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# A BILL FOR AN ACT

RELATING TO MOPED INSURANCE.

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

1       SECTION 1. The purpose of this Act is to require that  
2 persons operating mopeds in the State carry an insurance policy.

3       SECTION 2. Section 431:10C-304, Hawaii Revised Statutes,  
4 is amended to read as follows:

5       **"§431:10C-304 Obligation to pay personal injury protection**  
6 **benefits.** For purposes of this section, the term "personal  
7 injury protection insurer" includes personal injury protection  
8 self-insurers. Every personal injury protection insurer shall  
9 provide personal injury protection benefits for accidental harm  
10 as follows:

11       (1) Except as otherwise provided in section  
12 431:10C-305(d), in the case of injury arising out of a  
13 motor vehicle accident, the insurer shall pay, without  
14 regard to fault, to the provider of services on behalf  
15 of the following persons who sustain accidental harm  
16 as a result of the operation, maintenance, or use of  
17 the vehicle, an amount equal to the personal injury



1 protection benefits as defined in section  
2 431:10C-103.5(a) payable for expenses to that person  
3 as a result of the injury:

4 (A) Any person, including the owner, operator,  
5 occupant, or user of the insured motor vehicle;

6 (B) Any pedestrian, including a bicyclist;

7 ~~[(C) Any user or operator of a moped as defined in~~  
8 ~~section 249-1;]~~ or

9 ~~[(D)]~~ (C) Any user or operator of an electric foot  
10 scooter as defined in section 249-1;

11 provided that this paragraph shall not apply in the  
12 case of injury to or death of any operator or  
13 passenger of a moped, motorcycle, or motor scooter as  
14 defined in section 286-2 arising out of a motor  
15 vehicle accident, unless expressly provided for in the  
16 motor vehicle policy;

17 (2) Payment of personal injury protection benefits shall  
18 be made as the benefits accrue, except that in the  
19 case of death, payment of benefits under section  
20 431:10C-302(a) (5) may be made immediately in a lump  
21 sum payment, at the option of the beneficiary;



1           (3)   (A)   Payment of personal injury protection benefits  
2                           shall be made within thirty days after the  
3                           insurer has received reasonable proof of the fact  
4                           and amount of benefits accrued, and demand for  
5                           payment thereof. All providers shall produce  
6                           descriptions of the service provided in  
7                           conformity with applicable fee schedule codes;

8           (B)   If the insurer elects to deny a claim for  
9                           benefits in whole or in part, the insurer shall,  
10                          within thirty days, notify the claimant in  
11                          writing of the denial and the reasons for the  
12                          denial. The denial notice shall be prepared and  
13                          mailed by the insurer in triplicate copies and be  
14                          in a format approved by the commissioner. In the  
15                          case of benefits for services specified in  
16                          section 431:10C-103.5(a) the insurer shall also  
17                          mail a copy of the denial to the provider; and

18          (C)   If the insurer cannot pay or deny the claim for  
19                           benefits because additional information or loss  
20                           documentation is needed, the insurer shall,  
21                           within the thirty days, forward to the claimant



1 an itemized list of all the required documents.

2 In the case of benefits for services specified in  
3 section 431:10C-103.5(a) the insurer shall also  
4 forward the list to the service provider;

5 (4) Amounts of benefits that are unpaid thirty days after  
6 the insurer has received reasonable proof of the fact  
7 and the amount of benefits accrued, and demand for  
8 payment thereof, after the expiration of the thirty  
9 days, shall bear interest at the rate of one and one-  
10 half per cent per month;

11 (5) No part of personal injury protection benefits paid  
12 shall be applied in any manner as attorney's fees in  
13 the case of injury or death for which the benefits are  
14 paid. The insurer shall pay, subject to section  
15 431:10C-211, in addition to the personal injury  
16 protection benefits due, all attorney's fees and costs  
17 of settlement or suit necessary to effect the payment  
18 of any or all personal injury protection benefits  
19 found due under the contract. Any contract in  
20 violation of this provision shall be illegal and  
21 unenforceable. It shall constitute an unlawful and



1 unethetical act for any attorney to solicit, enter into,  
2 or knowingly accept benefits under any contract;

3 (6) Disputes between the provider and the insurer over the  
4 amount of a charge or the correct fee or procedure  
5 code to be used under the workers' compensation  
6 supplemental medical fee schedule shall be governed by  
7 section 431:10C-308.5; and

8 (7) Any insurer who violates this section shall be subject  
9 to section 431:10C-117(b) and (c)."

