
A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii is one of
2 only a few states whose motor vehicle insurance laws require
3 coverage for personal injury protection benefits. The law
4 requires that the insurer must offer the coverage and the
5 insured must accept the coverage. The purpose of this Act is to
6 change the coverage for personal injury protection benefits to a
7 required optional coverage. Specifically, the insurer must
8 offer the coverage but the insured may reject the coverage.
9 This Act will thereby assist in lowering the cost of motor
10 vehicle insurance coverage, as not everyone will accept the
11 coverage.

12 SECTION 2. Section 431:10C-301, Hawaii Revised Statutes,
13 is amended by amending subsections (a) and (b) to read as
14 follows:

15 "(a) An insurance policy covering a motor vehicle shall
16 provide[÷

17 ~~(1) Coverage specified in section 431:10C-304; and~~



1 ~~(2)~~ Insurance] insurance to pay on behalf of the owner or
2 any operator of the insured motor vehicle using the
3 motor vehicle with a reasonable belief that the person
4 is entitled to operate the motor vehicle, sums which
5 the owner or operator may legally be obligated to pay
6 for injury, death, or damage to property of others,
7 except property owned by, being transported by, or in
8 the charge of the insured, which arise out of the
9 ownership, operation, maintenance, or use of the motor
10 vehicle; provided that in the case of a U-drive motor
11 vehicle, insurance to pay on behalf of the renter or
12 any operator of the insured motor vehicle using the
13 motor vehicle with the express permission of the
14 renter or lessee, sums which the renter or operator
15 may be legally obligated to pay for damage or
16 destruction of property of others (except property
17 owned by, being transported by, or in the charge of
18 the renter or operator) arising out of the operation
19 or use of the motor vehicle unless the motor vehicle
20 is reported stolen by the owner within three days of
21 notification of the incident; provided that the
22 insurer and owner of a U-drive vehicle shall have the



1 right of subrogation against the renter and operator
2 for breach of the rental contract between owner and
3 renter; and provided further that, in the event that
4 any motor vehicle offered for rental or lease is
5 involved in an accident, the lessor shall provide all
6 information it has or obtains relevant to the accident
7 to all other involved parties upon their request,
8 including but not limited to information about the
9 lessee, and the driver of the vehicle if other than
10 the lessee.

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

12 (1) Liability coverage of not less than \$20,000 per
13 person, with an aggregate limit of \$40,000 per
14 accident, for all damages arising out of accidental
15 harm sustained as a result of any one accident and
16 arising out of ownership, maintenance, use, loading,
17 or unloading of a motor vehicle;

18 (2) Liability coverage of not less than \$10,000 for all
19 damages arising out of damage to or destruction of
20 property including motor vehicles and including the
21 loss of use thereof, but not including property owned
22 by, being transported by, or in the charge of the



1 insured, as a result of any one accident arising out
2 of ownership, maintenance, use, loading, or unloading,
3 of the insured vehicle;

4 (3) With respect to any motor vehicle registered or
5 principally garaged in this State, liability coverage
6 provided therein or supplemental thereto, in limits
7 for bodily injury or death set forth in paragraph (1),
8 under provisions filed with and approved by the
9 commissioner, for the protection of persons insured
10 thereunder who are legally entitled to recover damages
11 from owners or operators of uninsured motor vehicles
12 because of bodily injury, sickness, or disease,
13 including death, resulting therefrom; provided that
14 the coverage required under this paragraph shall not
15 be applicable where any named insured in the policy
16 shall reject the coverage in writing; [~~and~~]

17 (4) Coverage for loss resulting from bodily injury or
18 death suffered by any person legally entitled to
19 recover damages from owners or operators of
20 underinsured motor vehicles. An insurer may offer the
21 underinsured motorist coverage required by this



1 paragraph in the same manner as uninsured motorist
2 coverage; provided that the offer of both shall:

3 (A) Be conspicuously displayed so as to be readily
4 noticeable by the insured;

5 (B) Set forth the premium for the coverage adjacent
6 to the offer in a manner that the premium is
7 clearly identifiable with the offer and may be
8 easily subtracted from the total premium to
9 determine the premium payment due in the event
10 the insured elects not to purchase the option;
11 and

12 (C) Provide for written rejection of the coverage by
13 requiring the insured to affix the insured's
14 signature in a location adjacent to or directly
15 below the offer[-]; and

16 (5) Coverage specified in section 431:10C-304; provided
17 that:

18 (A) The coverage required under this paragraph shall
19 not be applicable where the insured shall reject
20 the coverage in writing;

21 (B) The offer of coverage shall be made when a policy
22 is first applied for or issued and also



1 thereafter upon the issue of any renewal or
2 replacement policy."

