

ACT 231

S.B. NO. 309

A Bill for an Act Relating to Insurance for Motor Vehicles and Other Vehicles.

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

SECTION 1. Chapter 294, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§294- Motorcycles and motor scooters excluded from chapter. (a) All motorcycles and motor scooters required to be registered under chapter 286 shall be exempt from chapter 294; provided that:

- (1) No person shall drive a motorcycle or motor scooter upon any public street, road, or highway of this State at any time unless such vehicle is insured at all times under a liability insurance policy as provided in this section; and
- (2) In the case of accidental harm arising out of a motorcycle or motor scooter accident to any passenger of said motorcycle or motor scooter, or any pedestrian, motorcycles and motor scooters will not be exempt from sections 294-4, 294-6, and 294-10; and
- (3) In the case of accidental harm arising out of an accident involving a motorcycle or motor scooter and a motor vehicle, the owner or operator of a motorcycle or motor scooter will not be exempt from section 294-6.

(b) The insurance policy required under this section shall provide insurance to pay on behalf of the owner or any operator of the insured vehicle sums which the owner or operator may legally be obligated to pay for injury, death, or damage to the 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 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;
- (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.
- (c) At the option of the owner, each insurer shall:
 - (1) Offer medical payment coverage up to \$15,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, and necessary ambulance, hospital, professional nursing, and funeral services; and
 - (2) Offer an income disability plan.

(d) Any person who violates this section shall be subject to a citation by the police and shall be subject to a nonsuspendable fine of not less than \$100, or more than \$1,000, or thirty days imprisonment, or a one-year driver's license suspension or any combination thereof, for each violation.”

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

“ “Motor vehicle”¹ 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[.], but not including motorcycles and motor scooters.²”

SECTION 3. 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, but not including any operator of a motorcycle or motor scooter as defined in section 286-2, who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, the insurer shall pay, without regard to fault, to the person an amount equal to the no-fault benefits payable to the person as a result of 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, but not including any operator of a motorcycle or motor scooter as defined in section 286-2, who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, the insurer shall pay, without regard to fault, to the legal representative of 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 the person, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of the person, subject, however, to the provisions of section 294-2(10).
- (2) Payment of no-fault benefits shall be made as the benefits accrue,³ except that in the case of death, payment of the benefits may, at the option of the beneficiary, be made immediately in a lump sum payment.
- (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.
- (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 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 provision⁴ of this section shall be subject to the provision⁴ of subsections 294-39(b) and (c)."

SECTION 4. 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[.]; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2. The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but 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 cost 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 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 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[.], or to the operator of a motorcycle or motor scooter as defined in section 286-2.

(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 the pedestrian (including a bicyclist)[.]; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2.

If there is no insurance on the vehicle, any other no-fault insurance applicable to the injured person shall apply[.]; except that no such other applicable no-fault insurance shall apply to any operator of a motorcycle or motor scooter as defined in section 286-2.

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 294-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to the no-fault coverages described in section 294-10 every insurer issuing a no-fault policy shall make available to the insured the following optional insurance under the following conditions:

- (1) At the option of the insured, every insurer shall offer provisions covering loss resulting from damage to the insured's motor vehicle with such deductibles including \$250, as the commissioner, by regulation, shall provide.

- (2) At the option of the insured, every insurer shall offer to compensate for damage, not covered by no-fault benefits, to the insured, his spouse, any dependents, or any occupants of the insured's vehicle.
- (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).
- (4) Terms, conditions, exclusions, and deductible clauses consistent with the required provisions of such policy and approved by the commissioner who shall only approve terms, conditions, exclusions, deductible clauses, coverages, and benefits which are fair and equitable, and which limit the variety of coverage available so as to give buyers of insurance reasonable opportunity to compare the cost of insuring with various insurers.
- (5) At appropriately reduced premium rates, no-fault insurers shall offer [each of the following] deductibles, applicable only to claims of no-fault insureds and, in case of death of a no-fault insured, of his survivors,[:
 - (A) Deductibles] in the amounts of \$100, \$300, and \$500 from all no-fault benefits otherwise payable, except that if two or more no-fault insureds to whom the deductible is applicable under the contract of insurance are injured in the same accident, the aggregate amount of the deductible applicable to all of them shall not exceed the specified deductible, which amount where necessary shall be allocated equally among them]; and
 - (B) Deductibles in the amounts of \$500, \$1,500 and \$3,000 per accident from all no-fault benefits otherwise payable for injury to a person which occurs while he is operating or is a passenger on a motor vehicle with less than four wheels]."

SECTION 6. Section 294-13, Hawaii Revised Statutes, is amended by deleting subsections (m), (n), and (o) as follows:

"[(m) Notwithstanding subsection (j) all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels shall provide a ten per cent reduction off the regular premium each insurer assesses for such policy, to the operator purchasing a no-fault policy who has successfully completed a safe driving course approved by the director of transportation.

