

ACT 4

H.B. NO. S6-93

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

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

SECTION 1. Article 10C of chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431:10C- Limit on nonrenewals and conditional renewals. (a)

The total number (rounded to the nearest whole number) of notices of intention not to renew a motor vehicle insurance policy, and of notices of intention to conditionally renew upon reduction of limits of any coverage, which an insurer may issue, shall be limited for each calendar year to two per cent of the total number of covered policies of the insurer in force at last year-end in each of the insurer's rating territories in use in this State that have completed their required policy periods. However, the insurer may non-renew or conditionally renew one policy in any of the insurer's rating territories in use in this State if the applicable percentage limitation results in less than one policy. Cancellations, notices of intention not to renew, and notice of intention to conditionally renew made pursuant to section 431:10C-111 (a)(1) and (a)(2), and section 431:10C-111(e) shall be independent of and in addition to those permitted under this subsection.

(b) For every two new automobile policies that the insurer voluntarily writes in each rating territory, the insurer shall be permitted to non-renew or conditionally renew one additional automobile policy in that territory in excess of the two per cent limit established in subsection (a) of this section, subject to a fair and nondiscriminatory formula developed by the commissioner that shall consider the number of automobile policies written less cancellations initiated by the insurer within the first sixty days of the policy period.”

SECTION 2. Section 431:10C-110, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-110 [Application for coverage, restriction against rejection of and grounds for rejection. An insurer authorized to issue a no-fault policy, including a general agent, subagent or solicitor, may not reject an application for a no-fault policy or optional additional insurance which insurers are required to make available, covering a motor vehicle, unless:

- (1) The principal operator of the vehicle does not have a license which permits operation of the vehicle; or
- (2) The application is not accompanied by at least six months¹ premium for the coverage. Nothing in this paragraph shall prohibit an insurer, at its discretion, from accepting a minimum of two months' premium and issuing a policy; provided that a temporary no-fault identification card may not be issued for a period exceeding the period for which premiums have been paid or earned. A no-fault identification card in compliance with section 431:10C-107 shall be issued by the insurer once any outstanding balance for the policy is paid. This paragraph shall apply only to the first application of a person for a no-fault policy and shall not apply to applications for commercial and fleet vehicles.]

Rejection of application, JUP placement. A general agent, including a branch office of a foreign or alien insurer, subagent, or solicitor upon rejection of an application for a no-fault policy or optional additional insurance shall immediately offer, subject to the guidelines established by rules of the commissioner, to place the requested insurance coverages with the joint underwriting plan.”

SECTION 3. Section 431:10C-111, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-111 [Rejection of applications, cancellation,] Cancellation and nonrenewal of policies: when prohibited, when permitted. (a) An insurer

may not cancel or refuse to renew a no-fault policy, including required optional additional insurance meeting the provisions of section 431:10C-302, once issued except when:

- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked; [or]
- (2) Premium payments for the policy are not made after reasonable demand therefor[.]; or
- (3) The nonrenewal or conditional renewal is limited in accordance with section 431:10C-_____.

(b) An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 431:10C-302 where the insured is a member of a class set forth in section 431:10C-407(b)(1)(A) or (B) at the time of the refusal to renew.

(c) No insurer shall refuse to continue a no-fault policy based solely upon a person's race, creed, ethnic extraction, age, sex, length of driving experience, marital status, residence, physical handicap, or because an insured has elected to obtain any required or optional coverage or deductible required by law. If an insured alleges that the insurer's refusal to continue the no-fault policy is based solely upon the insured's race, creed, ethnic extraction, age, sex, length of driving experience, marital status, residence, physical handicap, or because the insured has elected any required or optional coverage or deductible provided by law, the burden of proof shall rest with the insurer to prove that the refusal to continue the policy was not based on noncompliance with this subsection.

(d) 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 occurs first.

