

A Bill for an Act Relating to Motor Vehicles Insurance.

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

SECTION 1. One of the primary means of enforcing the compulsory insurance requirements of the Hawaii no-fault law is the requirement that the no-fault card be shown when a motorist is stopped by a police officer. This means of enforcement is frustrated when a person purchases coverage for a stated period, obtains the no-fault identification card showing coverage for the period, and subsequently cancels the policy or has the policy terminated by failing to pay premiums. While the policy may no longer be in effect, the motorist still has the card showing the alleged coverage. Currently, the only enforcement mechanism against this practice is the criminal prosecution of persons who fraudulently use or display no-fault identification cards knowing that the policy has been canceled. Depending upon the amount of the fine imposed, it may be cheaper to pay the fine for the fraudulent use of the card than to pay the no-fault premiums. Accordingly, it is the purpose of this Act to remedy this problem by:

- (1) Requiring persons who are applying for the first time with an insurer to be issued a no-fault identification card for a period not to exceed the period for which premiums have been paid or earned;
- (2) Requiring that when a no-fault policy is canceled before the end of the policy period, the insured shall return the no-fault identification card to the insurer;
- (3) Providing civil sanctions against fraudulent card users which will give insurance companies an incentive to assist law enforcement agencies in working against the problem; and
- (4) Taking the "profit" out of the fraudulent use of cards by making the fraudulent use more expensive than the payment of premiums.

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

"§294- Use of no-fault identification card after cancellation of policy; civil sanctions. (a) When a no-fault policy is canceled before the end of the policy period, the insured shall return either the no-fault identification card for the policy or if the card is lost or stolen, an affidavit signed by the insured stating that fact to the insurer within thirty days after being notified of the

cancellation. The insurer's notice of cancellation shall include the reason for the cancellation and a statement of actions which may be taken under this section if the card is not returned. If the card or affidavit is not returned within the period specified, the insurer may:

- (1) If the premiums for the period shown on the no-fault identification card have been prepaid, withhold the unearned portions of the premiums until the identification card or an affidavit signed by the insured has been returned. In addition, all premiums shall be considered "earned" until the card is returned.
- (2) If the premiums for the period shown on the identification card have not been paid in full, bring a civil action for three times the unpaid portion of the premiums. Notwithstanding sections 607-14 and 607-17, the insurer shall be awarded reasonable attorneys' fees and court costs. If the no-fault identification card is returned after the civil action is filed but before the matter is taken to trial, the insurer shall be awarded damages of not less than \$100, but not more than the amount of the unpaid premiums together with reasonable attorneys' fees and costs as provided in this section.

Notwithstanding the provisions of this section the imposition of criminal sanctions under section 294-39 shall not be precluded."

SECTION 3. Section 294-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Except as provided in subsection (d), an application for a no-fault policy, including required optional additional insurance meeting provisions of section 294-11, covering a motor vehicle shall not be rejected by an insurer authorized to issue a no-fault policy unless:

- (1) The principal operator of the vehicle does not have a license which permits the operator to operate the vehicle, or
- (2) The application is not accompanied by [a reasonable portion of the premium, as determined under rules of the commissioner.] at least six months premium for such coverage. Nothing herein prohibits an insurer, at its discretion, from accepting a minimum of two months premium and issuing a policy; provided that a temporary no-fault identification card may not be issued for a period exceeding the period for which premiums have been paid or earned. A no-fault identification card in compliance with section 294-8.5 shall be issued by the insurer once any outstanding premium balance for the policy is paid. This paragraph shall apply only to the first application of a person for a no-fault policy and shall not apply to applications for commercial and fleet vehicles.

(c) A no-fault policy, including required optional additional insurance meeting provisions of section 294-11, once issued shall not be canceled or refused renewal by an insurer except for:

- (1) Suspension or revocation of the license of the principal operator to operate the type of motor vehicle insured, or
- (2) Failure to pay the premium for the policy after reasonable demand therefor.

An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 294-11 where the insured is a member of a class set forth in section 294-22(b)(1)(A) or (B) at the time of the refusal to renew. In any case of cancellation or refusal to renew, the insurer shall continue all no-fault and optional additional coverages in force, to the date of expiration, or for thirty days following notice, whichever date first occurs. Within fifteen days of a cancellation[,] and the return of the no-fault identification card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 294- . In any case of cancellation or refusal to renew, written notice shall be given to the insured, not less than thirty days prior to the effective date of the cancellation or refusal to renew. The cancellation or refusal to renew shall not be deemed valid unless supported by a certificate of mailing properly validated by the United States Postal Service.

If the insurer has manifested in writing an offer to renew to the named insured at least thirty days prior to the end of the policy period and the offer is not accepted before the expiration of the policy term, the policy shall lapse upon that expiration date and this subsection shall not apply. Notwithstanding other valid methods of acceptance, an offer shall be deemed accepted as of the date of mailing of the acceptance. The date of mailing may be evidenced by the postmark or a certificate of mailing properly validated by the United States Postal Service."

SECTION 4. This Act does not affect rights and duties which matured, penalties which were incurred, and proceedings which were begun, or no-fault policies which were canceled prior to its effective date. This Act shall apply to no-fault policies entered into before but canceled after its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 1984.

(Approved May 29, 1984.)

Note

1. Edited pursuant to HRS §23G-16.5.