3 SECTION 3. Section 431:10C-304, Hawaii Revised Statutes,
4 is amended to read as follows:

5 "**§431:10C-304 Obligation to pay personal injury protection**
6 **benefits.** For purposes of this section, the term "personal
7 injury protection insurer" includes personal injury protection
8 self-insurers. [~~Every~~] Where the insured has not rejected
9 coverage for personal injury protection benefits, the personal
10 injury protection insurer shall provide personal injury
11 protection benefits for accidental harm as follows:

12 (1) Except as otherwise provided in section 431:10C-
13 305(d), in the case of injury arising out of a motor
14 vehicle accident, the insurer shall pay, without
15 regard to fault, to the provider of services on behalf
16 of the following persons who sustain accidental harm
17 as a result of the operation, maintenance, or use of
18 the vehicle, an amount equal to the personal injury
19 protection benefits as defined in section 431:10C-
20 103.5(a) payable for expenses to that person as a
21 result of the injury:

1 (A) Any person, including the owner, operator,
2 occupant, or user of the insured motor vehicle;

3 (B) Any pedestrian (including a bicyclist); or

4 (C) Any user or operator of a moped as defined in
5 section 249-1;

6 provided that this paragraph shall not apply in the
7 case of injury to or death of any operator or
8 passenger of a motorcycle or motor scooter as defined
9 in section 286-2 arising out of a motor vehicle
10 accident, unless expressly provided for in the motor
11 vehicle insurance policy;

12 (2) Payment of personal injury protection benefits shall
13 be made as the benefits accrue, except that in the
14 case of death, payment of benefits under section
15 431:10C-302(a)(5) may be made immediately in a lump
16 sum payment, at the option of the beneficiary;

17 (3) (A) Payment of personal injury protection benefits
18 shall be made within thirty days after the
19 insurer has received reasonable proof of the fact
20 and amount of benefits accrued, and demand for
21 payment thereof. All providers must produce



1 descriptions of the service provided in
2 conformity with applicable fee schedule codes;
3 (B) If the insurer elects to deny a claim for
4 benefits in whole or in part, the insurer shall,
5 within thirty days, notify the claimant in
6 writing of the denial and the reasons for the
7 denial. The denial notice shall be prepared and
8 mailed by the insurer in triplicate copies and be
9 in a format approved by the commissioner. In the
10 case of benefits for services specified in
11 section 431:10C-103.5(a), the insurer shall also
12 mail a copy of the denial to the provider; and
13 (C) If the insurer cannot pay or deny the claim for
14 benefits because additional information or loss
15 documentation is needed, the insurer shall,
16 within the thirty days, forward to the claimant
17 an itemized list of all the required documents.
18 In the case of benefits for services specified in
19 section 431:10C-103.5(a), the insurer shall also
20 forward the list to the service provider;
21 (4) Amounts of benefits which are unpaid thirty days after
22 the insurer has received reasonable proof of the fact



1 and the amount of benefits accrued, and demand for
2 payment thereof, after the expiration of the thirty
3 days, shall bear interest at the rate of one and one-
4 half per cent per month;

5 (5) No part of personal injury protection benefits paid
6 shall be applied in any manner as attorney's fees in
7 the case of injury or death for which the benefits are
8 paid. The insurer shall pay, subject to section
9 431:10C-211, in addition to the personal injury
10 protection benefits due, all attorney's fees and costs
11 of settlement or suit necessary to effect the payment
12 of any or all personal injury protection benefits
13 found due under the contract. Any contract in
14 violation of this provision shall be illegal and
15 unenforceable. It shall constitute an unlawful and
16 unethical act for any attorney to solicit, enter into,
17 or knowingly accept benefits under any contract;

18 (6) Disputes between the provider and the insurer over the
19 amount of a charge or the correct fee or procedure
20 code to be used under the workers' compensation
21 supplemental medical fee schedule shall be governed by
22 section 431:10C-308.5; and



1 (7) Any insurer who violates this section shall be subject
2 to section 431:10C-117(b) and (c)."

3 SECTION 4. Section 431:10C-305, Hawaii Revised Statutes,
4 is amended by amending subsections (a) and (b) to read as
5 follows:

6 "(a) (1) A claim for personal injury protection benefits
7 for accidental harm of a person who is not an occupant
8 of any motor vehicle involved in a motor vehicle
9 accident may be made against the insurer of any
10 involved vehicle; provided that the insured of the
11 involved vehicle has not rejected coverage for
12 personal injury protection benefits; and

13 (2) The insurer against whom the claim is asserted shall
14 process and pay the claim as if wholly responsible,
15 but the insurer shall thereafter be entitled to
16 recover from the insurer of all other involved
17 vehicles proportionate contribution for the benefits
18 paid and the cost of processing the claim[-] to the
19 extent that the insureds of all other involved
20 vehicles have not rejected coverage for personal
21 injury protection benefits.