[(d)] (e) An insurer may [reject or refuse to accept additional applications for, or] also refuse to renew no-fault policies:

- (1) If the commissioner determines that the financial soundness of the insurer would be impaired by the writing of additional policies of insurance; or
- (2) The insurer ceases to write any new policies of insurance of any kind in this State.

[(e)] (f) Within fifteen days of a cancellation and the return of the no-fault card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 431:10C-109."

SECTION 4. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit.
- (2) Notwithstanding any provision of the Hawaii Penal Code[.];
 - (A) [each] Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended[; provided that] except as provided in subparagraph (B);

- (B) [if] If the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine shall be [\$1,000] \$500 for the first offense and a minimum of [\$3,000] \$1,500 for each subsequent offense; provided that the judge shall have the discretion to suspend the fine for the first offense; provided [however,] further that upon the defendant's request, the judge may grant community service in lieu of the fine, of not less than 75 hours and not more than 100 hours for the first offense, and not less than 200 hours nor more than 275 hours for the second offense; and provided further that the judge may grant community service in lieu of the fine for subsequent offenses at the judge's discretion.
- (3) In addition to the fine in this paragraph, if any person operates a motor vehicle without a valid no-fault policy in effect insuring the driver or registered owner, or both, either the driver's license of the driver and of the registered owner shall be suspended for three months or they shall be required to maintain proof of financial responsibility pursuant to section 287-21(2), (3), or (4) and keep a nonrefundable no-fault insurance policy in force for six months; provided that if the violation is a subsequent offense of driving without a valid no-fault policy, the driver's licenses of the driver and the registered owner shall be suspended for one year; and provided further that any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:
- (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving; or
- (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or
- (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured.
- [(3)] (4) In the case of multiple violations, the court, in addition to any other penalty, shall impose the following penalties:
- (A) Imprisonment of not more than thirty days;
- (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
- (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
- (D) Any combination of those penalties."

SECTION 5. Section 431:10C-301, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-301 Required motor vehicle policy coverage. (a) In order to meet the requirements of a no-fault policy as provided in this article, an insurance policy covering a motor vehicle shall provide:

- (1) Coverage specified in section 431:10C-304; and
- (2) 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; provided that in the case of a U-drive motor vehicle, insurance to pay on behalf of the renter or any operator of the insured motor vehicle using the motor vehicle with the express permission of the renter or lessee, sums which the renter or operator may be legally obligated to pay for damage or destruction of property of others (except property owned by, being transported by, or in the charge of the renter or operator) arising out of the operation or use of the motor vehicle unless the motor vehicle is reported stolen by the owner within three days of notification of the incident; provided that the insurer and owner of a U-drive vehicle shall have the right of subrogation against the renter and operator for breach of the rental contract between owner and renter; and provided further that, in the event that any motor vehicle offered for rental or lease is involved in an accident, the lessor shall provide all information it has or obtains relevant to the accident to all other involved parties upon their request, including but not limited to information about the lessee, and the driver of the vehicle if other than the lessee.

(b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than \$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 death¹, 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 such¹ 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 such¹ 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.

(c) The stacking or aggregating of uninsured motorist coverage¹ or underinsured motorist coverage[, whichever is applicable,] is prohibited,¹ except as provided in subsection (d).¹ [However, an insurer shall offer an option to stack uninsured motorist¹ and underinsured motorist coverage, as applicable¹ in each no-fault policy whenever any policy is issued, delivered, or renewed.]

(d) An insurer shall offer [uninsured motorist coverage and underinsured motorist coverage of not less than the amount of the maximum bodily injury liability coverage in the insured's policy when the policy is first issued; provided that written rejection shall only be required when the policy is first issued or first renewed. No further rejections are required. Provided further that for] the insured the opportunity to purchase uninsured motorist coverage and underinsured motorist coverage by offering the following options with each no-fault policy:

- (1) The option to stack uninsured motorist coverage and underinsured motorist coverage; and
- (2) The option to select uninsured motorist coverage and underinsured motorist coverage, whichever is applicable, up to but not greater than the bodily injury liability coverage limits in the insured's policy.

