

ACT 113

H.B. NO. 850

A Bill for an Act Relating to the Hawaii Motor Vehicle Accident Reparations Act.

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

SECTION 1. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of “motor vehicle” to read:

“(8) “Motor vehicle” means any vehicle of a type required to be registered under chapter 286, including a vehicle with less than four wheels or a trailer.”

SECTION 2. Section 294-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

“(c) “Maximum limit.” The total no-fault benefits payable per person or on his death to his survivor on account of accidental harm sustained by him in any one motor vehicle accident shall be \$15,000, regardless of the number of motor vehicles involved or policies applicable.”

SECTION 3. Section 294-4, Hawaii Revised Statutes, is amended to read:

“**Sec. 294-4 Obligation to pay no-fault benefits.** Every no-fault and self-insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 294-5(c):
 - (A) In the case of injury arising out of a motor vehicle accident to any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian (including a bicyclist) who sustains accidental harm as a result of the operation, maintenance, or use of said vehicle, the insurer shall pay, without regard to fault, to such person an amount equal to the no-fault benefits payable to such person as a result of such injury; or
 - (B) In the case of death arising out of a motor vehicle accident of any person, including the owner, operator, occupant, or user of the insured motor vehicle, or any pedestrian (including a bicyclist) who sustains accidental harm as a result of the operation, maintenance, or use of said vehicle, the insurer shall pay, without regard to fault, to the legal representative of such person, for the benefit of the surviving spouse and any dependent, as defined in section 152 of the Internal Revenue Code of 1954, of such person, an amount equal to the no-fault benefits payable to such spouse and dependent as a result of the death of such person, subject, however, to the provisions of section 294-2(10).
- (2) Payments for no-fault benefits shall be made as such benefits accrue except that in the case of death, payment for such benefits may, at the option of the beneficiary, be made immediately in a lump sum payment. Amounts of benefits accrued unpaid thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof shall, after the expiration of such thirty days, bear interest at the rate of one and one-half per cent per month.
- (3) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which such benefits are paid. The insurer shall pay, subject to section 294-30, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit, necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable, and it shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any such contract.”

SECTION 4. Section 294-6, Hawaii Revised Statutes, is amended to read:

“Sec. 294-6 Abolition of tort liability. (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 administrators, executors, 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 the 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.

(b) No provision of this chapter shall be construed to exonerate, or in any manner to limit, the liability of any person in the business of manufacturing, retailing, repairing, servicing, or otherwise maintaining motor vehicles, arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle in the course of his business.

(c) No provision of this section shall be construed to exonerate, or in any manner to limit the criminal or civil liability of any person who, in the maintenance, operation, or use of any motor vehicle:

- (1) Intentionally causes injury or damage to a person or property; or
- (2) Engages in criminal conduct which causes injury or damage to person or property; or
- (3) Engages in conduct resulting in punitive or exemplary damages.

(d) No provision of this section shall be construed to abolish tort liability with respect to property damage arising from motor vehicle accidents.

SECTION 5. Section 294-8, Hawaii Revised Statutes, is amended to read:

“Sec. 294-8 Conditions of operations and registration.

- (a) (1) No person may register any motor vehicle in this State or operate or use a motor vehicle upon any public street, road, or highway of this State at any time unless such motor vehicle is insured under a no-fault policy, containing the requirements of this chapter and pursuant to such regulations, including those determining the manner

and term of proof of such insurance as the commissioner shall prescribe.

(2) The requirements of this subsection may be satisfied by any owner of a motor vehicle if:

(A) Such owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a no-fault policy, as determined and approved by the commissioner under regulations, and

(B) The commissioner is satisfied that in case of injury or death or property damage, any claimant would have the same rights against such owner as the claimant would have had if a no-fault policy had been applicable to such vehicle.

(b) Any person who violates the provisions of subsection (a) shall be subject to the provisions of subsection 294-39(a).

(c) The provisions of this chapter shall not apply to any vehicle owned by or registered in the name of any agency of the federal government."

SECTION 6. Section 294-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read:

"(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 may not be rejected by an insurer authorized to issue such a policy unless:

(1) The principal operator of such vehicle does not have a license which permits him to operate such vehicle, or

(2) The application is not accompanied by a reasonable portion of the premium, as determined under regulations of the commissioner.

