

ACT 271

S. B. NO. 1960-80

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

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

SECTION 1. Section 294-13, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 294-13 Motor vehicle insurance rates. (a) Except as otherwise provided in this chapter, all premium rates for motor vehicle insurance shall comply with the provisions of the casualty rating law contained in chapter 431.

(b) All premium rates for motor vehicle insurance shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within this State, to catastrophe hazards, if any, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective loss experience within the State; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold within the State; past and prospective expenses in the sale and administration of motor vehicle insurance within the State; and, optionally, to past or prospective loss, sales and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates.
- (2) Due consideration shall be given to the investment income from reserves and unearned insurance premiums and other unearned proceeds received on account of motor vehicle insurance sold in this State, and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates.
- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (5) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (6) Rate making and regulation of rates for all insurance subject to this chapter shall be governed by chapter 431; subject, however, to the following:
 - (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with the provisions of section 431-703;
 - (B) Except as provided in subsection (j), the commissioner shall establish rates and shall consider with other relevant factors loss experience in this State and the investment income of the insurers, and insofar as section 431-694 and section 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not be applicable herein;
 - (C) To afford all interested persons an opportunity to be heard the commis-

sioner shall, after notice is published pursuant to chapter 91, hold a public hearing whenever rates are to be increased;

- (D) The initial rates shall be reviewed prior to September 1, 1975, and thereafter shall be reviewed at least every two years. The commissioner shall issue a public statement or an order approving the rates for the benefit of the public;
- (E) The commissioner shall order insurers to rebate to policyholders any excessive profit realized by insurers from their operations.

(c) Except to the extent necessary to meet the provisions of paragraph (4) of subsection (b) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(d) No manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance shall be effective unless approved by the commissioner. The commissioner may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers. The commissioner shall have the power to set rates under this chapter, pursuant to and following the procedure under chapter 91, except as specifically provided herein. The commissioner shall not set any rates without a public hearing at which all affected and interested parties have a full opportunity to examine, to comment, and to present evidence on the impact and application of the proposed establishment, or revision of rates. The commissioner shall publish a notice of the date, time, and place of the public hearing at least once in each of three successive weeks in a newspaper of general circulation.

(e) Any person aggrieved by the application as to him of any classification, rule, standard, rate, or rating plan made, followed, or adopted by an insurer may make written request to the commissioner to review such application and grant the relief requested. If the commissioner finds that probable cause for the complaint exists or that the complaint charges a violation of this chapter or any applicable provisions of the casualty rating law, he shall conduct a hearing on the complaint. The hearing shall be subject to the procedure provided in section 431-705(a).

(f) If the commissioner has good cause to believe that a classification, rule, standard, rate, rating territory, or rating plan made, followed, or adopted by an insurer does not comply with any of the requirements of this chapter or any applicable provisions of the casualty rating law, he shall, unless he has good cause to believe that such noncompliance is wilful, give notice, in writing, to each insurer stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, within which such noncompliance may be corrected. Notices under this subsection shall be confidential as between the commissioner and the parties unless a hearing is held as provided in subsection (g).

(g) If the commissioner has good cause to believe such noncompliance to be wilful, or if, within the period prescribed by the commissioner in the notice, the insurer does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or established to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may pro-

ceed with a hearing which shall be subject to the hearing procedure provided in section 431-705(a).

(h) If, after a hearing conducted pursuant to subsection (b) or (e), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this chapter or any applicable provisions of the casualty rating law, he shall issue an order granting the complainant's claim for relief or prohibiting the insurer from using such classification, rule, standard, rate, rating territory, or rating plan. The order shall contain the commissioner's findings of fact and conclusions of law, including, as appropriate, a specification of the respects in which a violation of this chapter or any applicable provision of the casualty rating law exists and shall specify a reasonable time period within which the insurer shall comply with the terms of the order. Any such order shall be subject to judicial review in accordance with the provisions of section 431-705(b).

(i) The commissioner shall periodically review and evaluate the motor vehicle insurance program described in this chapter, including an annual review of the premium rates, benefit payments, and insurers' loss experience.

