

ACT 208

S.B. NO. 1814

A Bill for an Act Relating to Insurance for Motorcycles and Motor Scooters.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be designated and to read as follows:

**“ARTICLE 10G
MOTORCYCLE AND MOTOR SCOOTER INSURANCE**

PART I. GENERAL PROVISIONS

§431:10G-101 Definitions. As used in this article:

“Accidental harm” means bodily injury, death, sickness, or disease caused by a motorcycle or motor scooter accident to a person.

“Injury” means accidental harm not resulting in death.

“Motor scooter” has the meaning prescribed by section 286-2.

“Motorcycle” has the meaning prescribed by section 286-2.

“Motor scooter accident” means an accident arising out of the operation, maintenance, or use of a motor scooter, but not involving a motor vehicle.

“Motorcycle accident” means an accident arising out of the operation, maintenance, or use of a motorcycle, but not involving a motor vehicle.

“Owner” means a person who holds the legal title to a motorcycle or motor scooter; except that when a motorcycle or motor scooter is the subject of a security agreement or lease with a term of not less than one year, with the debtor or lessee having the right of possession, the term owner shall mean the debtor or lessee. Whenever transfer of title to a motorcycle or motor scooter occurs, the seller shall be considered the owner until delivery of the executed title to the buyer. Upon delivery of the executed title, the buyer holding the equitable title shall be considered the owner.

“Person” means, when appropriate to the context, not only individuals, but corporations, firms, associations, and societies.

§431:10G-102 Conditions of operation and registration of motorcycles and motor scooters. No person shall drive a motorcycle or motor scooter upon

any public street, road, or highway of this State at any time unless such motorcycle or motor scooter is insured at all times under a liability policy as provided in section 431:10G-301.

§431:10G-103 Motorcycle or motor scooter self-insurance. The motorcycle or motor scooter insurance required by section 431:10G-102 may be satisfied by any owner of a motorcycle or motor scooter if:

- (1) Such owner provides proof of qualifications as a self-insurer, and a surety bond or other securities affording security substantially equivalent to that afforded under a policy meeting the requirements of section 431:10G-301 and providing coverage at all times for the entire motorcycle or motor scooter registration period, as determined and approved by the commissioner under rules; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against such owner as the claimant would have had if a policy meeting the requirements of section 431:10G-301 had been applicable to such motorcycle or motor scooter.

§431:10G-104 Prerequisites for obtaining coverage. Any person seeking to obtain the liability coverage required by this part after the effective date of this section, shall first:

- (1) Have obtained a valid motorcycle or motor scooter license; or
- (2) Have obtained a valid motorcycle or motor scooter learner's permit and have taken and passed a motorcycle education course approved by the department of transportation.

§431:10G-105 Tort liability. (a) With respect to accidental harm incurred in or arising out of a motorcycle accident or motor scooter accident, tort liability is not abolished.

(b) Any owner or operator of a motorcycle or motor scooter involved in a motor vehicle accident as defined in section 431:10C-103(9) and who incurs accidental harm as defined in section 431:10C-103(1), including such person's representative or legal guardian, shall not have a cause of action in tort except in the following circumstances:

- (1) Death occurs to the owner or operator in such a motor vehicle accident;
- (2) Injury occurs to the owner or operator which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or
- (3) Injury occurs to the owner or operator which consists of a permanent and serious disfigurement which results in subjection of the owner or operator to mental or emotional suffering; or
- (4) Injury occurs to the owner or operator in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 431:10C-308 for expenses provided in section 431:10C-103(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit.

§431:10G-106 Verification of insurance. Every insurer shall issue to each of its insureds a proof of insurance card for each motorcycle or motor scooter for which a liability policy under this section is written. The proof of insurance card shall show the following:

- (1) Name, make, year, and factory or serial number of the motorcycle or motor scooter; provided that insurers of five or more motorcycles or motor scooters which are under common registered ownership and used in the regular course of business shall not be required to indicate the name, make, year, and the factory or serial number of each motorcycle or motor scooter;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.

The proof of insurance card shall be carried on the person operating the insured motorcycle or motor scooter at all times and shall be exhibited to a law enforcement officer upon demand.

§431:10G-107 Drivers' education fund underwriters' fee. (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers' education fund underwriters' fee of \$2 a year on each motorcycle or motor scooter insured by each insurer or self-insurer. This fee shall be due and payable in full on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit these fees into a special drivers' education fund account.

(c) The fees deposited for each fiscal year shall be distributed to and expended by the University of Hawaii community college employment training office for the operation of a drivers' education program for operators of motorcycles or motor scooters.

§431:10G-108 Penalties. Any person who violates this article shall be subject to a citation by the police and shall be subject to a nonsuspendable fine of not less than \$100 nor more than \$1,000, thirty days imprisonment, a one year driver's license suspension, or any combination thereof, for each violation.

§431:10G-109 Rules. The commissioner may adopt rules pursuant to chapter 91 necessary for the purposes of this article.

PART II. RATES AND ADMINISTRATION

§431:10G-201 Making of motorcycle and motor scooter insurance rates.