1 (b) (1) Except as provided in paragraph (2), personal
2 injury protection benefits shall be paid primarily
3 from the following sources in the following
4 conditions[+], to the extent possible:

5 (A) The insurance on the vehicle occupied by the
6 injured person at the time of the accident; or

7 (B) The insurance on the vehicle which caused
8 accidental harm if the injured person is a
9 pedestrian (including a bicyclist).

10 If there is no insurance on the vehicle, any other
11 motor vehicle insurance applicable to the injured
12 person shall apply.

13 No person shall recover personal injury
14 protection benefits from more than one insurer for
15 accidental harm as a result of the same accident;

16 (2) All personal injury protection benefits shall be paid
17 secondarily and net of any benefits a person is
18 entitled to receive because of the accidental harm
19 from workers' compensation laws; provided that:

20 (A) The total amount a person is entitled to receive
21 for monthly earnings loss under this article
22 shall be limited to the amount of any applicable



1 coverage under section 431:10C-302, without any
2 deduction of any amount received as compensation
3 for lost earnings under any workers' compensation
4 law;

5 (B) The aggregate of the payments from both sources
6 shall not exceed eighty per cent of the person's
7 monthly earnings as provided in section 431:10C-
8 302(a)(4). However, if the person's employer
9 provides both workers' compensation and personal
10 injury protection payments, the aggregate shall
11 not exceed the person's net monthly earnings
12 (computed by subtracting the total of federal and
13 state income taxes and employee social security
14 contributions from the gross monthly earnings),
15 provided that the workers' compensation payments
16 shall not be less than required by chapter 386;
17 and

18 (C) This section shall not apply to benefits payable
19 to a surviving spouse and any surviving dependent
20 as provided under section 431:10C-304.

21 If the person does not collect such benefits under the
22 workers' compensation laws by reason of the contest of



1 this right to so collect by the person or organization
2 responsible for payment thereof, the injured person,
3 if otherwise eligible, shall, nevertheless, be
4 entitled to receive personal injury protection
5 benefits and, upon payment thereof, the personal
6 injury protection insurer shall be subrogated to the
7 injured person's rights to collect such benefits."

8 SECTION 5. Section 431:19-115.5, Hawaii Revised Statutes,
9 is amended to read as follows:

10 "**§431:19-115.5 Applicability of other laws to captive**
11 **insurance companies writing motor vehicle insurance policies in**
12 **this State.** Captive insurance companies writing motor vehicle
13 insurance policies in this State shall be subject to sections
14 431:10C-102, 431:10C-103, 431:10C-107, 431:10C-108, 431:10C-109,
15 431:10C-112, 431:10C-115, 431:10C-119, 431:10C-120, 431:10C-207,
16 431:10C-211, 431:10C-212, 431:10C-213, 431:10C-215, 431:10C-301,
17 and [~~431:10C-303~~] 431:10C-303.5 through 431:10C-315. Captive
18 insurance companies shall also be subject to the rules adopted
19 by the commissioner to implement these sections."

20 SECTION 6. Section 431:10C-303, Hawaii Revised Statutes,
21 is repealed.



1 ~~["§431:10C-303 Right to personal injury protection~~
2 **benefits.** ~~(a) If the accident causing accidental harm occurs~~
3 ~~in this State, every person insured under this article, and such~~
4 ~~person's survivors, suffering loss from accidental harm arising~~
5 ~~out of the operation, maintenance, or use of a motor vehicle,~~
6 ~~has a right to personal injury protection benefits.~~

7 ~~(b) If the accident causing accidental harm occurs outside~~
8 ~~this State, the following persons and their survivors suffering~~
9 ~~loss from accidental harm arising out of the operation,~~
10 ~~maintenance, or use of a motor vehicle, have a right to personal~~
11 ~~injury protection benefits as defined in section 431:10C-~~
12 ~~103.5(a):~~

13 ~~(1) Insureds as defined in section 431:10C-103; and~~
14 ~~(2) The driver and other occupants of an insured vehicle,~~
15 ~~other than a vehicle which is regularly used in the~~
16 ~~course of the business of transporting persons or~~
17 ~~property and which is one of five or more vehicles~~
18 ~~under common ownership."]~~

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun, before its effective date.

4 SECTION 9. This Act shall take effect on January 1, 2010.

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INTRODUCED BY:

F. K. O. Jr.

JAN 27 2009



Report Title:

Motor Vehicle Ins.; PIP

Description:

Changes no-fault insurance coverage for personal injury protection benefits from required coverage to required optional coverage.

