

ACT 261

H.B. NO. 274

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 the “motor vehicle” to read as follows:

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

SECTION 2. Section 294-4, Hawaii Revised Statutes, is amended to read as follows:

“**§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), or any user or operator of a moped as defined in section 249-1 who sustains accidental harm as a result of the operation, maintenance, or use of [said] the vehicle, the insurer shall pay, without regard to fault, to [such] the person an amount equal to the no-fault benefits payable to [such] the person as a result of [such] the 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), or any user or driver of a moped as defined in section 249-1 who

sustains accidental harm as a result of the operation, maintenance, or use of [said] the vehicle, the insurer shall pay, without regard to fault, to the legal representative of [such] the 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] the person, an amount equal to the no-fault benefits payable to [such] the spouse and dependent as a result of the death of [such] the person, subject, however, to the provisions of section 294-2(10).

- (2) [Payments for] Payment of no-fault benefits shall be made as [such] the benefits accrue except that in the case of death, payment [for such] of the 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) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof. If the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward the claimant an itemized list of all the required documents.
- (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
- [(3)] (5) 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] the 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.
- (6) Any insurer who violates the provisions of this section shall be subject to the provisions of subsections 294-39(b) and (c)."

SECTION 3. Section 294-5, Hawaii Revised Statutes, is amended to read as follows:

"§294-5 Payment from which insurer. (a) A claim for no-fault benefits for accidental harm of a person who is not an occupant of any motor vehicle

involved in an accident may be made against the no-fault insurer of any involved vehicle. The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but [such] the insurer shall thereafter be entitled to recover from the no-fault insurers of all other involved vehicles proportionate contribution for the benefits paid and the costs of processing the claim.

(b) All no-fault benefits shall be paid secondarily and net of any benefits a person is entitled to receive because of the accidental harm from [social security laws or] workers' compensation laws; provided that this section shall be inapplicable to benefits payable to a surviving spouse and any surviving dependent as provided under section 294-4. If the person does not collect such benefits under [such] the workers' compensation laws by reason of the contest of his right to so collect by the person or organization responsible for payment thereof, the injured person, if otherwise eligible, shall, nevertheless, be entitled to receive no-fault benefits and upon payment thereof the no-fault insurer shall be subrogated to the injured person's rights to collect such benefits.

(c) No payment of no-fault benefits may be made to the occupants of a motor vehicle other than the insured motor vehicle or to the operator or user of a motor vehicle engaging in criminal conduct which causes any loss.

(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 (including a bicyclist), the insurance on the vehicle which caused accidental harm to [such] the pedestrian (including a bicyclist).

If there is no [such] insurance on [such] the 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 4. Section 294-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person making a claim for no-fault benefits may be allowed an award of a reasonable sum for attorney's fee, based upon actual time expended, which shall be treated separately from [such] the claim and be paid directly by the insurer to the attorney, and all reasonable costs of suit in an action brought against an insurer who denies all or part of a claim for benefits under [such] the policy unless the court or the commissioner, upon judicial or administrative proceedings, respectively, determines that the claim was fraudulent, excessive, or frivolous."

SECTION 5. Section 294-31, Hawaii Revised Statutes, is amended to read as follows:

"**§294-31 Fraudulent or frivolous claims.** Within the discretion of the court[,], or the commissioner, upon judicial or administrative proceedings, respectively, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee, based upon actual time expended, and all reasonable costs of suit for its defense against a person making claim against [such] the insurer or self-insurer where [such] the claim is determined by the court or the commissioner to be fraudulent or frivolous, and [such] the attorney's fee and all [such] reasonable costs

of suit so awarded may be treated as an offset against any benefits due or to become due to [such] the person.”

SECTION 6. Section 294-31.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§294-31.5]]~~ **Administrative hearing on denial of claim.** [(a) If an insurer or self-insurer elects to deny a claim for no-fault or optional additional insurance benefits in whole or in part, it shall within five business days thereafter notify the claimant in writing of the denial and the reasons for the denial.

(b)] (a) If a claimant objects to the denial of benefits[, he] by an insurer or self-insurer pursuant to section 294-4 and desires an administrative hearing thereupon, the claimant shall file with the commissioner two copies of the denial, a written request for review and a written statement setting forth specific reasons for [his] the claimant’s objections. The documents must be filed within sixty days after the date of denial of [his] the claim.

[(c)] (b) The commissioner shall not review any denial of benefits [in which] where the disputed amount exceeds \$5,000[.] as of the date of the denial; provided that if the amount in dispute exceeds \$5,000 due solely to an insurer’s or self-insurer’s noncompliance with section 294-4, then the claim shall remain within the jurisdiction of the commissioner.

[(d)] (c) The commissioner shall conduct a hearing to review the denial of benefits in conformity with chapter 91. The commissioner shall have all the powers to conduct a hearing as set forth in section 92-16. After granting an opportunity for hearing to the insurer and claimant, the commissioner shall affirm the denial or reject the denial and order the payment of benefits as the facts may warrant.

[(e)] (d) The commissioner may assess the cost of the hearing upon either or both of the parties.

(e) The commissioner’s final order may be appealed in the manner provided for by chapter 91.”

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

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

(Approved June 11, 1983.)