

ACT 275

H.B. NO. 2823

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. The purpose of this Act is to continue to effectuate motor vehicle insurance reform initiated by the passage of Act 251, Session Laws of Hawaii 1997. This Act:

- (1) Assists Hawaii drivers and insurers during the transitional phase of the implementation of new laws;
- (2) Streamlines the motor vehicle insurance administration process; and
- (3) Makes numerous technical, nonsubstantive changes for purposes of clarity and style.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10C to be appropriately designated and to read as follows:

“§431:10C- Indemnification of agents; policyholder applications. General agents, subagents, solicitors, or brokers licensed under article 9 shall be indemnified by the insurance companies for the policies they issue, in civil damages

for simple negligence arising out of the placement or renewal of policyholder applications for the motor vehicle insurance required under article 10C; provided that nothing in this section shall be construed to exempt the general agents, subagents, solicitors, or brokers from liability for gross negligence arising out of those acts.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10C to be appropriately designated and to read as follows:

“§431:10C- Binding arbitration. (a) A claimant or defendant shall have the option to elect arbitration to resolve a claim in tort that is covered by motor vehicle liability insurance.

(b) A claimant or defendant may submit any dispute relating to a tort claim to binding arbitration by either filing a written request with the clerk of the circuit court in the circuit where the accident occurred or by agreement.

(c) A claimant or defendant shall have the opportunity to decline arbitration.

(d) Except as otherwise provided herein, arbitration shall be in accordance with and governed by chapter 658.

(e) Fees and costs of arbitration shall be borne equally by the parties, unless otherwise agreed to by the parties.

(f) Any arbitration award issued under this section shall be limited to the applicable liability policy limit, unless the insured tortfeasor otherwise agrees.”

SECTION 4. Section 431:10C-103, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read as follows:

““Motor vehicle insurance policy” means an insurance policy that meets the requirements of section 431:10C-301.

“Monthly earnings” means:

- (1) In the case of a person regularly employed, one-twelfth of the average annual compensation before state and federal income taxes at the time of injury or death;
- (2) In the case of a person regularly self-employed, one-twelfth of the average annual earnings before state and federal income taxes at the time of injury or death; or
- (3) In the case of an unemployed person or a person not regularly employed or self-employed, one-twelfth of the anticipated annual compensation before state and federal income taxes that would have been paid from the time the person would reasonably have been expected to be regularly employed.”

2. By amending the definitions of “insured” and “person receiving public assistance” to read as follows:

““Insured” means:

- (1) The person identified by name as insured in a motor vehicle insurance policy complying with section 431:10C-301; and
- (2) [While] A person residing in the same household with a named insured, [the following persons not identified by name as an insured in any other contract of motor vehicle insurance policy complying with this article:] specifically:
 - (A) A spouse or reciprocal beneficiary or other relative of a named insured[.]; and

- (B) A minor in the custody of a named insured or of a relative residing in the same household with a named insured.

A person resides in the same household if the person usually makes the person's home in the same family unit, which may include reciprocal beneficiaries, even though the person temporarily lives elsewhere.

"Person receiving public assistance benefits" means:

- (1) Any person receiving benefits consisting of [medical services or] direct cash payments through the department of human services; or
- (2) Any person receiving benefits from the Supplemental Security Income Program under the Social Security Administration."

3. By repealing the definition of "personal injury protection policy".

[""Personal injury protection policy" means an insurance policy which meets the requirements of section 431:10C-301.""]

SECTION 5. Section 431:10C-103.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Personal injury protection benefits, with respect to any accidental harm, means all appropriate and reasonable treatment and expenses necessarily incurred as a result of the accidental harm and which are substantially comparable to the requirements for prepaid health care plans, including medical, hospital, surgical, professional, nursing, dental, optometric, chiropractic, ambulance, prosthetic services, products and accommodations furnished, x-ray, psychiatric, physical[, and] therapy pursuant to prescription by a medical doctor, occupational therapy, [and] rehabilitation[.], and therapeutic massage by a licensed massage therapist when prescribed by a medical doctor."