(c) A no-fault policy, including required optional additional insurance meeting provisions of section 294-11, once issued may 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 such policy after reasonable demand therefor.

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, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. In any case of cancellation or refusal to renew written notice by registered or certified mail deliverable to addressee only, shall be given to the insured not less than thirty days prior to the effective date of such cancellation or refusal to renew. Within five calendar days after actual cancellation or processing a cancellation of no-fault insurance, whether at the option of the insurer or the insured, the insurer shall give written notice to the director of finance and the chief of police of the appropriate county of registration."

SECTION 7. Section 294-10, Hawaii Revised Statutes, is amended to read:

"Sec. 294-10 Required policy coverage. (a) In order to be a no-fault policy, an insurance policy covering a motor vehicle shall provide, in addition to the coverage specified in section 294-4, insurance to pay on behalf of the owner or any operator of the insured motor vehicle sums which the owner or operator may legally be obligated to pay for injury, death, or damage to 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 motor vehicle:

- (1) Liability coverage of not less than \$25,000 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 arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles 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 arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle.

(b) The commissioner shall accumulate experience data for all motor vehicle accidents in the State on a yearly basis commencing September 1, 1974, resulting in accidental harm, and shall tabulate the amounts of benefits paid; claims filed; and tort claims filed, settled or litigated; hereinafter collectively termed "claims," for expenses specified in section 294-2(10)(A) and (B) for each of these accidents. He shall arrange the claims made by dollar value from maximum to zero and then determine, annually, that specific figure in dollar value, below which are ninety per cent of all motor vehicle accident medical-rehabilitative claims made or paid during the year. This specific figure shall be utilized annually as the medical-rehabilitative limit during the third and succeeding years for all accidents occurring during those years for the purpose of section 294-6(a)(2). During the first two years of the no-fault program, September 1, 1974 through August 31, 1976, the medical-rehabilitative limit shall be \$1,500.

(c) For the purposes of this section the no-fault policy term year shall commence annually on September 1 and terminate the following August 31. For each term year the commissioner shall make the tabulation of data necessary for the computation of the medical-rehabilitation limit during the period July 1 to June 30 preceding the September 1 start of the no-fault policy term year."

SECTION 8. Section 294-13, Hawaii Revised Statutes, is amended by amending subsections (b) and (j) to read:

"(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 experi-

ence 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 commissioner 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.

(j) For the period of three years from September 1, 1975, and terminating on August 31, 1978, 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 three-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 three-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, 1977, 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, 1977.

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

SECTION 9. Section 294-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

"(b) The plan shall provide all no-fault benefits and services and tort liability coverage, to the limits and coverages specified in part I for all classes of persons, motor vehicles, and motor vehicle uses specified in this section upon the payment of premiums as provided in section 294-4, as follows:

- (1) The plan shall provide no-fault benefits and policies for each of the following classes, and each class shall be able to secure a no-fault and tort liability policy through the plan:
- (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner shall, by regulation, define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of his examination

of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk automobile driver.

- (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving,
 - (ii) Driving while license suspended or revoked,
 - (iii) Leaving the scene of an accident,
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle,
 - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marihuana, as provided in section 291-7.
 - (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuitously.
 - (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in (C) or the exclusive use of a vehicle for domestic-household-familial purposes;
 - (E) All motorcycles, motor scooters, and vehicles with less than four wheels required to be registered under chapter 286.
- (2) The plan shall provide no-fault benefits and policies for all classes of persons, motor vehicles and motor vehicle uses, at the premiums specified under section 294-24, at the options of the owners, for the following classes, which the commissioner shall, by regulation, further define and regulate:
- (A) All licensed drivers receiving public assistance benefits consisting of medical services or direct cash payments through the department of social services and housing, or benefits from the Supplemental Security Income Program under the Social Security Administration; provided, however, said licensed drivers are the registered owners of motor vehicles to be insured under this chapter.
 - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver-owner (A) or (B) may secure no-fault coverage through the plan at the individual's option, provided any previous no-fault policy has expired or has been cancelled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid coverage under any no-fault policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible, under regulations to be adopted by the commissioner, under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private

insurer's coverage.

Any person covered by the plan under subparagraph (A) shall remain eligible for coverage under the plan for a consecutive period of three months following the month in which eligibility for any public assistance benefits terminate.