(a) All premium rates for motorcycle and motor scooter insurance shall be made in accordance with the following provisions:

- (1) Rates shall not be excessive, inadequate, or unfairly discriminatory;
- (2) Due consideration shall be given to:
 - (A) Past and prospective loss experience within and outside this State, catastrophe hazards, if any, reasonable margin for profit, and contingencies, dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;
 - (B) Past and prospective expenses both country-wide and those specially applicable to this State in the sale and administration of motorcycles and motor scooters insurance; and
 - (C) Investment income from reserves, unearned insurance premiums, and other unearned proceeds received on account of motorcycle and motor scooter insurance sold, and all other factors that may be deemed relevant, if they are established to have a probable effect upon losses, expense, or rates, such as but not limited to types of vehicles, occupations, and involvement in past accidents;

- (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 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; and
 - (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. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (b) Except to the extent necessary to meet the provisions of subsection (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.
- (c) After the effective date of this section, each insurer of a motorcycle or motor scooter shall provide a fifteen per cent reduction off premium charges each insurer assesses for each new and renewal policy for liability coverage issued pursuant to this article if the applicant has successfully completed a motorcycle education course approved by the department of transportation.

§431:10G-202 Rate filings. (a) Every insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motorcycle or motor scooter insurance which it proposes to use. Every filing shall state the proposed effective date of the filing and the character and extent of the coverage contemplated.

(b) The commissioner also 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.

(c) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(d) A filing and any supporting information shall be open to the public upon filing with the commissioner.

§431:10G-203 Rate review: request by aggrieved party. (a) Any person aggrieved by the application as to such person 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 article, the commissioner shall conduct a hearing on the complaint according to the procedure set forth in section 431:14-118.

(b) If, after a hearing conducted pursuant to subsection (a), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this article, the commissioner 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 a specification of the respects in which a violation of this article exists and specifying 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 the manner provided in chapter 91.

§431:10G-204 Rate review: rate methods in noncompliance with article.

(a) 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 the requirements of this article, the commissioner shall, unless the commissioner has good cause to believe that such noncompliance is wilful, give notice in writing to each insurer, stating in what manner and to what extent such noncompliance is alleged to exist and specifying 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 (b).

(b) 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 given under subsection (a), the insurer does not:

- (1) Correct the noncompliance specified by the commissioner; or
- (2) Establish to the satisfaction of the commissioner that such noncompliance does not exist,

then the commissioner may proceed with a hearing which shall be subject to the hearing procedure provided in section 431:14-118.

§431:10G-206 Rate administration. Except as otherwise provided in this article, the commissioner shall implement and evaluate motorcycle and motor scooter insurance rates in compliance with article 14.

PART III. COVERAGES AND RIGHTS

§431:10G-301 Required motorcycle and motor scooter policy coverage.

(a) An insurance policy covering a motorcycle or motor scooter shall provide insurance to pay, on behalf of the owner or any operator of the insured motorcycle or motor scooter, sums which the owner or any operator may legally be obligated to pay for injury, death, or damage to the property of others, except property owned by, being transported by, or in the charge of the insured which arise out of the ownership, operation, maintenance, or use of the motorcycle or motor scooter:

- (1) Liability coverage of not less than \$35,000 for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm; and
 - (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motorcycles or motor scooters and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident.
- (b) At the option of the owner, each insurer shall:
- (1) Offer medical payment coverage up to \$15,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, and dental services, and necessary ambulance, hospital, professional nursing, and funeral services;
 - (2) Offer an income disability plan; and
 - (3) Offer liability coverage in excess of the minimum coverages required by this section."

SECTION 2. Section 431:10C-106, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-106 Specialty insurers not prohibited. [(a) Nothing in this article shall prevent an insurer from offering no-fault insurance policies for only motor vehicles with fewer than four wheels.

(b)] Nothing in this article shall prevent an insurer from offering no-fault policies for only U-drive motor vehicles.”

SECTION 3. Section 431:10C-115, Hawaii Revised Statutes, is amended to read as follows:

“§431:10C-115 Driver’s¹ education fund underwriters’ fee. (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers’ education fund underwriters’ fee of \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable in full on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit [these] the fees into a special drivers’ education fund account.

(c) The commissioner shall allocate the fees deposited for each fiscal year in the following manner:

- (1) Fifty per cent to the commissioner to be expended for the operation of the drivers’ education program provided in section 286-128(m); and
- (2) Fifty per cent to the superintendent of education to support the drivers’ education program administered by the department of education for high school students[;

Provided that all fees received under subsection (a), which are derived from motorcycles, motor scooters or similar vehicles, shall be expended by the University of Hawaii community college employment training office for the operation of a drivers’ education program for operators of motorcycles, motor scooters or similar vehicles].

(d) The commissioner shall make all necessary rules and regulations for the execution of this section and the distribution of this fund.”

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

- “(a) (1) A claim for no-fault benefits for accidental harm of a person who is not an occupant of any motor vehicle involved in [an] a motor vehicle accident may be made against the no-fault insurer of any involved vehicle[; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2].
- (2) The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but the insurer shall thereafter be entitled to recover from the no-fault insurer of all other involved vehicles proportionate contribution for the benefits paid and the cost of processing the claim.”

SECTION 5. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person, or such person’s legal representative, shall be disqualified from receiving benefits through the plan if:

- (1) Such person is disqualified for criminal conduct under section 431:10C-305(d) from receiving the no-fault benefits; or
- (2) Such person was:
 - (A) The owner or registrant of [an uninsured or insured] the motor vehicle at the time of [its] the motor vehicle’s involvement in the accident out of which such person’s accidental harm arose; [or]

- (B) The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle; [or]
- (C) The owner, [or] operator, or passenger of a motorcycle or motor scooter as defined in section 286-2[.]; or
- (D) A pedestrian incurring accidental harm arising out of a motorcycle accident or a motor scooter accident, as defined in section 431:10G-101."

SECTION 6. Article 10C, Part V of Chapter 431, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

Note

1. So in original.