

ACT 124

H.B. NO. 3974

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

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding two new sections to article 10C to be appropriately designated and to read as follows:

“§431:10C- Amnesty period for uninsured motorists. Notwithstanding any other provision of law to the contrary, any penalties and any provision for surcharge based on prior failure to maintain no-fault insurance shall not apply to any uninsured motorist who obtains the required coverages prior to December 31, 1992.

§431:10C- Immediate rate freeze; rate reduction; relief. (a) No insurer may increase motor vehicle insurance rates between the effective date of this Act and December 31, 1993.

(b) Commencing on January 1, 1993, all authorized insurers transacting motor vehicle insurance in this State shall implement a fifteen per cent rate reduction from the rates on file with the commissioner for all motor vehicle insurance

policies in effect on March 1, 1992, and for each new and renewal policy issued thereafter. The reduced rate shall continue to apply to each new and renewal policy for a period of one year.

(c) There shall be no exception to the requirements of this section unless the commissioner, pursuant to an insurer's petition, finds that those requirements will result in imminent danger of insolvency of the insurer. An insurer who contends that a rate required by this section will result in imminent danger of insolvency of the insurer shall designate in its petition the rate it contends is appropriate and shall state with specificity the factors and data upon which it relies. The insurer shall be permitted to use all generally accepted actuarial techniques in filing any petition pursuant to this subsection. The insurer shall have the burden of proof to actuarially justify any rate increase from those provided for in subsections (a) and (b) and shall furnish all information, facts, and data requested by the commissioner reviewing any rate request.

(d) Effective January 1, 1994, all insurers shall include data on the impact of the provisions of this Act on all requested rate adjustments. The commissioner shall not approve any rate adjustments that do not contain a statement of the impact of the provisions of this Act, the method used in calculating such impact and the data used to determine such impact."

SECTION 2. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of "uninsured motor vehicle" to read:

"(23) "Uninsured motor vehicle" means any of the following:

- (A) A motor vehicle for which there is no bodily injury liability insurance or self-insurance applicable at the time of the accident; or
- (B) An unidentified motor vehicle that causes an accident resulting in injury provided the accident is reported to the police or proper governmental authority, [physical or independent evidence exists of its involvement,] and claimant notifies the claimant's insurer within thirty days or as soon as practicable thereafter, that the claimant or the claimant's legal representative has a legal action arising out of the accident."

SECTION 3. Section 431:10C-202, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-202 Making of motor vehicle insurance rates. All premium rates for motor vehicle insurance shall be made in accordance with article 14 and the following provisions:

- [(1) Rates shall not be excessive, inadequate, or unfairly discriminatory;
- (2) Due consideration shall be given to:
 - (A) Past and prospective loss experience in this State, catastrophe hazards, if any, reasonable margin for profit and contingencies, dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
 - (B) Reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold;
 - (C) Past and prospective expenses in the sale and administration of motor vehicle insurance;

- (D) Investment income from reserves, unearned insurance premiums, and other unearned proceeds received on account of motor vehicle insurance sold, 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; and
 - (E) Optionally, to past or prospective loss, sales, and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce 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 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; and
- (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. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (b) Except to the extent necessary to meet the provisions of subsection (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.
- (c) 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 article as either no-fault insurance or as optional additional insurance except as provided in part IV of this article. Each insurer licensed to underwrite no-fault insurance in the State shall establish its own rate schedule. The commissioner, however, shall monitor and survey the several companies' rate making methods and systems. The commissioner shall require of each insurer and of each self-insurer any and all information, data, internal memoranda, studies, and audits the commissioner deems desirable for the purpose of evaluation, comparison, and study of the methods and schedules.
- (d) Notwithstanding subsection (c), and in addition to all other premium reductions required under this section, commencing on October 1, 1986, and ending on September 30, 1989, all insurers of any motor vehicle shall provide a 1.5 per cent reduction for bodily injury liability, property damage liability, no-fault benefits, uninsured motorist, and underinsured motorist coverages, and a 0.75 per cent reduction for collision coverage off premium charges each insurer assesses for each new and renewal policy, based on the anticipated effects of section 281-78. Commencing on October 1, 1989, and ending on September 30, 1990, at the discretion of and as determined by the commissioner, based on the difference between the actual and anticipated effects of section 281-78, all insurers of any motor vehicle shall provide a refund or credit to each insured at the time of renewal of a no-fault policy.
- (e) (1) 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; provided that this subsection shall not apply to advisory organizations referred to in section 431:14-111 which are not involved in rate making under this article.

