ACT 245 H.B. NO. 915

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Prior to the enactment of the Hawaii no-fault law in 1973, Hawaii, along with many other states, followed a "tort" or "fault" system of motor vehicle accident reparations. The enactment of the no-fault system was made in an effort to eliminate or at least to minimize the negative features of the fault system, which were substantial. The no-fault law was enacted only after extensive study and deliberation on the part of the legislature.

Nationally, the fault system had been criticized severely by a number of commentators for several decades prior to the passage of the no-fault law. One of the strongest indictments of the fault system was made by professors Robert Keeton and Jeffrey O'Connell in their book entitled Basic Protection for the Traffic Victim (Harvard University Press, 1965). Their study, which was sponsored by the Harvard Law School, concluded: "It (the present automobile claims system) provides too little, too late, unfairly allocated, at wasteful cost, and through means that promote dishonesty and disrespect for law." (at 3) (parenthetical material added).

Similarly, other studies concluded, among other things, that:

(1) In one New York county, more than one-third of all funds paid as damages in personal injury actions went to pay the fees of the claimant's attorneys;

(2) In Illinois, more money was spent on legal expenses arising out of accidents than was spent for medical treatment;

(3) The individuals whose negligence caused accidents paid an almost negligible share of the total reparation received by injury victims (the bulk being paid by insurers).

After reviewing these and other studies, law professor Alfred F. Conard concluded: "These facts nullify most of the underpinning of contemporary tort theory. Tort theorists are accustomed to justify the law on the ground that it makes the wrongdoer pay, or shifts the loss to the wrongdoer. These theories prove to be poetic fallacies. The losses are not shifted to wrongdoers, but to right-doers: the conscientious drivers who buy liability insurance." 63 Mich. L. Rev. 279, 293 (1964).

The Hawaii experience under the fault system was similar to the national experience. In 1971, the legislature ordered the legislative auditor to conduct a study of motor vehicle insurance in Hawaii. The auditor responded in January 1972 with a report developed by Haldi Associates, Inc. entitled "A Study of Hawaii's Motor Vehicle Insurance Program". Among other things, the study found that:

"(1) Hawaii motorists could have saved between $5 and $10 million in 1970 alone if motor vehicle insurance benefits were provided as efficiently as are accident and health insurance benefits.

(2) Hawaii accident victims forego annually an estimated imputed cost of delay of over $3.4 million. This is directly attributable to a time lag in settlement for the average claim of between 9 and 12 months.

(3) A number of Hawaii accident victims receive no compensation whatsoever.

(4) Current methods and procedures used in underwriting and marketing motor vehicle insurance in Hawaii are expensive, discriminatory and inequitable. They are largely the product of present disincentives to avoid litigation in the courts occasioned by the system of negligence law under which liability claims must be settled. One undesirable result of this system is that about 19 percent of all motorists in Hawaii have no insurance whatsoever." (at 3)

The Hawaii no-fault law was designed to minimize these problems by substantially restructuring the motor vehicle insurance reparations system. Payments are made by the insured person's own insurer in a manner similar to health insurance. This eliminates the need for the injured person to wait until a determination of fault has been made in order to receive payments from the insurer of the party at fault. Elements of the old tort system have been retained for the serious cases involving death, disfigurement, and when medical-rehabilitative expenses reach a certain "threshold" amount set by the insurance commissioner. Any person whose expenses exceed that threshold within the statute of limitations may sue for recovery. The threshold is set at a level to ensure that approximately 90 per cent of such cases are resolved by the no-fault system.

In constructing Hawaii's no-fault law system, the legislature was cognizant of two possible areas of legal objections. The first was whether the taking away of the right to sue constitutes a denial of due process. The second area was whether persons of limited means would be deprived equal protection.

The legislature viewed the due process question from the standpoint of an alteration of available remedies, rather than removal of the right to sue. While the legislature views the freedom to engage in gainful employment as a substantially more important privilege than driving, the legislature determined that the public interest would be enhanced by establishing a system of motor vehicle accident reparations which was similar to the one used for accidents on the job site. In so doing, the legislature established a structured system which bore a number of similarities to the workers' compensation system which had been in effect for years. Persons were not denied access to benefits. Only the means of obtaining them had been changed.

In the interest of equal protection, the legislature has remained sensitive to the interests of those whose ability to pay is limited, often due to circumstances beyond their control. Since the legislature has broad authority under the police power to provide for public health, safety, and welfare, however, it was their view that substantial measures can be taken to protect and assist persons who have suffered personal injuries and property damage as a result of motor vehicle accidents. Driving is a privilege, and the legislature always reserves the right to take reasonable measures to restrict this privilege in order to promote the public good. The legislature has provided a means by which indigent persons receiving public assistance may receive state funded insurance coverage.

A constant problem in the no-fault system is the minority which consistently refuses to obtain the motor vehicle insurance coverage required under the law. The legislature has taken more than one approach to encourage full compliance with the law. These approaches include:

(1) Criminal penalties including fines, possible license suspension, jail, and impoundment of the vehicle; and

(2) A civil approach of giving an uninsured person a shorter time period in which to reach the damage threshold and to bring a suit. Uninsured persons were required to reach the threshold and sue within two years after the date of the accident while persons who have the coverage required by law have until two years after they receive their last no-fault benefit payments to reach the threshold and to bring court action.

In recent times the Hawaii supreme court, however, eroded one of the most important elements of our no-fault system, the mandatory insurance coverage of all who choose to exercise the privilege of driving. The court's decision in Joshua v. MTL, Inc. (#8177 December 29, 1982) misread the intent of the legislature and in so doing:

(1) Removed all no-fault law limits on the time in which an uninsured motorist may bring an action for recovery in tort; and

(2) Eliminated the no-fault law tort threshold requirements altogether with regard to the uninsured motorists.