SECTION 6. Section 431:10C-103.6, Hawaii Revised Statutes, is amended to read as follows:

"[[§431:10C-103.6]] Personal injury protection benefits tied to prepaid health care plan for description of coverage only. (a) The benefits provided under section 431:10C-103.5 shall be substantially comparable to the requirements for prepaid health care plans, as provided in chapter 393 and rules of the department of labor and industrial relations, pertaining to the Prepaid Health Care Act[, as of January 1, 1998]. The reference to the Prepaid Health Care Act is only for purposes of describing the coverages and exclusions, without regard to any specific insurer or plan, and shall not be construed to transfer coverage to the prepaid health care plans. The precise charges and utilization rates shall be as contained in the workers' compensation schedules as provided under section 431:10C-308.5, unless modified by the commissioner by rule under chapter 91.

(b) Chiropractic treatments shall be allowed for not more than the lesser of the following:

- (1) Thirty visits at no more than \$75 a visit, plus no more than five x-rays at no more than \$50 each,¹ or
- (2) Treatment as defined by the Hawaii State Chiropractic Association guidelines[.] in effect on January 25, 1997.

(c) Acupuncture treatments shall be allowed for no more than thirty visits at no more than \$75 a visit.

(d) The combined total of chiropractic and acupuncture treatments may not exceed thirty visits.

[(b)] (e) The benefits under section 431:10C-103.5 may be with copayment, and shall be subject to and apply the utilization requirements applicable under prepaid health care plans, under chapter 393."

SECTION 7. Section 431:10C-104.5, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-104.5 **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, since January 1, 1996, to maintain no-fault or motor vehicle insurance or suspension or revocation of license due solely to failure to maintain no-fault or motor vehicle insurance shall not apply to any uninsured motorist who obtains the required coverages prior to December 31, [1997.] 1998.”

SECTION 8. Section 431:10C-111.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For every two new [automobile] motor vehicle insurance policies that the insurer voluntarily writes in each rating territory, the insurer shall be permitted to non-renew or conditionally renew one additional [automobile] motor vehicle insurance 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] motor vehicle insurance policies written less cancellations initiated by the insurer within the first sixty days of the policy period.”

SECTION 9. 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 operated 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 traffic violations bureau of the district court of the first circuit[.];
- (2) Notwithstanding any provision of the Hawaii Penal Code:
 - (A) 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 except as provided in subparagraph (B); and
 - (B) If the person is convicted of not having had a motor vehicle insurance policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior conviction; provided that the judge:
 - (i) Shall have the discretion to suspend the fine for the first offense; provided further that upon the defendant’s request, the judge may grant community service in lieu of the fine, of not less than seventy-five hours and not more than one hundred hours for the first offense, and not less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and
 - (ii) May grant community service in lieu of the fine for subsequent offenses at the judge’s discretion[.];
- (3) In addition to the fine in paragraph (2), for the first conviction within a five-year period for the offense of driving without a valid motor vehicle insurance policy, the court shall either:
 - (A) Suspend the driver’s license of the driver or of the registered owner for three months[.]; provided that they shall not be re-

- quired to obtain proof of financial responsibility pursuant to section 287-20; or
- (B) Require the driver or the registered owner to keep a nonrefundable motor vehicle insurance policy in force for six months[.];
- In addition to the fine in paragraph (2), if the violation is a subsequent offense of driving without a valid motor vehicle insurance policy, within a five-year period of any prior conviction, the driver's [licenses] license of the driver or the registered owner shall be suspended for one year and the driver or the registered owner shall be required to maintain proof of financial responsibility pursuant to section 287-20[.];
- (4) 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;
 - (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[.]; and
 - (5) In the case of multiple convictions for driving without a valid motor vehicle insurance policy within a five-year period from any prior conviction, 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 10. Section 431:10C-119, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Prior to licensing an insurer to transact a motor vehicle insurance business in this State, the commissioner:

- (1) Shall effect a thorough examination of the insurer's business experience, financial soundness, and general reputation as an insurer in this and other states. In the discretion of the commissioner, this examination may include an examination of any or all of the business records of the insurer, and an audit of all or any part of the insurer's motor vehicle insurance business, each to be performed by the commissioner's staff or by independent consultants. No license shall be issued until the commissioner is satisfied as to the business experience, financial solvency, and the economic soundness of the insurer; [and]
- (2) Shall require of each insurer, and determine that satisfactory arrangements have been made for, the provision of a complete sales and claims service office in the State[.]; and
- (3) Notwithstanding any other requirements of this section or of the insurance code, may require a bond in a reasonable amount and with deposits or sureties determined in the commissioner's discretion of any applicant for a license hereunder. The commissioner may, at any time,

make and enforce such a requirement of any licensed insurer or self-insurer.”

SECTION 11. Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any insurer, any general agent, agent, solicitor, or representative of an insurer who violates subsection (a) shall be subject to [the provisions of] section [431:10C-117(c).] 431:10C-117.”

SECTION 12. Section 431:2-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner may:

- (1) Make[, subject to chapter 91,] reasonable rules [and regulations] for effectuating any provision of this code, except those relating to the commissioner’s appointment, qualifications, or compensation. The commissioner shall adopt rules to effectuate article 10C of chapter 431, subject to the approval of the governor’s office and the requirements of chapter 91.
- (2) Conduct examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any [such] provision.
- (3) Require, upon reasonable notice, that insurers report [such] any claims information [as] the commissioner may deem necessary to protect the public interest.”

SECTION 13. Section 431:10C-206.5, Hawaii Revised Statutes, is amended to read as follows:

“**[[]§431:10C-206.5[]] Group insurance plans.** (a) [Any] Notwithstanding section 431:12-104(a), any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation, or type of group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among other persons insured under the group plan.

(b) This section is additional to article 12 and other provisions of law, with the exception of section 431:12-104(a), relating to group insurance.”

SECTION 14. Section 431:10C-208, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-208 Increase in premiums prohibited.** No premium on any motor vehicle insurance policy shall be increased as a result of any accident if the insured is not at fault in the accident. An accident in which the insured was not at fault shall not be used in any way to affect any subsequent increases,² including loss of any discounts,² in insurance premiums.”

SECTION 15. Section 431:10C-215, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The commissioner shall, in the commissioner’s discretion, cause an audit to be made of all or any segment of the motor vehicle insurance books and business records of any insurer by the staff of the division or by an independent

[auditor.] contract examiner. A copy of every audit, internal or external, performed by any insurer of any aspect of its motor vehicle books and business records shall be submitted immediately upon completion to the commissioner.

(c) The commissioner shall assess and collect from each insurer, self-insurer, and from every applicant for a certificate of self-insurance or a license to transact the motor vehicle insurance and optional additional insurance business in this State, such portion of the full cost of every audit, inspection, examination, visitation, and other services related to motor vehicle insurance required by this or any other article, or performed by the commissioner in the commissioner's discretion under this article or this code, as the commissioner deems equitable in rendering of [such] the service. The charges for audits, inspections, examinations and visitations shall be collected and paid into the insurance examiners revolving fund when moneys from this fund are expended for the purposes of carrying out this section. All other charges collected shall be collected and paid into the general fund of this State."

SECTION 16. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) 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,] a reasonable belief that the person is entitled to operate the motor vehicle, 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 \$20,000 per person, with an aggregate limit of \$40,000 per accident, 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] and arising out of ownership, maintenance, use, loading, or unloading of [the insured] a motor vehicle;
 - (2) Liability coverage of not less than \$10,000 for all damages arising out of damage 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 paragraph (1), 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 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 the 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 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 17. Section 431:10C-301.5, Hawaii Revised Statutes, is amended to read as follows:

“[§431:10C-301.5] Covered loss deductible. [(a)] Whenever a person effects a recovery for bodily injury, whether by suit, arbitration, or settlement, and it is determined that the person is entitled to recover damages, the judgment, settlement, or award shall be reduced by \$5,000 or the amount of personal injury protection benefits incurred, whichever is greater, up to the maximum limit. The covered loss deductible shall not include benefits paid or incurred under any optional additional coverage.

