

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 "accidental harm" and "motor vehicle accident" to read:

- "(1) "Accidental harm" means bodily injury, death, sickness, or disease caused by a motor vehicle accident to a person.
- (9) "Motor vehicle accident" means an accident arising out of the operation, maintenance, or use of a motor vehicle, including an object drawn or propelled by a motor vehicle."

SECTION 2. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of "insurer" to read:

- "(6) "Insurer" means every person licensed to engage in the business of making contracts of motor vehicle insurance and includes reciprocal or interinsurance exchanges."

SECTION 3. Section 294-2, Hawaii Revised Statutes, is amended by amending the definition of "No-fault benefits" to read:

- "(10) "No-fault benefits" with respect to any accidental harm shall be subject to an aggregate limit of \$15,000 per person or his survivor and means:
 - (A) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional nursing, dental, optometric, ambulance, prosthetic services, products and accommodations furnished, x-ray and may include any non-medical remedial care and treatment rendered in accordance with the teachings, faith or belief of any group which depends for healing upon spiritual means through prayer;
 - (B) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
 - (C) Monthly earnings loss measured by an amount equal to the lesser of:
 - (i) \$800 per month, or
 - (ii) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity, or
 - (iii) A monthly amount equal to the amount, if any, by which the lesser of (i) or (ii) exceeds any lower monthly earnings of the person sustaining injury at the time he resumes gainful activity.
 - (D) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to, (i) expenses incurred in obtaining services in substitution of those

that the injured or deceased person would have performed for the benefit of himself or his family up to \$800 per month, (ii) funeral expenses not to exceed \$1,500, and (iii) attorney's fees and costs to the extent provided in section 294-30(a);

provided that the term, when applied to persons described in section 294-22(b) (2) (A), shall not include benefits under subparagraph (A), (B), and (C)."

SECTION 4. Section 294-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read:

"(d) The no-fault insurance applicable on a primary basis to accidental harm to which this chapter applies is the insurance on the vehicle occupied by the injured person at the time of the accident, or, if the injured person is a pedestrian, the insurance on the vehicle which caused accidental harm to such pedestrian.

If there is no such insurance on such vehicle, any other no-fault insurance applicable to the injured person shall apply.

No person shall recover no-fault benefits from more than one insurer for accidental harm as a result of the same accident."

SECTION 5. Section 294-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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 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. Such cancellation or refusal to renew shall not be deemed valid unless supported by a certificate of mailing properly validated by the United States Post Office."

SECTION 6. Section 294-13, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(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 operational-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, 1978, 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, 1978.

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 7. Section 294-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) The board shall elect its chairman and vice-chairman annually. The first meeting of the board shall be convened by the commissioner within sixty days of the effective date of this chapter. Thereafter, the board shall meet at its discretion, but not less frequently than quarterly."

SECTION 8. 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 294-24, 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.

- (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 9. 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 10. This Act shall take effect upon its approval.

(Approved May 12, 1976.)

*Edited accordingly.