

ACT 33

S.B. NO. 1658-78

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 294-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

“(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 however, 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 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.”

SECTION 2. Section 294-23, Hawaii Revised Statutes, is amended to read:

“**Sec. 294-23 Joint underwriting plan assigned claims, eligibility.** (a) Each person sustaining accidental harm, or his legal representative, may, except as provided in subsection (b) of this section, obtain the no-fault benefits through the plan whenever:

- (1) No insurance benefits under no-fault policies are applicable to the accidental harm; or
- (2) No such insurance benefits applicable to the accidental harm can be identified; or

- (3) The only identifiable insurance benefits under no-fault policies applicable to the accidental harm will not be paid in full because of financial inability of one or more self-insurers or insurers to fulfill their obligations.

(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 or insured 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.

(c) Any person eligible for benefits under this section, or who becomes eligible to file a claim or an action against the mandatory public liability or property damage policies, shall, upon the bureau's determination of such eligibility, be entitled to:

- (1) The full no-fault benefits as if such victim had been covered as an insured at the time of the accident producing the accidental harm.

- (2) The rights of claim and action against the insurer, assigned under section 294-20(b), with reference to the mandatory public liability policy for accidental harm, and with reference to the mandatory property damage policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory public liability or property damage policies, or the basic no-fault policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of parts I and III of this chapter, except that the date of notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 294-36.

(d) By regulation, promulgated by the commissioner, each self-insurer shall be assessed its equitable proration of all costs and claims paid under this section, annually. No claim shall be assigned to any self-insurer for servicing. Proration for insurers and self-insurers shall be founded upon a pro rata distribution for each premium dollar actually or theoretically received. Self-insurers shall be assessed that prorated amount based upon the total premium cost for the coverage and vehicles stated in its certificate of self-insurance, as if the self-insurer had sold such coverage at the premium rates applicable under section 294-24.

(e) If a person qualifies for assignment or benefits under this section, the joint underwriting plan or any insurer to whom the claim is assigned by the plan shall be subrogated to the rights of such person and shall have a claim for relief or a cause of action, separate from that of such persons, to the extent that:

- (1) It has paid no-fault benefits; and

- (2) Elements of damage compensated for by the plan with reference to the mandatory public liability policy for accidental harm and with reference to the mandatory property damage policy for property damage

sustained are paid.”

SECTION 3. 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 4. This Act shall take effect upon its approval.

(Approved April 18, 1978.)

*Edited accordingly.