[(b)] It shall be a violation of section 431:13-103 for any insurer to alter, adjust, or in any way offset a judgment, settlement, or award as a result of the maximum limit as defined in section 431:10C-103.]”

SECTION 18. Section 431:10C-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to the motor vehicle insurance coverages described in section 431:10C-301, every insurer issuing a motor vehicle insurance policy shall make available to the insured the following optional insurance under the following conditions[:]. Every insurer issuing a commercial motor vehicle insurance policy shall make available to the insured the following optional insurance, except for those benefits under paragraphs (4), (5), (9), (10), and (11) 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,] rule, 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 personal injury protection benefits;
- (3) Additional coverages and benefits with respect to any injury 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);] (2);
- (4) At the option of the insured, an option in writing for coverage for wage loss benefits for monthly earnings loss for injury arising out of a motor vehicle accident. Any change in the wage loss benefits coverage selected by an insured shall apply only to benefits arising out of motor vehicle accidents occurring after the date the change becomes effective. Coverage shall be offered in [the amounts of \$1,000 a month to \$5,000 a month in increments of \$500 a month;] multiples of \$500 a month/\$3,000 per accident per person, from \$500 a month/\$3,000 per accident to \$2,000 a month/\$12,000 per accident; however, nothing shall prevent an insurer from making available higher limits of coverage[.];

[Benefit payments under this paragraph shall be for no less than two years following the date of the accidental harm and be made for lost net income after taxes for as long as the treating health care provider determines that the covered person's injuries prevent the person from engaging in the employment in which the person was engaged immediately prior to the accident. Benefit payments after more than two years following the date of the accident shall continue if the treating health care provider determines the person is disabled from employment to which the person is suited by education, training, and experience. If, pursuant to this requirement, the covered person engages in a form of employment other than that in which the person was engaged immediately prior to the accident, the person shall receive payment for the difference between the person's resulting net income after taxes and the person's net income after taxes immediately prior to the accident;]

- (5) An option in writing for minimum coverage for death benefits for death arising out of a motor vehicle accident in an amount of \$25,000, to be paid to [named beneficiaries. If there is no named beneficiary, the amount shall be paid to] the surviving spouse, for the benefit of the spouse and dependent children, or if there are no surviving spouse or dependent children, then to the estate. Coverage shall also be made available for increased death benefits in increments of \$25,000 up to \$100,000; however, nothing shall prevent an insurer from making available higher limits of coverage. At the option of the insured, coverage for funeral expenses of \$2,000 shall be made available;
- (6) Terms, conditions, exclusions, and deductible clauses, coverages, and benefits which:
 - (A) Are consistent with the required provisions of [such] the 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;
- (7) At appropriately reduced premium rates, deductibles applicable only to claims of an insured in the amounts of \$100, \$300, \$500, and \$1,000 from all personal injury protection benefits otherwise payable; provided that if two or more 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;
- (8) Every insurer shall fully disclose the availability of all required and optional coverages and deductibles, including the nature and amounts, at the issuance or delivery of the policy; or, for a policy already issued [at the time of] on January 1, 1998, disclosure shall be made at the first renewal after January 1, 1998. The insurer shall also disclose at issuance or renewal, as applicable, the effect on premium rates and savings of each option and deductible. Further offers or disclosures thereafter shall be required to be included with every other renewal or replacement policy. All elections of coverages, options, and deductibles by a named insured shall be binding upon additional insureds covered under the named insured's policy. The purpose of this paragraph is to inform insureds or prospective insureds of the coverages under this article;
- (9) (A) An insurer may make available, and provide at the option of the named insured, the benefits described in section 431:10C-103.5(a) through managed care providers such as a health maintenance organization or a preferred provider organization. The option may include conditions and limitations to coverage, including deductibles and coinsurance requirements, as approved by the commissioner. The commissioner shall approve those conditions and limitations which are substantially comparable to or exceed the coverage provided under section 431:10C-103.6;
- (B) An insurer may make available, and provide at the option of the named insured, deductible and coinsurance arrangements whereby the recipient of care, treatment, services, products, expenses, or accommodations shares in the payment obligation;
- (C) No deductible or coinsurance under a policy covered under section 431:10C-302(a)(9)(A) or (B) shall be applied with respect to care, treatment, services, products, or accommodation provided or expenses incurred by an insured during the first twenty-four hours in which emergency treatment has been provided or until the insured patient's emergency medical condition is stabilized, whichever is longer;
- (D) (i) The optional coverage prescribed in section 431:10C-302(a)(9)(A) and (B) shall apply only to the named insured, resident spouse, or resident relative; and
- (ii) "Resident relative" means a person who, at the time of the accident, is related by blood, marriage, or adoption to the named insured or resident spouse and who resides in the named insured's household, even if temporarily living elsewhere, and any ward or foster child who usually resides with the named insured, even if living elsewhere;
- (E) An agreement made under section 431:10C-302(a)(9) must be a voluntary agreement between the insured and the insurer, and no insurer shall require an insured to agree to those policy provisions

