

ACT 235

H.B. NO. 89

A Bill for an Act Relating to Traffic Safety.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291- Mandatory use of seat belts, when, penalty.** (a) Except as otherwise provided by law, no person:

- (1) Shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and any passengers in the front seat of the motor vehicle are restrained by a seat belt

assembly if between the ages of four and fifteen or are restrained pursuant to section 291-11.5 if under the age of four;

- (2) If fifteen years of age or more shall be a passenger in the front seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly.

As used in this section "seat belt assembly" means the seat belt assembly required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor Vehicle Safety Act of 1966, as amended.

(b) The passengers of the following motor vehicles shall be exempt from the requirements of this section: emergency, commercial, for hire, and mass transit vehicles, and type I school buses. Further exemptions from this section may be established by rules adopted by the department of transportation pursuant to chapter 91.

(c) No person shall be guilty of violating this section if:

- (1) The person is in a motor vehicle which is not required to be equipped with a seat belt assembly under any federal motor vehicle safety standard unless the vehicle is in fact equipped with a seat belt assembly;
- (2) The person not restrained by a seat belt assembly is in a vehicle in which the number of persons exceeds the number of seat belt assemblies available in the vehicle or the number of seat belt assemblies originally installed in the vehicle, whichever is greater; provided that all available seat belt assemblies are being used to restrain passengers;
- (3) The person not restrained by a seat belt assembly has a physically disabling condition which prevents appropriate restraint by the seat belt assembly; provided such condition is duly certified by a physician who shall state the nature of the handicap, as well as the reason such restraint is inappropriate; or
- (4) Otherwise exempted by rules adopted by the department of transportation pursuant to chapter 91.

(d) This section shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident.

(e) A person who fails to comply with the requirements of this section shall be guilty of a violation and subject to a fine of \$15 for each violation."

SECTION 2. Section 294-13, Hawaii Revised Statutes, is amended to read as follows:

**"§294-13 Motor vehicle insurance rates.** (a) Except as otherwise provided in this chapter, all premium rates for motor vehicle insurance shall comply with the provisions of the casualty rating law contained in chapter 431.

(b) All premium rates for motor vehicle insurance shall be made in accordance with the following provisions:

- (1) Due consideration shall be given to past and prospective loss experience within this State, to catastrophe hazards, if any, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective loss experience within the State; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold within the State; past and prospective expenses in the

sale and administration of motor vehicle insurance within the State; and, optionally, to past or prospective loss, sales, and administrative costs experience in the nation or regionally, whenever such consideration will serve to reduce rates.

- (2) Due consideration shall be given to the investment income from reserves [and], unearned insurance premiums, and other unearned proceeds received on account of motor vehicle insurance sold in this State, and all other factors that may be deemed relevant, such as but not limited to types of vehicles, occupations, and involvement in past accidents, provided they are established to have a probable effect upon losses or expense, or rates.
- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.
- (5) Rates shall not be excessive, inadequate, or unfairly discriminatory.
- (6) Rate making and regulation of rates for all insurance subject to this chapter shall be governed by chapter 431; subject, however, to the following:
  - (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with [the provisions of] section 431-703;
  - (B) Except as provided in subsection (j) the commissioner shall establish rates and shall consider with other relevant factors loss experience in this State and the investment income of the insurers, and insofar as section 431-694 and section 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not be applicable herein;
  - (C) To afford all interested persons an opportunity to be heard the commissioner shall, after notice is published pursuant to chapter 91, hold a public hearing whenever rates are to be increased;
  - (D) The initial rates shall be reviewed prior to September 1, 1975, and thereafter shall be reviewed at least every two years. The commissioner shall issue a public statement or an order approving the rates for the benefit of the public;
  - (E) The commissioner shall order insurers to rebate to policyholders any excessive profit realized by insurers from their operations.

(c) Except to the extent necessary to meet the provisions of [paragraph (4) of] subsection (b)(4) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(d) No manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance shall be effective unless approved by the commissioner. The commissioner may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers. The commissioner shall have the power to set rates under this chapter, pursuant to and following the procedure under chapter 91, except as specifically provided herein. The commissioner shall not set any rates without a public hearing at which all affected and interested parties have a full opportunity to examine, to comment, and to present evidence on the impact and application of the proposed establishment, or revision of rates. The commissioner shall publish a notice of the date, time, and place of the public hearing at least once in each of three successive weeks in a newspaper of general circulation.

(e) Any person aggrieved by the application as to him of any classification, rule, standard, rate, or rating plan made, followed, or adopted by an insurer may make written request to the commissioner to review such application and grant the relief requested. If the commissioner finds that probable cause for the complaint exists or that the complaint charges a violation of this chapter or any applicable provisions of the casualty rating law, he shall conduct a hearing on the complaint. The hearing shall be subject to the procedure provided in section 431-705(a).