- [(f)] (2) Notwithstanding any provision in this section to the contrary, the plans and rates for any surcharge or credit included by an insurer as part of the proposed rate filing shall be separately identified. Only reasonable surcharges [and credits that] approved by the commissioner [deems reasonable] shall be used; provided that [surcharges and credits] no surcharge for the failure to maintain no-fault insurance shall be approved by the commissioner unless the insured has previously been convicted of driving without insurance within the preceding three years. Credits shall be deemed reasonable if there is no objection by the commissioner within sixty days of their filing. Insurers shall furnish the prospective insured with a written explanation, in easily understandable language, clearly describing the reason for the surcharge or credit and how the amount of the surcharge or credit is determined.”

SECTION 4. Section 431:10C-203, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-203 Rate filings. [(a) At least thirty days before an insurer proposes its filing to become effective, the insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance which it proposes to use. Each filing shall indicate the proposed effective date of the filing and the character and extent of the coverage contemplated.

(b) An insurer shall not implement a rate pursuant to a proposed rate filing until the effective date of the filing unless the insurer requests in writing and receives authorization from the commissioner to implement the rate filing prior to the expiration of the thirty-day period.

(c) The commissioner [also] may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

[(d) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner’s education and training fund.

(e) A filing and any supporting information shall be open to the public upon filing with the commissioner.]”

SECTION 5. Section 431:10C-210, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-210 Publication of premium rates. The commissioner shall publish annually, in a newspaper of general circulation in the State, a list of all motor vehicle insurers with representative annual premiums for motor vehicle insurance. In addition, the commissioner shall have information on premiums for motor vehicle insurance which shall be available to the public on request.”

SECTION 6. Section 431:10C-211, Hawaii Revised Statutes, is amended

by amending subsection (a) to read as follows:

“(a) A person making a claim for no-fault benefits may be allowed an award of a reasonable sum for attorney’s fees, and reasonable costs of suit in an action brought by or against an insurer who denies all or part of a claim for benefits under the policy, unless the court upon judicial proceeding or the commissioner upon administrative proceeding determines that the claim was unreasonable, fraudulent, excessive or frivolous. Reasonable attorney’s fees, based upon actual time expended, shall be treated separately from the claim and be paid directly by the insurer to the attorney.”

SECTION 7. Section 431:10C-212, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If a claimant or provider of services objects to the denial of benefits by an insurer or self-insurer pursuant to section 431:10C-304(3)(B) and desires an administrative hearing thereupon, the claimant or provider of services shall file with the commissioner, within sixty days after the date of denial of the claim, the following:

- (1) Two copies of the denial;
- (2) A written request for review; and
- (3) A written statement setting forth specific reasons for the [claimant’s] objections.”

(b) The commissioner has jurisdiction to review any denial of no-fault benefits, [where:

- (1) The disputed amount does not exceed \$5,000 as of the date of the denial; or
- (2) The disputed amount exceeds \$5,000 solely because an insurer or self-insurer has failed to comply with section 431:10C-304.]”

SECTION 8. Section 431:10C-213, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A claimant [or], insurer, or provider of services may submit any dispute relating to a no-fault policy to an arbitrator by filing a written request with the clerk of the circuit court in the circuit where the accident occurred.”

SECTION 9. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than [\$35,000] \$25,000 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;

- (3) With respect to any motor vehicle registered or principally garaged in this State, liability coverage 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 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 paragraph shall not be applicable where any named insured in the policy shall reject the coverage in writing; and
- (4) 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. An insurer may offer the underinsured motorist coverage required by this paragraph in the same manner as uninsured motorist coverage; provided that such offer of both shall:
 - (A) Be conspicuously displayed so as to be readily noticeable by the insured;
 - (B) Set forth the premium for the coverage adjacent to the offer in such a manner that the premium is clearly identifiable with the offer and may be easily subtracted from the total premium to determine the premium payment due in the event the insured elects not to purchase the option; and
 - (C) Provide for written rejection of the coverage by requiring the insured to affix the insured's signature in a location adjacent to or directly below the offer."