- as a condition of providing insurance coverage. Requiring an agreement as a precondition to the provision of insurance shall constitute an unfair insurance practice and shall be subject to the provisions, remedies, and penalties provided in article 13; and
- (F) An insurer providing the coverages authorized in section 431:10C-302(a)(9)(A) and (B) shall demonstrate in rate filings submitted to the commissioner the savings to the insured to be realized under the plan; [and]
 - (10) An insurer shall make available optional coverage for naturopathic, acupuncture, [and nonremedial] nonmedical remedial care, and treatment rendered in accordance with the teachings, faith, or belief of any group which relies upon spiritual means through prayer for healing[.]; and
 - (11) An insurer may make available optional coverage for chiropractic treatment in addition to chiropractic treatment provided under §431:10C-103.6 for not more than the lesser of the following:
 - (A) Thirty additional visits at no more than \$75 a visit; or
 - (B) Treatment as defined by the Hawaii Chiropractic Association guidelines in effect on January 25, 1997.

The commissioner shall adopt rules, including policy limits, terms, and conditions as necessary to implement the requirements of this section.”

SECTION 19. Section 431:10C-302.5, Hawaii Revised Statutes, is amended by amending its title³ and subsection (a) to read as follows:

“**[§431:10C-302.5[]] Managed care option.** (a) An insurer [shall] may offer, and provide at the option of the named insured, the personal injury protection benefits through managed care providers such as a health maintenance organization or preferred provider organization. The option may include conditions and limitations to coverage, including deductibles and coinsurance requirements, as approved by the commissioner. The commissioner shall approve those conditions and limitations if the benefits are substantially comparable to or exceed the requirements of section 431:10C-103.5.”

SECTION 20. Section 431:10C-303.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A U-drive motor vehicle insurance policy shall be primary; provided that its bodily injury and property damage liability [coverage] coverages shall be secondary to the operator’s or renter’s motor vehicle insurance policy if:

- (1) The U-drive rental business provides any claimant or person sustaining accidental harm or damages, as a result of the operation of the rental vehicle, the identity and address of the operator or renter, along with any information available to the U-drive rental business as to the identity and address of any insurer under any liability policies applicable to the operator or renter; provided that the U-drive rental business shall make reasonable efforts to obtain such information;
- (2) A suit may be filed and service upon the responsible operator or renter can be effectuated; and
- (3) An insurer responds on behalf of the operator or renter to a claim or suit.”

SECTION 21. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-304 Obligation to pay personal injury protection benefits.