(n) Notwithstanding subsection (j) at the option of each insurer all premium rates on a no-fault policy for any motorcycle, motor scooter, or vehicle with less than four wheels may provide a discount of not more than ten per cent to the operator purchasing a no-fault policy when the operator submits an affidavit to the insurer that he will wear a safety helmet that is approved by the director of transportation during the operation of the insured vehicle; provided that if the insurer provides for a discount the insurer may provide for a surcharge of an amount equal to the discount for those operators who do not submit an affidavit that they will wear an approved safety helmet during the operation of the insured vehicle.

No insured shall operate a vehicle insured under a no-fault policy under this section which provides for a discount for the use of a safety helmet, unless the insured is wearing an approved safety helmet.

(o) Notwithstanding subsection (j), all insurers of any motorcycle, motor scooter, or vehicle with less than four wheels may provide a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a renewal no-fault policy, and a reduction of not more than fifteen per cent off the regular premium each insurer assesses to the operator purchasing a no-fault policy when the operator purchases insurance for more than one vehicle of the type described in this subsection.]”

SECTION 7. Section 294-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 commissioners,⁵ by rules, shall 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 marijuana, 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 subparagraph (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, by rules shall 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 that the licensed drivers are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this chapter unless extra vehicles are approved by the department of social services and housing as being necessary for medical or employment purposes.

- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver-owner under subparagraph (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 canceled. 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 rules adopted by the commissioner, under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of social services and housing indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid no-fault insurance identification card pursuant to section 294-8.5.

- (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, by rules, shall provide."

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 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[.], or
 - (C) The owner or operator of a motorcycle or motor scooter as defined in section 286-2."

SECTION 9. Section 294-24, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 \$500, \$1,500 and \$3,000;
- (2)] (1) For the licensed public assistance driver, as defined at 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)] (2) 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).] paragraph (2).”

SECTION 10. Section 294-34, Hawaii Revised Statutes, is amended to read as follows:

“§294-34 Equitable allocation of burdens among insurers. [(a) Insurers and self-insurers paying no-fault or optional additional benefits are entitled to proportionate reimbursement from other insurers and self-insurers to assure that the allocation of the financial burden of losses will be reasonably consistent with the propensities of different vehicles to affect probability and severity of injury to persons because the vehicles are of different weight or have different devices for the protection of occupants, other different characteristics, or different regular uses. Insurers paying no-fault benefits for loss arising from injury to persons, and self-insurers, including those who are natural persons bearing equivalent losses arising from their own injuries, are entitled to proportionate reimbursement from insurers or self-insurers of other involved vehicles.

(b) Insurers shall maintain in accordance with regulations of the commissioner statistical records from which can be determined the propensities of different vehicles to affect probability and severity of injury to persons.

(c) When the commissioner determines that adequate supporting information is available, he may establish by regulation and maintain a system under which rights of reimbursement are determined through pooling, reinsurance, or other form of reallocation procedure in lieu of case-by-case reimbursement. The system may apply to (1) all insurers and self-insurers, or (2) all insurers and self-insurers except those who are parties to an agreement entered into under this subsection and approved by the commissioner. Two or more insurers or self-insurers, with approval of the commissioner, may enter into an agreement for

settlement of their rights of proportionate reimbursement through a system of pooling, reinsurance, or other reallocation procedure in lieu of case-by- case reimbursement.

(d) The commissioner may not approve or establish case-by- case proportionate reimbursement on the basis of fault in cases involving only privately owned passenger motor vehicles designed to carry ten or fewer passengers.

(e) All claims for case-by-case proportionate reimbursement between insurers including self-insurers, if not settled by agreement, may be settled through arbitration or litigation.

(f) In order further to reduce the incidence of tort liability arising under this chapter, and to stabilize the numbers and amounts of claims arising under the joint underwriting assigned claims plan, in the event any insurer becomes unable fully to meet and fund its obligations under this part, or becomes insolvent, all other no-fault insurers shall guarantee the outstanding policies and claims obligations of the defaulting insurer, in an equitable distribution of such policies and claims based upon the amount of premium revenue or the value of policies written, including both no-fault, mandatory, and optional-additional insurance policies written that year, as the commissioner shall, by regulation, provide. This guaranty shall be effected without increase in any rate for any such policy being guaranteed, and without requiring duplicate payment of any premium by any insured."

SECTION 11. Section 294-35, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.⁶

SECTION 13. This Act shall take effect upon its approval.

(Approved June 5, 1985.)

Notes

1. "(8)" designation missing.
2. The period should be underscored.
3. The comma should be underscored.
4. Formerly read "provisions".
5. Formerly read "commissioner".
6. Edited pursuant to HRS §23G-16.5.