

JAN 22 2008

A BILL FOR AN ACT

RELATING TO TORT ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to allow judges to
2 exercise the authority and discretion they normally exercise
3 with regard to all evidence, when considering whether to admit
4 evidence of a failure to wear a seatbelt or a helmet. Thus
5 judges would consider such factors as whether the evidence is
6 relevant and whether its probative value outweighs any
7 prejudicial value. The legislature finds that evidence of a
8 failure to wear a seatbelt or a helmet should not be
9 categorically excluded from evidence.

10 In Kealoha v. County of Hawaii, 74 Haw. 308 (1993), the
11 court held that evidence that a motorcyclist injured in an
12 accident did not wear a helmet is not relevant, and therefore
13 not admissible, because there is no common law duty on the part
14 of motorcyclists to wear a helmet in Hawaii. The court
15 indicated that evidence of a motorist's failure to wear a
16 seatbelt would also be inadmissible, even though failure to wear
17 a seatbelt is a criminal violation under Hawaii law, because
18 there is no common law duty to wear a seatbelt in Hawaii. In

1 effect, Kealoha categorically bars such evidence in all cases.
2 This Act does not mandate the admission of such evidence; it
3 simply removes the categorical bar.

4 SECTION 2. Chapter 663, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§663- Failure to wear seat belt or helmet;
8 consideration by court or jury. (a) Notwithstanding any other
9 statute to the contrary, and notwithstanding any common law
10 principle to the contrary, the failure to wear an appropriate
11 seat belt while operating a motor vehicle, or while riding as a
12 passenger in a motor vehicle, may be considered as evidence by
13 the court or jury in civil litigation with regard to all issues
14 for which such evidence is admissible pursuant to the Hawaii
15 Rules of Evidence if a reasonably prudent person would have worn
16 a seat belt under the circumstances presented by the case.

17 (b) Notwithstanding any other statute to the contrary, and
18 notwithstanding any common law principle to the contrary, the
19 failure to wear an appropriate helmet while operating a
20 motorcycle or motor scooter, or while riding as a passenger on a
21 motorcycle or motor scooter, may be considered as evidence by
22 the court or jury in civil litigation with regard to all issues

S.B. NO. 2973

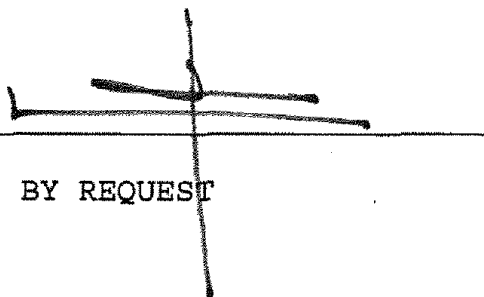
1 for which such evidence is admissible pursuant to the Hawaii
2 Rules of Evidence if a reasonably prudent person would have worn
3 a helmet under the circumstances presented by the case."

4 SECTION 3. New statutory material is underscored.

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

6
7
8

INTRODUCED BY: _____

A handwritten signature is written over a horizontal line. Below the signature, the words "BY REQUEST" are printed. A vertical line is drawn through the signature and the words "BY REQUEST".

BY REQUEST

Report Title:

TORT ACTIONS; EVIDENCE.

Description:

Allows juries in civil cases, like those involving accidents, to hear evidence that operators or passengers in motor vehicles, motorcycles, or motor scooters were not wearing seat belts or helmets; currently juries are usually not allowed to hear such evidence.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO TORT ACTIONS.

PURPOSE: To allow the finder of fact in a civil action to consider the plaintiff's failure to use a seat belt or helmet as evidence of comparative negligence.

MEANS: Add a new section to chapter 663, Hawaii Revised Statutes.

JUSTIFICATION: At the present time, the fact that a plaintiff was not using a seat belt or helmet at the time of an auto or motorcycle/moped accident often cannot be considered by the finder of fact as evidence of comparative negligence. This is true even when a reasonably prudent person in a plaintiff's position would have used a seat belt or helmet under the same circumstances, and even when there is evidence establishing that use of a seat belt or helmet would have lessened or prevented a plaintiff's injuries. This bill is therefore an attempt to correct this inequitable situation by permitting the finder of fact to consider the plaintiff's failure to use a seat belt or helmet as evidence of the plaintiff's comparative negligence. This bill is also consistent with the law in many other states in which failure to wear a seat belt or to use a helmet may be used as evidence of negligence.

Impact on the public: This bill may make it more difficult for plaintiffs to recover damages for personal injuries arising out of automobile or motorcycle/moped accidents, but only in those cases where they have not taken appropriate action for their own safety by failing to wear a seat belt or helmet, when a reasonably prudent person

would have done so under the same
circumstances.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Judiciary.
EFFECTIVE DATE:	Upon approval.