For purposes of this section, the term “personal injury protection insurer” includes personal injury protection self-insurers. Every personal injury protection insurer shall provide personal injury protection benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d), in the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the provider of services on behalf of the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the personal injury protection benefits as defined in section 431:10C-103.5(a) payable for expenses to that person as a result of the injury:
 - (A) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
 - (B) Any pedestrian (including a bicyclist); or
 - (C) Any user or operator of a moped as defined in section 249-1; provided that this paragraph shall not apply in the case of injury to or death of any operator or passenger of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident[;], unless expressly provided for in the motor vehicle policy;¹
- (2) Payment of personal injury protection benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section 431:10C-302(a)(5) may be made immediately in a lump sum payment, at the option of the beneficiary;
- (3) (A) Payment of personal injury protection 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[;].⁴ All providers must produce descriptions of the service provided in conformity with applicable fee schedule codes;
- (B) 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-103.5(a) the insurer shall also mail a copy of the denial to the provider; and
- (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 the case of benefits for services specified in section 431:10C-103.5(a) 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 personal injury protection 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 personal injury protection benefits due, all attorney’s fees and costs of settlement or suit necessary to effect the payment of any or all personal injury protection 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 contract; and

- (6) Any insurer who violates this section shall be subject to section 431:10C-117(b) and (c).”

SECTION 22. Section 431:10C-306, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Tort liability is not abolished as to the following persons, their personal representatives, or their legal guardians in the following circumstances:

- (1) Death occurs to [such] the person in such a motor vehicle accident;
- (2) Injury occurs to [such] the person which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body;
- (3) Injury occurs to [such] the person which consists of a permanent and serious disfigurement which results in subsection of the injured person to mental or emotional suffering; or
- (4) Injury occurs to [such] the person in a motor vehicle accident and as a result of such injury that the personal injury protection benefits incurred by such person equal or exceed \$5,000[.]; provided that in calculating this amount:

(A) The following shall be included:

- (i) Personal injury protection benefits incurred by, paid to or payable to, or on behalf of, an eligible injured person including amounts paid directly by or on behalf of the eligible insured because of the accidental harm or similar benefits under social security, worker’s compensation, or public assistance laws;
- (ii) The applicable amounts of deductible or copayment paid or incurred;
- (iii) Amounts paid by or on behalf of an injured person who is not entitled to personal injury protection benefits, by health insurance or other funds; provided that payment in excess of the charges or services allowable under this chapter shall not be included;
- (iv) Where an eligible injured person receives coverage on other than a fee for service basis including, but not limited to, a health maintenance organization operating on a capitation basis, the value of services provided shall be determined in accordance with the fee schedules allowable under this chapter for purposes of threshold determination;

(B) When a person has optional coverage, benefits received in excess of the maximum basic personal injury protection limits set forth in section 431:10C-103.5 shall not be included.”

SECTION 23. Section 431:10C-306, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No claim may be made for benefits under the uninsured motorist coverage by an injured person against an insurer who has paid or is liable to pay [[personal injury protection]] motor vehicle insurance benefits to [such] the injured person unless [such] the claim meets the requirements of [subsection (b).] this article.”

SECTION 24. Section 431:10C-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-307 Reimbursement of duplicate benefits. Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates personal injury protection benefits already paid under the provisions of this article, the motor vehicle insurer shall be reimbursed fifty per cent of the personal injury protection benefits paid to [such] or on behalf of the person receiving the duplicate benefits[,] up to the maximum limit.”

SECTION 25. Section 431:10C-307.8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The purpose of the insurance fraud [[]investigations[]] unit shall be to conduct a statewide program for the investigation and prosecution of insurance fraud cases and violations of all applicable state laws relating to insurance fraud. The insurance fraud [[]investigations[]] unit may also review and take appropriate action on complaints relating to insurance fraud.”

