

---

---

## A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE INSURANCE.

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

1           SECTION 1. Section 431:10C-304, Hawaii Revised Statutes,  
2 is amended to read as follows:

3           "**§431:10C-304 Obligation to pay personal injury protection**  
4 **benefits.** For purposes of this section, the term "personal  
5 injury protection insurer" includes personal injury protection  
6 self-insurers. Every personal injury protection insurer shall  
7 provide personal injury protection benefits for accidental harm  
8 as follows:

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



# H.B. NO. 1423

1 103.5(a) payable for expenses to that person as a  
2 result of the injury:

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

5 or

6 (B) Any pedestrian [~~including a bicyclist~~]; ~~or~~

7 ~~(C) Any user or operator of a moped as defined in~~  
8 ~~section 249-1];~~

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

15 (2) Payment of personal injury protection benefits shall  
16 be made as the benefits accrue, except that in the  
17 case of death, payment of benefits under section  
18 431:10C-302(a)(5) may be made immediately in a lump  
19 sum payment, at the option of the beneficiary;

20 (3) (A) Payment of personal injury protection benefits  
21 shall be made within thirty days after the



## H.B. NO. 1423

1 insurer has received reasonable proof of the fact  
2 and amount of benefits accrued, and demand for  
3 payment thereof. All providers must produce  
4 descriptions of the service provided in  
5 conformity with applicable fee schedule codes;

6 (B) If the insurer elects to deny a claim for  
7 benefits in whole or in part, the insurer shall,  
8 within thirty days, notify the claimant in  
9 writing of the denial and the reasons for the  
10 denial. The denial notice shall be prepared and  
11 mailed by the insurer in triplicate copies and be  
12 in a format approved by the commissioner. In the  
13 case of benefits for services specified in  
14 section 431:10C-103.5(a) the insurer shall also  
15 mail a copy of the denial to the provider; and

16 (C) If the insurer cannot pay or deny the claim for  
17 benefits because additional information or loss  
18 documentation is needed, the insurer shall,  
19 within the thirty days, forward to the claimant  
20 an itemized list of all the required documents.  
21 In the case of benefits for services specified in



# H.B. NO. 1423

1                   section 431:10C-103.5(a) the insurer shall also  
2                   forward the list to the service provider;

3       (4) Amounts of benefits which are unpaid thirty days after  
4       the insurer has received reasonable proof of the fact  
5       and the amount of benefits accrued, and demand for  
6       payment thereof, after the expiration of the thirty  
7       days, shall bear interest at the rate of one and one-  
8       half per cent per month;

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



# H.B. NO. 1423

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

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

8           SECTION 2. Section 431:10C-305, Hawaii Revised Statutes,  
9 is amended as follows:

10           1. By amending subsection (b) to read:

11           "(b) (1) Except as provided in paragraph (2), personal  
12           injury protection benefits shall be paid primarily  
13           from the following sources in the following  
14           conditions:

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

17           (B) The insurance on the vehicle which caused  
18           accidental harm if the injured person is a  
19           pedestrian [~~including a bicyclist~~].



1 If there is no insurance on the vehicle, any other  
2 motor vehicle insurance applicable to the injured  
3 person shall apply.

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

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

11 (A) The total amount a person is entitled to receive  
12 for monthly earnings loss under this article  
13 shall be limited to the amount of any applicable  
14 coverage under section 431:10C-302, without any  
15 deduction of any amount received as compensation  
16 for lost earnings under any workers' compensation  
17 law;

18 (B) The aggregate of the payments from both sources  
19 shall not exceed eighty per cent of the person's  
20 monthly earnings as provided in section 431:10C-  
21 302(a)(4). However, if the person's employer



1 provides both workers' compensation and personal  
2 injury protection payments, the aggregate shall  
3 not exceed the person's net monthly earnings  
4 (computed by subtracting the total of federal and  
5 state income taxes and employee social security  
6 contributions from the gross monthly earnings),  
7 provided that the workers' compensation payments  
8 shall not be less than required by chapter 386;  
9 and

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

13 If the person does not collect such benefits under the  
14 workers' compensation laws by reason of the contest of  
15 this right to so collect by the person or organization  
16 responsible for payment thereof, the injured person,  
17 if otherwise eligible, shall, nevertheless, be  
18 entitled to receive personal injury protection  
19 benefits and, upon payment thereof, the personal  
20 injury protection insurer shall be subrogated to the  
21 injured person's rights to collect such benefits."



1           2. By amending subsection (d) to read:

2           "(d) The following persons are not eligible to receive  
3 payment of personal injury protection benefits:

4           (1) Occupants of a motor vehicle other than the insured  
5           motor vehicle;

6           (2) Operator or user of a motor vehicle engaging in  
7           criminal conduct which causes any loss; [~~or~~]

8           (3) Operator of a motorcycle or motor scooter as defined  
9           in section 286-2[~~-~~];

10          (4) A bicyclist; or

11          (5) Operator or user of a moped as defined in section 249-

12           1.

13 This subsection shall not preclude recovery in other capacities  
14 under a motor vehicle insurance policy covering a vehicle which  
15 the person did not occupy at the time of the accident."

16           SECTION 3. This Act does not affect rights and duties that  
17 matured, penalties that were incurred, and proceedings that were  
18 begun before its effective date.

19           SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

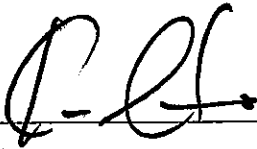




# H.B. NO. 1423

1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY: 

JAN 29 2015



# H.B. NO. 1423

**Report Title:**

Motor Vehicle Insurance; Bicyclists; Moped Users or Operators

**Description:**

Prohibits a bicyclist or moped operator injured in an accident with a motor vehicle from receiving personal injury protection benefits from the insurer of the motor vehicle.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