These offers are to be made when a no-fault policy is first applied for or issued. For any existing policies,¹ an insurer shall offer such coverage at the first renewal after January 1, 1993. Once an insured has been provided the opportunity to purchase the coverages under the options, no further offer is required to be included with any renewal or replacement policy issued to the insured.

(e) If uninsured motorist coverage or underinsured motorist coverage is rejected, pursuant to section 431:10C-301(b):

- (1) The offers required by section 431:10C-301(d) are not required to be made;
- (2) No further offers or notice of the availability of uninsured motorist coverage and underinsured motorist coverage are required to be made in connection with any renewal or replacement policy; and
- (3) The written rejections required by section 431:10C-301(b) shall be presumptive evidence of the insured's decision to reject the options."

SECTION 6. Section 431:10C-308.7, Hawaii Revised Statutes, is amended to read as follows:

"[§431:10C-308.7] Client-patient referrals, health care provider practices prohibited. (a) An attorney or a law firm of which the attorney is a member or by which the attorney is employed may not establish a pattern of consistently referring clients to the same health care provider as a result of any accidental harm which is subject to benefits under this article, and a health care provider may not establish a pattern of consistently referring patients to the same attorney or law firm as a result of any accidental harm which is subject to benefits under this article. Any attorney, or any attorney from the law firm of which the

attorney is a member or by which the attorney is employed, and that health care provider engaged in such pattern shall be presumed to be in violation of this section.

As used in this [subsection] section, "law firm" means any sole proprietorship, partnership, corporation, or other entity having members or employees who engage in the practice of law in this State.

(b) No health care provider shall engage in, or agree or offer to engage in, fee splitting. For the purposes of this subsection, "fee splitting" means the payment, or acceptance of payment, by a health care provider, of any portion of a health care fee, or a commission, in return for the referral of a patient for any service or treatment for which no-fault benefits are provided under this chapter.

(c) No health care provider shall refer, for any service or treatment authorized under this chapter, a patient to any entity in which the referring provider has a financial interest unless the referring provider has disclosed that financial interest to the patient.

For the purposes of this section "financial interest" shall mean an ownership or investment interest through debt, equity, or any other means. "Financial interest" does not refer to salary or other compensation paid to physicians by a health maintenance organization, or any compensation arrangement involving payment by a group practice which contracts with a health maintenance organization to a physician in the same group practice or entity affiliated with the health maintenance organization for services provided to a member of the health maintenance organization.

(d) The health care provider shall make the disclosure required by this section in advance and in writing, and shall obtain the signature of the patient and retain the disclosure form for a period of two years. The health care provider shall include in the disclosure a statement indicating that the patient is free to choose a different health care provider.

(e) The regulated industries complaints office, department of commerce and consumer affairs, shall refer any attorney or health care provider in violation of this section to the appropriate professional licensing or regulatory body, for appropriate disciplinary action, including the suspension or revocation of the attorney's or health care provider's license to practice.

[(c)] (f) The regulated industries complaints office, department of commerce and consumer affairs, may initiate investigations to enforce this section and shall investigate any reports of attorney-health care provider referrals of persons eligible for benefits under this article that may violate this section.

(g) For the purposes of this section, the term "health care provider" means any person who is licensed to provide health care services pursuant to chapters 436E, 442, 448, 452, 453, 455, 457G, 459, 460, 461J, 463E, and 465."

SECTION 7. Section 431:10C-407, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-407 Classifications. (a) The commissioner shall establish classifications of eligible persons and uses for which the joint underwriting plan shall provide both the required no-fault policies and any optional additional insurance an eligible person or user applies for. The commissioner shall, by regulation, establish, implement, and supervise the joint underwriting plan, through the bureau, 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 part to provide insurance for payment of no-fault and [tort] bodily injury and property damage liability

insurance, or optional additional benefits, and who cannot reasonably obtain insurance at rates not in excess of those applicable to applicants under the plan, or who otherwise are in good faith entitled to, but unable to obtain the insurance through ordinary methods.