10 SECTION 3. Section 431:10C-305, Hawaii Revised Statutes,  
11 is amended by amending subsection (d) to read as follows:

12 "(d) The following persons are not eligible to receive  
13 payment of personal injury protection benefits:

14 (1) Occupants of a motor vehicle other than the insured  
15 motor vehicle;

16 (2) Operator or user of a motor vehicle engaging in  
17 criminal conduct which causes any loss; or

18 (3) Operator of a moped, motorcycle, or motor scooter as  
19 defined in section 286-2.



1 This subsection shall not preclude recovery in other capacities  
2 under a motor vehicle insurance policy covering a vehicle which  
3 the person did not occupy at the time of the accident."

4 SECTION 4. Section 431:10C-408, Hawaii Revised Statutes,  
5 is amended by amending subsection (c) to read as follows:

6 "(c) Any person eligible for benefits under this part, and  
7 who becomes eligible to file a claim or an action against the  
8 mandatory bodily injury liability or property damage liability  
9 policies, shall, upon the bureau's determination of eligibility,  
10 be entitled to:

11 (1) The full personal injury protection benefits as if the  
12 victim had been covered as an insured at the time of  
13 the accident producing the accidental harm, but not  
14 including an owner, operator, or passenger of a moped,  
15 motorcycle, or motor scooter, as defined in section  
16 286-2, or a pedestrian incurring accidental harm  
17 arising out of a moped accident, motorcycle accident,  
18 or motor scooter accident, as defined in section  
19 431:10G-101; and

20 (2) The rights of claim and action against the insurer,  
21 assigned under section 431:10C-403, with reference to



1 the mandatory bodily injury liability policy for  
2 accidental harm, and with reference to the mandatory  
3 property damage liability policy for property damage  
4 sustained.

5 Any claims of an eligible assigned claimant against either  
6 mandatory bodily injury liability or property damage liability  
7 policies, or the basic personal injury protection policy, shall  
8 be filed with the insurer assigned and shall be subject to all  
9 applicable conditions and provisions of this subpart and subpart  
10 A, except that the date of notification of the assignment shall,  
11 where applicable, be substituted for the date of the accident  
12 for purposes of section 431:10C-315."

13 SECTION 5. Chapter 431, Article 10G, Hawaii Revised  
14 Statutes, is amended by amending its title to read as follows:

15 **"ARTICLE 10G**

16 **MOPED, MOTORCYCLE, AND MOTOR SCOOTER INSURANCE"**

17 SECTION 6. Section 431:10G-101, Hawaii Revised Statutes,  
18 is amended as follows:

19 1. By adding two new definitions to be appropriately  
20 inserted and to read:

21 "Moped" has the same meaning as in section 286-2.



1       "Moped accident" means an accident arising out of the  
2       operation, maintenance, or use of a moped, but not involving a  
3       motor vehicle."

4       2. By amending the definition of "accidental harm" to  
5       read:

6       ""Accidental harm" means bodily injury, death, sickness, or  
7       disease caused by a moped accident, motorcycle accident, or  
8       motor scooter accident to a person."

9       3. By amending the definition of "owner" to read:

10       ""Owner" means a person who holds the legal title to a  
11       moped, motorcycle, or motor scooter; except that when a moped,  
12       motorcycle, or motor scooter is the subject of a security  
13       agreement or lease with a term of not less than one year, with  
14       the debtor or lessee having the right of possession, [~~the term~~  
15       owner] "owner" shall mean the debtor or lessee. Whenever  
16       transfer of title to a moped, motorcycle, or motor scooter  
17       occurs, the seller shall be considered the owner until delivery  
18       of the executed title to the buyer. Upon delivery of the  
19       executed title, the buyer holding the equitable title shall be  
20       considered the owner."





SECTION 7. Section 431:10G-102, Hawaii Revised Statutes,  
is amended to read as follows:

"§431:10G-102 Conditions of operation and registration of  
mopeds, motorcycles, and motor scooters. No person shall drive  
a moped, motorcycle, or motor scooter upon any public street,  
road, or highway of this State at any time unless [~~such~~] the  
moped, motorcycle, or motor scooter is insured at all times  
under a liability policy as provided in section 431:10G-301;  
provided that this article shall not apply to any [~~antique~~]  
motorcycle or motor scooter that is an antique motor vehicle as  
defined in section 249-1."

