ACT 342 H.B. NO. 26

A Bill for an Act Relating to Liquor.

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

SECTION 1. The number of traffic accidents involving youthful drinking drivers in Hawaii since the drinking age was lowered to eighteen in 1972 has shown a sustained and significant increase. The legislature finds that when other states have raised the minimum drinking age there is a decrease in fatal crashes among drivers affected by the statutory changes. The legislature further finds that raising the drinking age will mitigate other social problems such as juvenile crime and poor school performance. For example, if alcohol is not legally available to young adults under twenty-one the accessibility of alcohol to intermediate and high school students will be decreased. The legislature also finds that, because of these and similar factors, the federal government has enacted legislation encouraging a national minimum drinking age.

The purpose of this Act is to establish a minimum drinking age of twenty-one, thereby reducing the number of traffic accidents involving young adults as well as preventing other social problems. The legislature further finds that under Public Law 98-363, the State of Hawaii will lose five per cent or $6,285,000 of its federal highway funds for fiscal year 1987 if Hawaii does not have a drinking age requirement of twenty-one by October 1, 1986, and will lose

ten per cent or $12,570,000 of these funds for fiscal year 1988 if it does not have this requirement by October 1, 1987. The legislature is aware that the State of Hawaii is challenging the constitutionality and rationale of Public Law 98-363 through an amicus brief filed on September 17, 1985. While the legislature supports and will continue to support this effort, the legislature further finds that the State's federal highway funding will be jeopardized if no legislation is enacted in the 1986 legislative session to raise the drinking age to twenty-one.

The legislature further finds that with the decrease in traffic fatalities and injuries expected from a higher drinking age, reductions in insurance benefits paid also can be expected, resulting in savings to the insurance industry. The legislature bases this finding on actuarial estimates and statements by the insurance industry and other groups affirming the efficacy of a higher drinking age in curbing alcohol-induced traffic accidents. Although no empirical evidence on the reduced payouts is available, the legislature believes a savings to the insurance industry can reasonably be expected. Therefore, the legislature finds it appropriate to pass this savings on to the consumer in the form of certain premium reductions on insurance policies.

SECTION 2. Section 281-1, Hawaii Revised Statutes, is amended by amending the definitions of "minor" and "public place" to read as follows:

"Minor" means any person below the age of [eighteen years.] twenty-one years.

"Public place" means any [place, building, or passenger conveyance to which the public resort or are generally permitted to have access.] publicly owned property or privately owned property open for public use or to which the public is invited for entertainment or business purposes."

SECTION 3. Section 281-78, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At no time under any circumstances shall any liquor:

(1) Be consumed on any public highway or any public sidewalk;

(2) Be sold or furnished by any licensee to:

(A) Any minor,

(B) Any person at the time under the influence of liquor,

(C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor, or

(D) Any person for consumption in any vehicle on the licensed premises;

Provided[,] that the sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the licensee acted in good faith, and it shall be incumbent upon the licensee to prove that he so acted in good faith;

(3) Be consumed on the premises of a licensee or on any premises connected therewith, whether there purchased or not, except as permitted by the terms of the license;

(4) Be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor's employment, and where there is proper supervision of such minor employees to ensure that the minors shall not consume the intoxicating liquor;

[(4)] (5) Be sold or served by any [minor] person below the age of eighteen upon any licensed premises, except in such individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, [or] the state community college system, or a federally sponsored manpower development and training program, under arrangements which ensure proper control and supervision of employees."

SECTION 4. Section 712-1250.5, Hawaii Revised Statutes, is amended to read as follows:

"[ ]§712-1250.5[ ] **Promoting intoxicating liquor to a minor.** (1) A person, including any licensee as defined in section 281-1, commits the offense of promoting intoxicating liquor to a minor if he knowingly:

(a) Sells or offers for sale, delivers, or gives to a person intoxicating liquor, and the person receiving the intoxicating liquor is a minor; or

(b) Permits a person to possess intoxicating liquor while on property under his control, and the person possessing the intoxicating liquor is a minor.