- (3) Under the joint underwriting plan, all basic no-fault coverages, including the basic no-fault policy, the mandatory \$25,000 public liability and the \$10,000 property damage policies shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, optional additional coverages shall be offered by every insurer in conformance with section 294-11, for each class except that defined in paragraph (2)(A), as the commissioner shall, by regulation, provide."

SECTION 10. Section 294-24, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

"(b) The commissioner shall periodically set rate schedules, but not less frequently than annually, for all classes, in accordance with this part and the following criteria, so that the total premium income, from all plan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all joint underwriting plan classes, the joint underwriting assigned claims plan, and the administration of the plans. The commissioner shall establish rates for the following classes within the restrictions stated:

- (1) Motorcycles and motor scooters shall be assessed a premium rate not in excess of that assessed the same driver for automobile coverage; with provisions for deductible no-fault policies of \$100, \$300, \$500, and \$1,000;
- (2) For the licensed public assistance driver, as defined in section 294-22(b)(2)(A), no premium shall be assessed for the basic no-fault, the mandatory public liability or the mandatory property damage policies; and all policies shall conform to the provisions of section 294-22(b)(2); and
- (3) For the physically limited driver defined at section 294-22(b)(2)(B), no rate shall be set higher than that assessed a comparable driver without limitation, except that a higher rate may be surcharged under any applicable standard conforming with section 294-24(a)(2).

The commissioner shall set various systems and schedules of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses, for each of the enumerated classes except the classes limited under paragraphs (2) and (3)."

SECTION 11. Section 294-35, Hawaii Revised Statutes, is amended to read:

"Sec. 294-35 Allocation of burdens until system established. The commissioner shall within two years after the effective date of this chapter establish a system of proportionate reimbursement as authorized by the provisions on equitable allocation of burdens among insurers and self-insurers under

section 294-34(c). Until the commissioner has adopted by regulation other criteria for proportionate reimbursement consistent with those provisions of section 294-34(a),

- (1) In accidents involving motor vehicles with a gross weight of more than ten thousand pounds and a vehicle with a gross weight of less than ten thousand pounds, the insurer or self-insurer of the heavier vehicle shall reimburse seventy-five per cent of the no-fault benefits paid by the insurer or self-insurer of the lighter vehicle. However, in conjunction with section 294-7, the insurer or self-insurer of the lighter vehicle shall not recover more than twenty-five per cent of all no-fault benefits paid to any person who effects a tort liability settlement for accidental harm.
- (2) In accidents involving motor vehicles with four or more wheels and motor vehicles with less than four wheels, the insurer or self-insurer of the motor vehicle with four or more wheels shall reimburse eighty per cent of the no-fault benefits paid by the insurer or self-insurer of the motor vehicle with less than four wheels. However, in conjunction with section 294-7, the insurer or self-insurer of the motor vehicle with less than four wheels shall not recover more than twenty per cent of all no-fault benefits paid to any person who effects a tort liability settlement for accidental harm."

SECTION 12. Section 294-39, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) Any person subject to the provisions of this chapter in the capacity of the operator, owner or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this chapter, shall be subject to citation for such violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit. Each violation shall be deemed a separate offense and shall be subject to a fine not to exceed \$1,000 or thirty days imprisonment, or suspension of motor vehicle operator's license, or forfeiture of motor vehicle certificate of registration, or any combination of such penalties."

SECTION 13. Section 286-140, Hawaii Revised Statutes, is repealed.

SECTION 14. Chapter 294, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately numbered, and to read:

"Sec. 294- Drivers' education fund underwriters' fee. (a) There is assessed and levied upon each insurer and self-insurer, as defined in section 294-2, a drivers' education fund underwriters' fee of one dollar per 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 underwriters' fees into a special drivers' education fund account which shall be allocated as follows:

- (1) For the fiscal year 1975-76, 70 percent to the commissioner which shall be expended for the operation of the driver education program

provided for in section 286-128(m) and 30 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, 60 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 40 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, 50 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 50 per cent to the superintendent of the department of education to support the driver education program administered by the department for high school students.

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

SECTION 15. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 16. This Act shall take effect upon its approval.

(Approved May 17, 1975.)

*Edited accordingly.