(j) For the period of eight years from September 1, 1975, and terminating on August 31, 1983, the commissioner shall be prohibited from setting, maintaining, or in any way fixing the rates charged by motor vehicle insurers for motor vehicle insurance issued in conformity with this chapter as either no-fault insurance or as optional additional insurance except as provided under section 294-23. This eight-year period shall be a period of open rating. Each firm licensed to underwrite no-fault insurance in the State shall establish its own rate schedule. The commissioner shall, however, monitor and survey the several companies' rate making methods and systems. The commissioner shall require of each insurer and of each self-insurer any and all information, data, internal memoranda, studies, and audits, he deems desirable for the purpose of evaluation, comparison, and study of the methods and schedules.

Notwithstanding this prohibition, the commissioner shall, in his discretion, intervene at any time during this eight-year period, to adjust rates, for the no-fault, mandatory, or optional-additional coverages, being assessed by any or all insurers, upon a finding that all or any rates are excessively high or unconscionably below the actual costs of provision of the coverage being assured.

On June 1, 1983, the applicable transition provisions of this chapter shall be effective as to rate making and the commissioner shall perform all acts required by this chapter for the setting and regulation of uniform rates conforming to this chapter to be effective on and after September 1, 1983.

In the establishment of their individual rate schedules, each insurer shall conform fully to subsections (b)(1), (2), and (4), during the open rating period.

(k) Notwithstanding any other law to the contrary, no insurer shall agree, combine, or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11. This subsection shall not apply to advisory organizations referred to in section 431-700 which are not involved in rate making under this chapter.

(l) Notwithstanding subsection (j), commencing with September 1, 1974, the commissioner shall enforce a mandatory reduction of not less than fifteen per cent by each insurer, calculated as a percentage of the insurer's premium for a comparable combination of insurance coverage in effect on January 1, 1973, on all motor vehicle coverages, as provided in this chapter, including the basic no-fault policy. There shall be no exception to the requirements of this provision, unless the commissioner shall find that the use of the rates required herein by an insurer will be inadequate to the extent that such rates jeopardize the solvency of the insurer required to use such rates. No rate for the insurance required by this chapter shall be increased prior to September 1, 1975, unless the insurer proposing such rate increase shall show that the rates herein are inadequate as stated above.

(m) Notwithstanding subsection (j) all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels shall provide a ten per cent reduction off the regular premium each insurer assesses for such policy, to the operator purchasing a no-fault policy who has successfully completed a safe driving course approved by the director of transportation.

(n) Notwithstanding subsection (j) at the option of each insurer all premium rates on a no-fault policy for any motorcycle, motor scooter, or vehicle with less than four wheels may provide a discount of not more than ten per cent to the operator purchasing a no-fault policy when the operator submits an affidavit to the insurer that he will wear a safety helmet that is approved by the director of transportation during the operation of the insured vehicle; provided that if the insurer provides for a discount the insurer may provide for a surcharge of an amount equal to the discount for those operators who do not submit an affidavit that they will wear an approved safety helmet during the operation of the insured vehicle.

No insured shall operate a vehicle insured under a no-fault policy under this section which provides for a discount for the use of a safety helmet, unless the insured is wearing an approved safety helmet."

SECTION 2. Section 294-35.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall deposit these underwriters' fees into a special drivers' education fund account which shall be allocated as follows:

- (1) For the fiscal year 1975-76, seventy per cent to the commissioner which shall be expended for the operation of the driver education program provided for in section 286-128(m) and thirty per cent to the superintendent of the department of education to support the driver education program administered by the department for high school students;
- (2) For the fiscal year 1976-77, sixty per cent to the commissioner which shall be expended for the operation of the driver education program provided for in section 286-128(m) and forth per cent to the superintendent of the department of education to support the driver education program administered by the department for high school students; and
- (3) For the fiscal year 1977-78 and the fiscal years thereafter, fifty per cent to the commissioner which shall be expended for the operation of the driver education program provided for in section 286-128(m) and fifty per cent to the superintendent of the department of education to support the driver

education program administered by the department for high school students; provided that all fees received, under 294-35.5(a), which are derived from motorcycles, motor scooters, or similar vehicles, shall be expended by the director of transportation for the operation of a driver education program for operators of motorcycles, motor scooters, or similar vehicles.”

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

SECTION 4. This Act shall take effect upon its approval.

(Approved June 16, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.