(2) It is a defense to a prosecution for promoting intoxicating liquor to a minor that:

(a) The intoxicating liquor provided to the minor was an ingredient in a medicine prescribed by a licensed physician for medical treatment of the minor; or

(b) The intoxicating liquor was provided to the minor as part of a ceremony of a recognized religion; or

(c) The defendant provided the intoxicating liquor to the minor with the belief, which was reasonable under the circumstances, that the minor had attained the age of [majority; or] twenty-one; or

(d) The defendant provided the intoxicating liquor to the minor with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the minor would not consume any portion of the substance; or

(e) The defendant provided the intoxicating liquor to the minor with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the minor would consume the substance only in the presence of the parent or legal guardian[.]; or

(f) The intoxicating liquor was possessed by the minor to be sold or served as allowed by law.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character, nature, and quantity of the intoxicating liquor possessed, distributed, or sold.

The fact that the defendant distributed or sold intoxicating liquor to a minor is prima facie evidence that the defendant knew the transferee was a minor, except as provided in subsection (2)(c).

(4) For the purposes of this section, "minor" means any person below the age of twenty-one years.

[(3)] (5) Promoting intoxicating liquor to a minor is a misdemeanor."

SECTION 5. Section 712-1252, Hawaii Revised Statutes, is amended to read as follows:

"**§712-1252 Knowledge of character, nature, or quantity of substance, or age of transferee; prima facie evidence.** (1) The fact that a person engaged in the conduct specified by any section in this part is prima facie evidence that he engaged in that conduct with knowledge of the character, nature, and quantity of the dangerous drug, harmful drug, detrimental drug, or intoxicating compounds[, or intoxicating liquor] possessed, distributed, or sold.

(2) The fact that the defendant distributed or sold a dangerous drug, harmful drug, detrimental drug, or intoxicating compound[, or intoxicating liquor,] to a minor is prima facie evidence that the defendant knew the transferee to be a minor."

SECTION 6. 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, 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; reasonable margin for profit from and contingencies in the administration of motor vehicle insurance sold; past and prospective expenses in the sale and administration of motor vehicle insurance; 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, unearned insurance premiums, and other unearned proceeds received on account of motor vehicle insurance sold, 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 to the following:
   (A) To assure the proper implementation and evaluation of the chapter the commissioner shall fully comply with section 431-703;
   (B) Except as provided in subsection (j) the commissioner shall establish rates and shall consider with other relevant factors loss experience and the investment income of the insurers, and insofar as sections 431-694 and 431-695 are in conflict with this provision, sections 431-694 and 431-695 shall not apply;
   (C) To afford all interested persons an opportunity to be heard the commissioner, after notice is published pursuant to chapter 91, shall 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 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 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), 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 standard.

(n) Notwithstanding subsection (j), and in addition to all other premium reductions required under this section, commencing on October 1, 1986, and ending on September 30, 1989, all insurers of any motor vehicle shall provide a 1.5 per cent reduction for bodily injury liability, property damage liability, no-fault benefits, uninsured motorist, and underinsured motorist coverages, and a 0.75 per cent reduction for collision coverage off premium charges each insurer assesses for each new and renewal policy, based on the anticipated effects of section 281-78. Commencing on October 1, 1989, and ending on September 30, 1990, at the discretion of and as determined by the commissioner, based on the difference between the actual and anticipated effects of section 281-78, all insurers of any motor vehicle shall provide a refund or credit to each insured at the time of renewal of a no-fault policy."

SECTION 7. The director of the state department of transportation shall submit a study, consisting of two reports, evaluating the effectiveness of this Act to the legislature. The first report shall be submitted no later than twenty-five days before the commencement of the regular legislative session of 1988, and the second report shall be submitted no later than twenty-five days before the commencement of the regular legislative session of 1991. This study shall evaluate the effectiveness of this Act and shall include, but not be limited to, information and recommendations relating to the extent to which this Act has reduced accidents, injuries, and fatalities caused by driving under the influence of intoxicating liquor, and the extent to which compliance has been achieved with this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on October 1, 1986, and shall be repealed as of September 30, 1991.

(Approved June 13, 1986.)