used by the insurer or the source was not reflective of market value. Dealer quotations and newspaper advertisements shall not be considered sole sources reflective of market values. When dealer quotations are used, the vehicle identification number shall be contained in the insured's claim file;
 - (B) Estimates from at least three licensed dealers may be used when vehicles are not quoted in the source usually used by the insurer and are not available for replacement. Dealer estimates shall take into consideration the condition of the insured vehicle prior to the loss;
 - (C) The documentation of the determination of the total loss vehicle market value shall be maintained in the insurer's claim file;
 - (D) If, within thirty days of the receipt of the settlement by the insured, the insured cannot purchase a comparable vehicle of like kind and quality for the market value determined by the insurer before applicable deductions and the insured has located, but not purchased, a comparable vehicle of like kind and quality in excess of such market value, the following procedure shall apply:
 - (i) The insurer shall locate a comparable vehicle of like kind and quality for the insured for the market value determined by the insurer at the time of settlement. Any comparable vehicle shall be available through licensed dealers;
 - (ii) The insurer shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;
 - (iii) The insurer may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or at common law; or
 - (iv) The insurer shall provide written notice to the insured at the time of settlement that if within thirty days of the receipt of the settlement by the insured, the insured cannot purchase a comparable vehicle of like kind and quality for the market value determined by the insurer before applicable deductions and the insured has located, but not purchased a comparable vehicle of like kind

and quality in excess of such market value, the insurer shall reopen its claim file.

(b) The following are applicable to subsection (a)(1) and (2)(A), (B), and (C):

(1) If a replacement vehicle is provided, the insurer shall pay the applicable general excise tax and certificate of ownership fee as follows:

(A) If a cash settlement is provided, and if within thirty days of the receipt of the settlement by the insured, the insured has purchased a vehicle, the insurer shall reimburse the insured for the applicable general excise tax and certificate of ownership fee incurred on account of the purchase of the vehicle, but not exceeding the amount payable on account of the value of the total loss vehicle. If the insured purchases a vehicle with a market value less than the amount of the settlement, then the insurer shall reimburse only the amount of the applicable general excise tax and certificate of ownership fee incurred by the insured. If the insured cannot substantiate the purchase and the payment of the taxes and fee, by submission to the insurer of appropriate documentation within thirty-three days after the receipt of settlement, the insurer shall not be required to reimburse the insured for the taxes or fee. In lieu of this reimbursement procedure, the insurer may directly pay the required amounts of general excise taxes, and certificate of ownership fee to the insured at the time of settlement; and

(B) Written notice of this procedure shall be communicated to the insured at the time of settlement, together with any form required by the insurer for applying for the reimbursement;

(2) Deductions of the kind commonly referred to as "get ready to go" and "dealer prep", or dealer preparation charges are prohibited.

§294- Insurer practices regarding loss of use, storage and towing, and betterment. (a) In motor vehicle property damage liability claims in which liability is reasonably clear, the insurer shall pay for the reasonable and necessary costs, in direct proportion to the extent of its liability, incurred in the rental of another motor vehicle as long as the loss of use claim is submitted and substantiated.

(b) The insurer shall provide reasonable notice to an insured prior to termination of payment for motor vehicle storage charges and document the notice in the claim file. Reasonable notice shall constitute sufficient notice to the insured to allow the insured to remove the vehicle from storage prior to the termination of payment. Unless the insurer has provided an insured with the name of a specific towing company prior to the insured's use of another towing company, the insurer shall pay any and all reasonable towing charges irrespective of the towing company used by the insured. An insurer shall make no advance charge deductions for storage and towing charges unless excessive charges have resulted from the insured's own actions. The insurer shall itemize each advance charge deduction and maintain in its claim file documentation of the reasons and dollar amounts involved in each deduction. Any determination of reasonable towing charges shall consider policy coverage as well as the cost and distances involved in each claim.

(c) Betterment deductions are allowable only if the deductions:

(1) Reflect a measurable decrease in market value attributable to the poorer condition of, or prior damage to, the insured vehicle;

- (2) Are for prior wear and tear, missing parts and rust damage that is reflective of the general overall condition of the vehicle considering its age; provided that any deductions for this type of damage shall not exceed \$500; and
- (3) Are measurable, itemized, specified as to dollar amount, and documented in the insurer's claim file.

No insurer shall require the insured or claimant to supply parts for replacement.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1986.)

Note

- 1. Edited pursuant to HRS §23G-16.5.