(b) The plan shall provide all no-fault benefits and services,¹ and [tort]¹ bodily injury and property damage¹ liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles,¹ and motor vehicle uses specified in this article upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide no-fault benefits and policies for each of the following classes, and each class shall be able to secure a no-fault and [tort]¹ bodily injury and property damage¹ liability policy through the plan:
 - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's 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 automobile driver.
 - (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, 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; or
 - (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 commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity.
 - (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes.
 - (E) All other motor vehicles, not classified under subparagraphs (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain no-fault policies and optional additional insurance through ordinary methods.
- (2) The plan shall provide no-fault benefits and bodily injury and property damage¹ policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
 - (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of medical services or direct cash payments through the department of human services, or benefits from the supplemental security

income program under the social security administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes.

- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver/owner under subparagraphs (A) and (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 canceled. 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 adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid no-fault insurance identification card pursuant to section 431:10C-107.

- (3) Under the joint underwriting plan, [all basic no-fault coverages, including the basic no-fault policy, the mandatory \$35,000¹ bodily injury liability, and the \$10,000 property damage policies] the required motor vehicle policy coverages as provided in section 431:10C-301¹ shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered by every insurer in conformance with section 431:10C-301, and¹ optional additional coverages shall be offered by every insurer¹ in conformance with section 431:10C-302, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide.

(c) The commissioner may further refine the definitions of the classifications provided for in subsection (b).”

SECTION 8. Section 431:10C-409, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-409 Establishment and criteria.** The commissioner shall, after consultation with the board, establish and promulgate the rating rules, classification standard and rules, rates, rating plans, territories, and policy forms for use in the provision of all motor vehicle insurance issued under the joint underwriting plan, in accordance with the following provisions:

- (1) Rates shall not be excessive, inadequate or unfairly discriminatory.
- (2) Consideration shall be given to the following:

- (A) The plan's past and prospective loss experience within the State;
 - (B) Contingencies in the administration of motor vehicle insurance sold;
 - (C) Past and prospective expenses in the sale and administration of motor vehicle insurance;
 - (D) Income from investments of premiums and other proceeds received on account of joint underwriting plan motor vehicle insurance sold; and
 - (E) 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].
- (3) The commissioner may:
- (A) Establish rating territories and group risks by classifications for the establishing of rates and minimum premiums;
 - (B) Provide for, by regulation, a uniform classification of risks and rating territories for the various coverages;
 - (C) Modify classification rates 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 convictions, and involvement in past accidents, provided they are established to have a demonstrable effect upon losses or expense; and
 - (D) Ensure that no standard or rating plan shall be based, in whole or in part, directly or indirectly, upon a person's race, creed, ethnic extraction, age, sex, length of driving experience, credit bureau rating, marital status, or physical handicap."

SECTION 9. An insurer shall include the amount of savings, if any, as a result of Acts 123 and 124, Session Laws of Hawaii 1992, when filing their rates pursuant to Article 14 of chapter 431, Hawaii Revised Statutes. The insurance commissioner shall ensure that insurers factors in this savings, if any, prior to approval of the rates.

SECTION 10. Until the commissioner by rule sets the rates, the premium basis for the newly established class under section 431:10C-407(b)(1)(E) shall be determined as follows: The commissioner shall survey the five largest motor vehicle insurers in the State and shall determine an average premium rate based on the survey. The premium basis for the newly established class under section 431:10C-407(b)(1)(E) shall be fifteen per cent higher than the average premium rate established by the survey. This rate shall remain in effect until the commissioner by rule shall establish the appropriate rate.

SECTION 11. If any provision of this Act, or its application to any person, insurer, or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are severable.

SECTION 12. This Act does not affect rights and duties that matured,

penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 14. This Act shall take effect upon its approval.

(Approved September 13, 1993.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.