SECTION 26. Section 431:10C-308.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The charges and frequency of treatment for services specified in section 431:10C-103.5(a), except for emergency services provided within seventy-two hours following a motor vehicle accident resulting in injury, shall not exceed the charges and frequency of treatment permissible under the workers’ compensation schedules. Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, to be conducted by a licensed Hawaii provider⁵ unless the insured consents to an out-of-state provider, shall not exceed the charges permissible under the workers’ compensation schedules for consultation for a complex medical problem. The workers’ compensation schedules shall not apply to independent medical examinations conducted by out-of-state providers; provided that the charges for the examination are reasonable. All records relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers’ compensation schedules.”

SECTION 27. Section 431:10C-308.5, Hawaii Revised Statutes, is amended by adding a new subsection to read as follows:

“(f) A health care provider shall be compensated by the insurer for preparing reports documenting the need for treatments which exceed the schedules in accordance with the fee schedule for special reports. The health care provider may assess the cost of preparing a report to the insurer at no more than \$20 per page up to a maximum of \$75 for each report.”

SECTION 28. Section 431:10C-315, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No suit shall be brought on any contract providing motor vehicle insurance benefits or any contract providing optional additional coverage more than[,] the later of:

- (1) Two years from the date of the motor vehicle accident upon which the claim is based;
- (2) Two years after the last payment of motor vehicle insurance [or optional additional] benefits;
- (3) Two years after the entry of a final order in arbitration; [or]
- (4) Two years after the entry of a final judgment in, or dismissal with prejudice of, a tort action arising out of a motor vehicle accident, where a cause of action for insurer bad faith arises out of the tort action[.]; or
- (5) Two years after payment of liability coverage, for underinsured motorist claims."

SECTION 29. Section 431:10C-403, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-403 Bureau's duties. The bureau shall promptly assign each claim and application, and notify the claimant or applicant of the identity and address of the assignee of the claim or application. Claims and applications shall be assigned so as to minimize inconvenience to claimants and applicants. The assignee, thereafter, has rights and obligations as if it had issued motor vehicle mandatory public liability and property damage policies complying with this [part] article applicable to the accidental harm or other damage, or, in the case of financial inability of a motor vehicle insurer or self-insurer to perform its obligations, as if the assignee had written the applicable motor vehicle insurance[,] policy, undertaken the self-insurance, or lawfully obligated itself to pay motor vehicle insurance benefits."

SECTION 30. Section 431:10C-406, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner shall [make and promulgate] adopt all necessary and appropriate [regulations] rules for the execution of the commissioner's duties under this [article] part as provided for in chapter 91."

SECTION 31. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The commissioner shall establish classifications of eligible persons and uses for which the joint underwriting plan shall provide both the required motor vehicle insurance policies and any optional additional insurance an eligible person or user applies for. The commissioner shall, by [regulation,] rule, 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 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 personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this [article] part upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure

a personal injury protection and bodily injury and property damage 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] motor vehicle 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; and
 - (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods;
- (2) The plan shall provide personal injury protection benefits and bodily injury and property damage 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 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; and
 - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation. Each category of driver/owner under subparagraphs (A) and (B) may secure motor vehicle

insurance coverage through the plan at the individual's option[,]; provided any previous motor vehicle insurance 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 motor vehicle insurance 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 motor vehicle insurance identification card pursuant to section 431:10C-107; and

- (3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 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 in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 32. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsections (c) through (e) to read as follows:

"(c) Any person eligible for benefits under this part, and who becomes eligible to file a claim or an action against the mandatory bodily injury liability or property damage liability policies, shall, upon the bureau's determination of eligibility, be entitled to:

- (1) The full personal injury protection benefits as if the victim had been covered as an insured at the time of the accident producing the accidental harm; and
- (2) The rights of claim and action against the insurer, assigned under section 431:10C-403, with reference to the mandatory bodily injury liability policy for accidental harm, and with reference to the mandatory property damage liability policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory bodily injury liability or property damage liability policies, or the basic personal injury protection policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of [subparts A and B,] this subpart and subpart A, except that the date of notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 431:10C-315.