SECTION 8. Section 431:10G-103, Hawaii Revised Statutes,  
is amended to read as follows:

"§431:10G-103 [~~Motorcycle~~] Moped, motorcycle, or motor  
scooter self-insurance. The moped, motorcycle, or motor scooter  
insurance required by section 431:10G-102 may be satisfied by  
any owner of a moped, motorcycle, or motor scooter if:

- (1) [~~Such~~] The owner provides proof of qualifications as a  
self-insurer, and a surety bond or other securities  
affording security substantially equivalent to that  
afforded under a policy meeting the requirements of



1 section 431:10G-301 and providing coverage at all  
2 times for the entire moped, motorcycle, or motor  
3 scooter registration period, as determined and  
4 approved by the commissioner under rules; and

5 (2) The commissioner is satisfied that in case of injury,  
6 death, or property damage, any claimant would have the  
7 same rights against [~~such~~] the owner as the claimant  
8 would have had if a policy meeting the requirements of  
9 section 431:10G-301 had been applicable to [~~such~~] the  
10 moped, motorcycle, or motor scooter."

11 SECTION 9. Section 431:10G-104, Hawaii Revised Statutes,  
12 is amended by amending subsection (a) to read as follows:

13 "(a) Any person seeking to obtain the liability coverage  
14 required by this part after June 7, 1989, shall first:

15 (1) Have obtained a valid moped, motorcycle, or motor  
16 scooter license; or

17 (2) Have obtained a valid moped, motorcycle, or motor  
18 scooter learner's permit and, for a person operating a  
19 motorcycle or motor scooter, have taken and passed a  
20 motorcycle education course approved by the department  
21 of transportation."



SECTION 10. Section 431:10G-105, Hawaii Revised Statutes,  
is amended to read as follows:

**"§431:10G-105 Tort liability.** (a) With respect to  
accidental harm incurred in or arising out of a moped accident,  
motorcycle accident, or motor scooter accident, tort liability  
is not abolished.

(b) Any owner or operator of a moped, motorcycle, or motor  
scooter involved in a motor vehicle accident as defined in  
section 431:10C-103 and who incurs accidental harm as defined in  
section 431:10C-103, including ~~[such]~~ the person's  
representative or legal guardian, shall have a cause of action  
in tort as provided in section 431:10C-306."

SECTION 11. Section 431:10G-106, Hawaii Revised Statutes,  
is amended to read as follows:

**"§431:10G-106 Verification of insurance.** Every insurer  
shall issue to each of its insureds a paper or electronic proof  
of insurance card for each moped, motorcycle, or motor scooter  
for which a liability policy under this article is written. The  
electronic proof of insurance card may be accessed directly  
through the licensed insurer's website, application, or  
database. The proof of insurance card shall show the following:



(1) Name, make, year, and factory or serial number of the moped, motorcycle, or motor scooter; provided that insurers of five or more mopeds, motorcycles, or motor scooters that are under common registered ownership and used in the regular course of business shall not be required to indicate the name, make, year, and the factory or serial number of each moped, motorcycle, or motor scooter;

(2) Policy number;

(3) Names of the insured and the insurer; and

(4) Effective dates of coverage including the expiration date.

The proof of insurance card shall be carried on, or accessible on a mobile electronic device, as defined in section 291C-137, by the person operating the insured moped, motorcycle, or motor scooter at all times and shall be exhibited to a law enforcement officer upon demand."

SECTION 12. Section 431:10G-108, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10G-108 Penalties.** Any person who violates this article shall be subject to a citation by the police and shall



1 be subject to a nonsuspendable fine of [~~not~~] no less than \$100  
2 [~~not~~] and no more than \$1,000, thirty days imprisonment, a one  
3 year driver's license suspension, or any combination thereof,  
4 for each violation.

5 Any person cited under this section shall have an  
6 opportunity to present a good faith defense, including but not  
7 limited to lack of knowledge or proof of insurance. The general  
8 penalty provision of this section shall not apply to:

- 9 (1) Any operator of a moped, motorcycle, or motor scooter  
10 owned by another person if the operator's own  
11 insurance covers such driving;
- 12 (2) Any operator of a moped, motorcycle, or motor scooter  
13 owned by that person's employer during the normal  
14 scope of that person's employment; or
- 15 (3) Any operator of a borrowed moped, motorcycle, or motor  
16 scooter if the operator holds a reasonable belief that  
17 the subject vehicle is insured."

