

ACT 74

H.B. NO. 980

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Distracted driving is a problem of national concern. The legislature finds that the task of driving requires a driver's full attention in focusing on the roadway and driving maneuvers. Any distraction that diverts a driver's

attention from the primary tasks of maneuvering the vehicle and responding to critical events increases the driver's risk of being involved in a motor vehicle crash. A distraction is anything that takes a driver's eyes off the road (visual distraction), mind off the road (cognitive distraction), or hands off the wheel (manual distraction).

The use of cellular phones or other mobile electronic devices during the task of driving constitutes a distraction and poses a risk of harm to the driver and others in the vehicle or on the road. New research findings by the National Highway Traffic Safety Administration show that nearly six thousand individuals, which is approximately sixteen per cent of all fatal crashes, died in 2008 in crashes involving a distracted or inattentive driver, and more than five hundred thousand individuals were injured in such collisions. A survey has shown that on any given day during 2008, more than eight hundred thousand vehicles were driven by someone using a hand-held cellular phone. Federal researchers have observed drivers of all ages using a variety of hand-held devices while driving—cellular phones, iPods, video games, Blackberrys, and Global Positioning System receivers. In particular, the use of cellular phones for talking and texting while driving has become more prevalent on our nation's roadways.

The National Safety Council reported that the Harvard Center of Risk Analysis concluded that cellular-phone use contributes to an estimated six per cent of all crashes. That percentage equates to 636,000 crashes, three hundred thirty thousand injuries, twelve thousand serious injuries, and two thousand six hundred deaths each year. The annual cost of crashes caused by cellular-phone use is estimated at \$43,000,000,000. The Wireless Association reports that there are more than 270,000,000 cellular phone subscribers nationwide and that eighty-one per cent of the individuals surveyed admitted to talking on a cellular phone while driving.

In 2007, the Hawaii department of transportation showed that of the 8,770 collisions that happened during that year, 2,871, or thirty-two per cent, were attributed to inattention to driving. The new surface transportation bill, Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141), passed by Congress in 2012, authorizes \$22,500,000 in federal fiscal year 2013 and \$23,100,000 in federal fiscal year 2014 to be distributed to the states that have a distracted driver state law. Unfortunately, Hawaii is not eligible for this funding due to the absence of a state distracted driving statute that prohibits the use of mobile electronic devices while driving.

The purpose of this Act is to prohibit the use of cellular phones and other mobile electronic devices while operating a vehicle, with certain exceptions, and to specifically prohibit activities such as texting, instant messaging, gaming, and e-mailing, which take a driver's eyes off the road, mind off the road, and hands off the wheel.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291C- Mobile electronic devices. (a) No person shall operate a motor vehicle while using a mobile electronic device.

(b) The use of a mobile electronic device for the sole purpose of making a “911” emergency communication shall be an affirmative defense to this law.

(c) No person under eighteen years of age shall operate a motor vehicle while utilizing a hands-free mobile electronic device, except for the sole purpose of making a “911” emergency communication.

(d) The following persons shall be exempt from subsection (a):

- (1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;
- (2) Drivers using a two-way radio or a private Land Mobile Radio System, within the meaning of title 47 Code of Federal Regulations part 90, while in the performance and scope of their work-related duties and who are operating fleet vehicles or who possess a commercial vehicle license; or
- (3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.

(e) As used in this section:

“Emergency responders” include firefighters, emergency medical technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

“Fleet vehicle” means any vehicle validly registered pursuant to section 286-53.5.

“Mobile electronic device” means any handheld or other portable electronic equipment capable of providing wireless or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle.

“Operate” a motor vehicle means the same as is defined in section 291E-1.

“Use” or “using” means holding a mobile electronic device while operating a motor vehicle.

(f) Every person who violates this section shall be subject to the following penalties:

- (1) For a first violation, or any violation not preceded within one year by a prior violation of this section, a fine of not less than \$100 and not more than \$200;
- (2) For a violation that occurs within one year of a prior violation of this section, a fine of not less than \$200 and not more than \$300; and
- (3) For a violation that occurs within two years of two prior violations of this section, and for the fourth and each subsequent violation of this section, regardless of when committed, a fine of not less than \$300 and not more than \$500.

If a person violates this section while operating a motor vehicle in a school zone or construction area, as defined in section 291C-104, the fines imposed pursuant to this subsection shall be doubled.

(g) Any violation as provided in subsections (a) and (c) shall not be deemed to be a traffic infraction as defined in section 291D-2.

(h) This section shall supersede any county ordinance regulating the use or utilization of mobile electronic devices while operating a motor vehicle.”

SECTION 3. Section 286-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver’s license, except as otherwise provided in this part. The examination shall include a test of:

- (1) The applicant's eyesight and any further physical examination that the examiner of drivers finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways;
- (2) The applicant's ability to understand highway signs regulating, warning, and directing traffic;
- (3) The applicant's knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; provided that the examination shall specifically test the applicant's knowledge of the provisions of section 291C-121.5[;] and section 291C-; and
- (4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director.

The examiner of drivers shall require every applicant to comply with section 286-102.5.

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant for a driver's license.

For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286-107.5(a)."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2013.

(Approved May 20, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.