(d) By rules adopted by the commissioner, each self-insurer shall be assessed its equitable proration of all costs and claims paid under this [article] part annually. No claim shall be assigned to any self-insurer for servicing. Proration for insurers and self-insurers shall be founded upon a pro rata distribution for each premium dollar actually or theoretically received. Self-insurers shall be assessed that prorated amount based upon the total premium cost for the coverage and vehicles stated in its certificate of self-insurance, as if the self-insurer had sold [such] the coverage at the premium rates applicable under subpart C.

(e) If a person qualifies for assignment or benefits under this [article,] part, the joint underwriting plan or any insurer to whom the claim is assigned by the plan shall be subrogated to the rights of [such] the person and shall have a claim for relief or a cause of action, separate from that of [such] the persons, to the extent that:

- (1) It has paid personal injury protection benefits; and
- (2) Elements of damage compensated for by the plan, with reference to the mandatory [public liability policy for accidental harm] motor vehicle insurance or bodily injury policies and to the mandatory property damage policy for property damage sustained, are paid.”

SECTION 33. Section 431:10C-410, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-410 Schedules. The commissioner shall:

- (1) Set rate schedules periodically, but not less frequently than annually, for all classes in accordance with this part and the criteria in paragraph (3), so that the total premium income, from all plan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all joint underwriting plan classes, the joint underwriting assigned claims plan, and the administration of the plans;
- (2) Prior to setting rates in accordance with paragraph (1), hold a public hearing on the proposed rates to afford all interested persons an opportunity to be heard. Notice shall be published and the hearing shall be held in accordance with chapter 91;
- (3) Establish rates for the following classes within the following restrictions:
 - (A) For the licensed public assistance driver, as defined in section 431:10C-407(b)(2)(A), no premium shall be assessed for the mandatory [public liability or the mandatory property damage policies;] minimum personal injury protection, bodily injury, or property damage coverages; and all policies shall conform to section 431:10C-407(b)(2); and
 - (B) For the [physically limited driver] licensed physically handicapped driver, including drivers with any auditory limitation, defined in section 431:10C-407, no rate shall be set higher than that assessed a comparable driver without limitation, except that a higher rate may be surcharged under any applicable standard conforming with section 431:10C-409(3); and
- (4) Set various systems and schedules of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses for each of the enumerated classes except the classes limited under paragraph (3).”

SECTION 34. Section 431:10G-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:10G-301 Required motorcycle and motor scooter policy coverage. (a) An insurance policy covering a motorcycle or motor scooter shall provide insurance in the following amounts to pay, on behalf of the owner or any operator of the insured motorcycle or motor scooter, sums that the owner or any operator may legally be obligated to pay for injury, death, or damage to the property of others, except property owned by, being transported by, or in charge of the insured that arise

out of the ownership, operation, maintenance, or use of the motorcycle or motor scooter:

- (1) Liability coverage of not less than [\$25,000] \$20,000 per person, with an aggregate limit of \$40,000 per accident, 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]; and
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property, including motorcycles or motor scooters 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.
- (b) At the option of the owner, each insurer shall:
 - (1) Offer medical payment coverage up to [\$20,000] \$10,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, dental, ambulance, hospital, professional, and nursing[, and funeral] services;
 - (2) Offer an income disability plan; and
 - (3) Offer liability coverage in excess of the minimum coverages required by this section.

(c) Any operator or passenger of a motorcycle or motor scooter as defined in section 286-2 who receives injuries or dies in a motor vehicle accident may not claim personal injury protection benefits under a motor vehicle insurance policy, unless expressly provided for in the motor vehicle policy."

SECTION 35. If any provision of this Act, or the application thereof to any person or circumstances 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 36. Statutory material to be repealed is bracketed. New statutory material is underscored.⁶

SECTION 37. This Act shall take effect upon its approval, except that Section 2 of this Act shall take effect on January 1, 1999, and shall be repealed on January 1, 2001.

(Approved July 20, 1998.)

Notes

1. Semicolon should not be underscored.
2. Comma should be underscored.
3. So in original.
4. Period should be underscored.
5. Prior to amendment ",'" appeared here.
6. Edited pursuant to HRS §23G-16.5.