SECTION 10. Section 431:10C-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to the no-fault coverages described in section 431:10C-301, 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, provisions covering loss resulting from damage to the insured's motor vehicle with such deductibles, including but not limited to collision and comprehensive deductibles of \$50, \$100, \$250, \$500, \$1,000, \$1,500 and \$2,000, at appropriately reduced premium rates, as the commissioner, by regulation, shall provide;
- (2) At the option of the insured, compensation to the insured, the insured's spouse, any dependents, or any occupants of the insured's vehicle for damages not covered by no-fault benefits;
- (3) Additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or from operation of a motor vehicle for which the insurer may provide for aggregate limits with respect to such additional coverage so long as the basic liability coverages provided are not less than those required by section 431:10C-301(b)(1) and (b)(2);
- (4) Terms, conditions, exclusions, and deductible clauses, coverages and benefits which:
 - (A) Are consistent with the required provisions of such policy,

- (B) Limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers, and
- (C) Are approved by the commissioner as fair and equitable; [and]
- (5) At appropriately reduced premium rates, deductibles applicable only to claims of a no-fault insured or of the insured's survivors in case of the insured's death in the amounts of \$100, \$300, [and] \$500, and \$1,000 from all no-fault benefits otherwise payable; provided 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
- (6) Every insurer shall fully disclose the availability of all deductibles, including the nature of the deductible, amount of the deductible, and amount of savings in premium rates associated with each deductible at the time any policy is issued, delivered, or renewed."

SECTION 11. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-304 Obligation to pay no-fault benefits. Every no-fault and self-insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d):
 - (A) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the following persons who sustain accidental harm as a result of the operation, maintenance or use of the vehicle, an amount equal to the no-fault benefits payable for wage loss and other expenses to that person under section 431:10C-103(10)(A)(iii) and (iv) as a result of the injury:
 - (i) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
 - (ii) Any pedestrian (including a bicyclist); or
 - (iii) Any user or operator of a moped as defined in section 249-1; [or]
 - (B) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the persons listed in item (1)(A) charges for services covered under section 431:10C-103(10)(A)(i) and (ii); or
 - [(B)] (C) In the case of death of any person listed in item (1)(A), arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the legal representatives of such person who sustains accidental harm as a result of the operation, maintenance or use of the vehicle¹ for the benefit of the surviving spouse and any defendant,² as defined in section 152 of the Internal Revenue Code of 1954, as amended, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of such person, subject to the provisions of section 431:10C-103(10);

Provided that []subparagraphs[] (A) [and], (B), and (C) shall not

- apply in the case of injury to or death of any operator of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident.
- (2) Payment of no-fault benefits shall be made as the benefits accrue, except that in the case of death, payment of [the] benefits under section 431:10C-103 (10)(A) (iii) and (iv) may be made immediately in a lump sum payment, at the option of the beneficiary.
 - (3) (A) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof.
 - (B) [If] Subject to section 431:10C-____, relating to peer review, if the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also mail a copy of the denial to the provider.
 - (C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also forward the list to the service provider.
 - (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
 - (5) 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 the benefits are paid. The insurer shall pay, subject to section 431:10C-211, 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. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into or knowingly accept benefits under any such contract.
 - (6) Any insurer who violates the provisions of this section shall be subject to the provisions of section 431:10C-117(b) and (c)."

SECTION 12. Section 431:10C-308, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-308 Medical-rehabilitative limit. (a) The commissioner shall annually revise the medical-rehabilitative limit [in the following manner:

- (1) The commissioner shall determine the percentage change in the medical care category of the consumer price index for all urban consumers for the Western region as published by the bureau of labor statistics from April of the previous year to April of the current year;

- (2) 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;
- (3) 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; and
- (4) 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.]

by accumulating 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 medical-rehabilitative benefits for each of these accidents. The commissioner shall perform such actuarial evaluations of this data necessary to determine, annually, that specific figure in dollar value, below which ninety per cent 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 for the purpose of section 431:10C-306(b)(2).

(b) For the purposes of this section, the no-fault policy term year shall commence annually on September 1 and terminate the following August 31. For each term year, the commissioner shall make the tabulation of data necessary for the computation of the [medical-rehabilitation] medical-rehabilitative limit during the period [April] January 1 to [March] December 31 preceding the September 1 start of the no-fault policy term year.

(c) The medical-rehabilitative limit for the one-year period commencing September 1, 1992 shall be \$10,000, provided that if the commissioner is unable to revise the medical-rehabilitative limit within the one-year period, the medical-rehabilitative limit shall continue at \$10,000 for the next no-fault policy term year commencing September 1, 1993."

SECTION 13. Section 431:10C-204, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 431:10C-206, Hawaii Revised Statutes is repealed.

SECTION 15. The provisions of this Act do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

SECTION 16. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 18. This Act shall take effect upon its approval except sections 7, 8, 9, and 11 shall take effect on January 1, 1993; and provided that this Act, upon its approval, shall take effect only if S.B. No. 2361⁴ in conference draft is passed by the legislature, Regular Session of 1992, and becomes an Act.

(Approved June 3, 1992.)

Notes

1. Prior to amendment “,” appeared here.
2. Prior to amendment “dependent” appeared here.
3. Edited pursuant to HRS §23G-16.5.
4. Act 123.