(f) If the commissioner has good cause to believe that a classification, rule, standard, rate, rating territory, or rating plan made, followed, or adopted by an insurer does not comply with any of the requirements of this chapter or any applicable provisions of the casualty rating law, he shall, unless he has good cause to believe that such noncompliance is wilful, give notice, in writing, to each insurer stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, within which such noncompliance may be corrected. Notices under this subsection shall be confidential as between the commissioner and the parties unless a hearing is held as provided in subsection (g).

(g) If the commissioner has good cause to believe such noncompliance to be wilful, or if, within the period prescribed by the commissioner in the notice, the insurer does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or [established] establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may proceed with a hearing which shall be subject to the hearing procedure provided in section 431-705(a).

(h) If, after a hearing conducted pursuant to subsection (b) or (e), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this chapter or any applicable provisions of the casualty rating law, he shall issue an order granting the complainant's claim for relief or prohibiting the insurer from using such classification, rule, standard, rate, rating territory, or rating plan. The order shall contain the commissioner's findings of fact and conclusions of law, including, as appropriate, a specification of the respects in which a violation of this chapter or any applicable provision of the casualty rating law exists and shall specify a reasonable time period within which the insurer shall comply with the terms of the order. Any such order shall be subject to judicial review in accordance with the provisions of section 431-705(b).

(i) The commissioner shall periodically review and evaluate the motor vehicle insurance program described in this chapter, including an annual review of the premium rates, benefit payments, and insurers' loss experience.

(j) 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. 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 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.

In the establishment of their individual rate schedules, each insurer shall conform fully to subsection (b)(1), (2), and (4).

(k) Notwithstanding any other law to the contrary, no insurer shall agree, combine, or conspire with any other private insurer or enter into, become a member of, or participate in any understanding, pool, or trust, to fix, control, or maintain, directly or indirectly, motor vehicle insurance rates. Any violation of this section shall subject the insurer and each of its officers and employees involved to the penalties of chapter 480 without benefit of any exemption otherwise permitted by section 480-11. This subsection shall not apply to advisory organizations referred to in section 431-700 which are not involved in rate making under this chapter.

(l) Notwithstanding subsection (j), commencing with September 1, 1974, the commissioner shall enforce a mandatory reduction of not less than fifteen per cent by each insurer, calculated as a percentage of the insurer's premium for a comparable combination of insurance coverage in effect on January 1, 1973, on all motor vehicle coverages, as provided in this chapter, including the basic no-fault policy. There shall be no exception to the requirements of this provision, unless the commissioner shall find that the use of the rates required herein by an insurer will be inadequate to the extent that such rates jeopardize the solvency of the insurer required to use such rates. No rate for the insurance required by this chapter shall be increased prior to September 1, 1975, unless the insurer proposing such rate increase shall show that the rates herein are inadequate as stated above.

(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.

(p) Notwithstanding subsection (j), commencing on December 16, 1985 and ending on December 31, 1988, all insurers of any motor vehicle shall provide a ten per cent reduction off premium charges each insurer assesses for each new and renewal policy for no-fault benefits and medical payment coverage for any motor vehicle which is equipped with seat belt assemblies as required under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor Vehicle Safety Act of 1966, as amended, or which is so equipped even if not required to be under any federal motor vehicle safety standard."

SECTION 3. Any law enforcement official authorized to issue traffic citations under state or county traffic codes who stops a motor vehicle in the course of official business between November 1, 1985, and December 15, 1985, may issue verbal warnings to persons who would be in violation of section 291-, Hawaii Revised Statutes, as added by this Act, as if the provisions of this Act were in effect on the date of the warning for purposes of educating the public on the requirements of this Act.

SECTION 4. The state department of transportation and the county police departments shall initiate an educational program designed to encourage compliance with seat belt assembly laws. This program shall focus on the effectiveness of restraint devices, the monetary savings and other benefits to the public, and the requirements and penalties specified in this law.

SECTION 5. The director of the state department of transportation and the state insurance commissioner jointly shall submit a report to the legislature no later than twenty days before the commencement of the regular legislative sessions of 1987, 1988, 1989, 1990, and 1991. These reports shall evaluate the effectiveness of this Act and shall include, but not be limited to, information and recommendations relating to the extent to which the public has complied with section 291-, Hawaii Revised Statutes, as added by this Act, statistics on traffic accidents and resulting injuries and fatalities, and the effect of this Act on insurance rates.

SECTION 6. This Act is intended to be compatible with support for federal safety standards requiring automatic crash protection and should not be interpreted or applied in any manner to rescind federal automatic crash protection system requirements for new motor vehicles.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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**SECTION 8.** This Act shall take effect on December 16, 1985, except that sections 3 and 4 of this Act shall take effect upon approval.

(Approved June 5, 1985.)

**Note**

1. Edited pursuant to HRS §23G-16.5.