The effect of the decision is that law abiding citizens who obtain coverage must reach the medical-rehabilitative threshold within two years of the last payment of no-fault benefits, while persons who stubbornly refuse to obtain coverage can sue for damages without regard to the threshold and without the time limits of the no-fault law.

The plaintiff in the Joshua decision was an indigent, unemployed person who was not aware that his insurance coverage had been canceled. Any inference, however, that the removal of the limitations would apply only to persons in comparable circumstances was abruptly dispelled in McAulton v. Goldstrin (#8071 December 30, 1982), which the supreme court issued on the following day. In McAulton, the court extended the principles enunciated in Joshua to a person who chose to spend $400 for black leather to cover his vehicle's interior rather than to purchase the no-fault insurance required by law.

The result of the Joshua and McAulton decisions is that the no-fault law is interpreted to provide law violators faster and easier access to the judicial system than law abiding citizens have. These decisions fly in the face of justice and public policy. By rewarding noncompliance, these decisions may well be the first step in what could lead ultimately to the destruction of the no-fault system. If a return is to be made to the fault system which preceded the existing law, it should be done through the conscious decision making process of the legislature as the voice of the people.

Accordingly, the purpose of this Act is to expressly restate, reiterate, and clarify the intent of the legislature in enacting sections 294-6(a) and 294-36(b), Hawaii Revised Statutes, concerning the barring of suits by uninsured motorists for injuries sustained in motor vehicle accidents was originally, and is now:

(1) To prevent a person who is ineligible for no-fault benefits from bringing a civil action if the medical-rehabilitative limit is not reached within two years of the date of the motor vehicle accident;

(2) To deter persons from driving without motor vehicle insurance coverage not only through criminal penalties, but through a limitation on the ability of the uninsured motorist to recover for injuries in tort which is more stringent than the limitations placed upon the law-abiding citizens who have obtained the insurance coverage required by law, and who are thus entitled to no-fault benefits.

SECTION 2. Chapter 294, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§294- Challenges to no-fault law; intervention by attorney general.** The attorney general shall intervene, at the request of the commissioner, in any case before any appellate court in this State in which the constitutionality or validity of this chapter or any part thereof is at issue, and may appeal to the United States supreme court, if necessary, to obtain a final determination of any case."

SECTION 3. Section 294, Hawaii Revised statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§294- Fee in lieu of fine; defense.** (a) Any person bringing an action in tort under this chapter who was uninsured at the time of the accident shall pay a fee

of $1,000 in lieu of any fine which could have been levied as a criminal penalty for failing to obtain the no-fault insurance coverage required by this chapter.

(b) The fee required under subsection (a) shall be paid by the person directly, or deducted from any settlement or verdict received, or both.

(c) No person shall be required to pay the fee in subsection (a) if the person can show proof of having been convicted in a prior criminal proceeding for failing to have no-fault insurance coverage on the date of the accident which is the subject of the tort action."

SECTION 4. Section 294-1, Hawaii Revised Statutes, is amended to read as follows:

"**§294-1 Purpose.** (a) The purpose of this chapter is to create a system of reparations for accidental harm and loss arising from motor vehicle accidents, to compensate these damages without regard to fault, and to limit tort liability for these accidents.

(b) This system of no-fault insurance can only be truly effective, however, if all drivers participate at least to the extent required by law. The public must realize, as the legislature does, that regardless of the extent to which the driving of motor vehicles is allowed it is a privilege, not a right, and that driving carries with it a serious social responsibility in the form of an ability to compensate adequately those who are injured as a result of motor vehicle accidents. Those persons who try to obtain this privilege without the concomitant responsibilities must be dealt with severely, and therefore this chapter treats uninsured drivers more severely than those who obtain the legally required no-fault insurance coverage. To the extent that this different treatment exists in the criminal or civil areas, it is done with the specific legislative intent of encouraging participation by all drivers in the no-fault insurance system which this chapter establishes. For those persons truly economically unable to afford insurance, the legislature has provided for them under the public assistance provisions of this chapter. Therefore, there is no valid reason for persons not to have insurance under this chapter."

SECTION 5. Section 294-6, Hawaii Revised Statutes, subsection (a), is reenacted and amended to read as follows:

"(a) Tort liability of the owner, operator, or user of an insured motor vehicle, or the operator or user of an uninsured motor vehicle who operates or uses such vehicle without reason to believe it to be an uninsured motor vehicle, with respect to accidental harm arising from motor vehicle accidents occurring in this State, is abolished, except as to the following persons or their personal representatives, or legal guardians, and in the following circumstances:

(1) Death occurs to such person in such a motor vehicle accident; or injury occurs to such person which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or injury occurs to such person which consists of a permanent and serious disfigurement which results in subjection of the injured person to mental or emotional suffering;

(2) Injury occurs to such person in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 294-10(b) for expenses provided in section 294-2(10) (A) and (B);

(3) Injury occurs to such person in such an accident and as a result of such injury the aggregate limit of no-fault benefits outlined in section 294-2(10) payable to such person are exhausted.

This section shall apply whether or not the injured person is entitled to receive no-fault benefits.

SECTION 6. Section 294-36, Hawaii Revised Statutes, subsection (b), is reenacted.

"(b) No suit arising out of a motor vehicle accident shall be brought in tort more than:

(1) Two years after the date of the motor vehicle accident upon which the claim is based; or

(2) Two years after the date of the last payment of no-fault or optional additional benefits; whichever is the later."

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved June 9, 1983.)

Note

1. No bracketed material. Edited pursuant to HRS §23G-16.5.