18 SECTION 13. Section 431:10G-201, Hawaii Revised Statutes,  
19 is amended by amending its title and subsection (a) to read as  
20 follows:



1       "§431:10G-201 Making of moped, motorcycle, and motor  
2 scooter insurance rates. (a) All premium rates for moped,  
3 motorcycle, and motor scooter insurance shall be made in  
4 accordance with the following provisions:

5       (1) Rates shall not be excessive, inadequate, or unfairly  
6       discriminatory;

7       (2) Due consideration shall be given to:

8       (A) Past and prospective loss experience within and  
9       outside this State, catastrophe hazards, if any,  
10       reasonable margin for profit, and contingencies,  
11       dividends, savings, or unabsorbed premium  
12       deposits allowed or returned by insurers to their  
13       policyholders, members, or subscribers;

14       (B) Past and prospective expenses both country-wide  
15       and those specially applicable to this State in  
16       the sale and administration of moped,  
17       [~~motorcycles~~] motorcycle, and motor [~~scooters~~]  
18       scooter insurance; and

19       (C) Investment income from reserves, unearned  
20       insurance premiums, and other unearned proceeds  
21       received on account of moped, motorcycle, and



1 motor scooter insurance sold, and all other  
2 factors that may be deemed relevant, if they are  
3 established to have a probable effect upon  
4 losses, expense, or rates, [~~such as~~] including  
5 but not limited to types of vehicles,  
6 occupations, and involvement in past accidents;

7 (3) The systems of expense provisions included in the  
8 rates for use by any insurer or group of insurers may  
9 differ from those of other insurers or groups of  
10 insurers to reflect the requirements of the operating  
11 methods of any insurer or group with respect to any  
12 class of insurance, or with respect to any subdivision  
13 or combination thereof for which subdivision or  
14 combination separate expense provisions are  
15 applicable; and

16 (4) Risks may be grouped by classifications for the  
17 establishing of rates and minimum premiums.  
18 Classification rates may be modified to produce rates  
19 for individual risks in accordance with rating plans  
20 which establish standards for measuring variations in  
21 hazards or expense provisions, or both. The standards



1           may measure any differences among risks that can be  
2           demonstrated to have a probable effect upon losses or  
3           expenses."

4           SECTION 14. Section 431:10G-202, Hawaii Revised Statutes,  
5 is amended by amending subsection (a) to read as follows:

6           "(a) Every insurer shall file with the commissioner every  
7 manual of classification, rule, rate, rating plan, designation  
8 of rating territories, or standard for moped, motorcycle, or  
9 motor scooter insurance which it proposes to use. Every filing  
10 shall state the proposed effective date of the filing and the  
11 character and extent of the coverage contemplated."

12          SECTION 15. Section 431:10G-206, Hawaii Revised Statutes,  
13 is amended to read as follows:

14          "**§431:10G-206 Rate administration.** Except as otherwise  
15 provided in this article, the commissioner shall implement and  
16 evaluate moped, motorcycle, and motor scooter insurance rates in  
17 compliance with article 14."

18          SECTION 16. Section 431:10G-301, Hawaii Revised Statutes,  
19 is amended as follows:

20          1. By amending its title and subsection (a) to read:





1       "§431:10G-301 Required moped, motorcycle, and motor  
2 **scooter policy coverage.** (a) An insurance policy covering a  
3 moped, motorcycle, or motor scooter shall provide insurance in  
4 the following amounts to pay, on behalf of the owner or any  
5 operator of the insured moped, motorcycle, or motor scooter,  
6 sums that the owner or any operator may legally be obligated to  
7 pay for injury, death, or damage to the property of others,  
8 except property owned by, being transported by, or in charge of  
9 the insured that arise out of the ownership, operation,  
10 maintenance, or use of the moped, motorcycle, or motor scooter:

11       (1) Liability coverage of [~~not~~] no less than \$20,000 per  
12 person, with an aggregate limit of \$40,000 per

13 accident, for all damages arising out of accidental  
14 harm sustained as a result of any one accident; and

15       (2) Liability coverage of [~~not~~] no less than \$10,000 for  
16 all damages arising out of injury to or destruction of  
17 property, including mopeds, motorcycles, or motor  
18 scooters and including the loss of use thereof, but  
19 not including property owned by, being transported by,  
20 or in the charge of the insured, as a result of any  
21 one accident."



1           2. By amending subsection (c) to read:

2           "(c) Any operator or passenger of a moped, motorcycle, or  
3 motor scooter as defined in section 286-2 who receives injuries  
4 or dies in a motor vehicle accident may not claim personal  
5 injury protection benefits under a motor vehicle insurance  
6 policy, unless expressly provided for in the motor vehicle  
7 policy."

8           SECTION 17. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10          SECTION 18. This Act shall take effect on July 1, 3000.



**Report Title:**

Department of Commerce and Consumer Affairs; Required Insurance;  
Mopeds

**Description:**

Requires that moped operators carry an insurance policy by incorporating mopeds into the insurance laws governing motorcycles and motor scooters, including with respect to provisions concerning required licensure, the relationship with tort law, proof of insurance card, penalties, rate regulation, and minimum coverage levels. Makes conforming amendments. Effective 7/1/3000. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

