

ACT 166

H.B. NO. 1698

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 "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 or 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 not for income but 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 that term, when applied to a no-fault policy issued at no cost under the provisions of section 294-24(b) (2), shall not include benefits under subparagraph (A), (B), and (C) for any person receiving public assistance benefits."

SECTION 2. Section 294-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

"(18) "Person receiving public assistance benefits" means any person receiving 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."

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

"Sec. 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 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. If the person does not collect such benefits under such 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 pedestrian (including a bicyclist).

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

"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 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 claim may be made for benefits under the uninsured motorist coverage by an injured person against an insurer who has paid or is liable to pay no-fault benefits to such injured person unless such claim meets the requirements of the foregoing sections (a) (1), (2) or (3).

(c) No provision of this section shall be construed to abolish tort liability 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.

(d) 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.

(e) 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 294-7, Hawaii Revised Statutes, is amended to read:

"Sec. 294-7 Rights of subrogation. Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, the no-fault insurer shall be subrogated to fifty per cent of the no-fault benefits, up to the maximum limit specified by section 294-3(c), paid to such person."

SECTION 6. Section 294-11, Hawaii Revised Statutes, is amended by amending subsection (a) (3) to read:

"(3) Additional coverages and benefits with respect to any injury, death, or any other loss from motor vehicle accidents or loss from operation of a motor vehicle. An insurer may provide for aggregate limits with respect to such additional coverage so long as the basic liability coverages provided are not less than those required by section 294-10 (a) (1) and (2)."

SECTION 7. 294-13, Hawaii Revised Statutes, is amended by amending subsection (j) to read:

"(j) For the period of eight years from September 1, 1975, and terminating on August 31, 1983, 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 eight-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 eight-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, 1983, 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, 1983.

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 8. Section 294-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person, or his legal representative, shall be disqualified from receiving benefits through the plan, if:

- (1) Such person is disqualified for criminal conduct under section 294-5(c) from receiving the no-fault benefits, or
- (2) Such person was:
 - (A) The owner or registrant of an uninsured motor vehicle at the time of its 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."

SECTION 9. 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 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 policy unless the court determines that the claim was fraudulent, excessive, or frivolous."

SECTION 10. 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 11. This Act shall take effect upon its approval.

(Approved June 2, 1977.)

*Edited accordingly.