

ACT 170

S.B. NO. 2245

A Bill for an Act Relating to Unattended Children in Motor Vehicles.

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

SECTION 1. The legislature finds that leaving a child unattended in a car can too often have tragic consequences, either because the child suffers from exposure to excessive heat, is injured when the car is stolen, or releases the emergency brake, inadvertently starts the car, or puts the car in gear. On average, thirty-six children per year across the country die in hot vehicles. About forty per cent of those deaths occur when caregivers forget that children are in the car. About twenty per cent of children who die are intentionally left in vehicles by caregivers who do not know any better.

The legislature notes that with an outside temperature of approximately eighty-five degrees, the inside air temperature in a car will reach one hundred-thirty degrees or more. Under those conditions, a small child, whose body temperature increases three to five times faster than an adult's, can succumb to the heat in as short a time as fifteen minutes. External temperatures as low as sixty-six degrees can be fatal. As a result, the five-minute trip to the bank that ends up taking a half-hour can be deadly.

The legislature further finds that Hawaii is not immune to this problem. Four times within seven months in 2005, children were left in cars that were stolen. Since 2003, three children have died from heat stroke after being left unattended in a car by a parent or caregiver. Parents and caregivers know it is not safe to leave children home alone and unattended, but they continue to leave children unattended in a car even though it is just as dangerous, or more so. Accordingly, the legislature declares that it is the policy of the State that children should never be left unattended in vehicles under any circumstances. Stronger laws would also give law enforcement a preventive tool with which to work, similar to the effect of seat belt and child safety seat laws.

The legislature also finds that under current law, a police officer has only two choices when confronted with children left unattended in a car: either try to educate the parent or caregiver with a stern lecture or call child protective services and initiate a case for child endangerment. Since there is no law prohibiting this conduct, the first option provides little leverage to change it. The second option may be too draconian under the particular circumstances at hand. While current law permits institution of criminal charges in egregious circumstances, a sanction that is less severe is appropriate to deter this conduct when the circumstances do not warrant a criminal prosecution. State law already takes a similar approach to speeding, for example. Police officers are authorized to issue citations for speeding if the circumstances do not warrant, for example, arresting the driver for reckless driving. It simply makes no sense to say that we should not, for example, issue speeding tickets because the driver can always be charged with negligent homicide or manslaughter if someone happens to be killed by the speeding driver.

It is the purpose of this Act to protect the children of Hawaii by prohibiting operators and adult passengers of motor vehicles from leaving the vehicle with an unattended child inside for five minutes or more. This Act makes such conduct a violation of the statewide traffic code, not a crime, for which a violator may only be fined. Together with requirements that the knowledge of the prohibition be tested on the driver's examination and that rental car companies provide notice of the prohibition to renters, this prohibition will provide one more tool with which the police may take concrete action to protect Hawaii's children. Although Hawaii has criminal laws that can be used to sanction this behavior when injury or death results, it will be too late for the child in that case. Hawaii needs a way to deter this conduct when the child is not injured or killed, but before the ultimate tragedy strikes.

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

“§291C- Leaving a child unattended in a motor vehicle. (a) Notwithstanding chapter 571 or any other law to the contrary, a person violates this section if the person, being the operator or an adult passenger of a motor vehicle, leaves the motor vehicle for five minutes or longer when an unattended child is inside the vehicle, regardless of whether the operator or adult passenger is charged with the care or custody of the child.

(b) Any law enforcement officer, firefighter, or rescue team personnel who observes a child left unattended in a motor vehicle and determines that the unat-

tended child is in physical danger, or poses a danger to others, may use whatever means are reasonably necessary to protect the child or others and remove the child from the motor vehicle. If the person who left the motor vehicle with an unattended child inside cannot be located within a reasonable time, the law enforcement officer, firefighter, or rescue team personnel, upon removing the child from the motor vehicle, shall immediately report the matter to a police officer, as defined under section 587-2, who may assume protective custody of the child without a court order and without the consent of the child's family.

(c) Law enforcement officers, firefighters, and rescue team personnel shall not be liable in any civil action to any party for any act performed in good faith under this section.

(d) As used in this section:

“Child” means a person under the age of nine.

“Rescue team personnel” means physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of a hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have been charged by the owners or operators of the hospital or authorized emergency vehicle with providing life support and resuscitation to persons who are in immediate danger of loss of life in cases of emergency.

“Unattended” means leaving a child:

- (1) Alone in a motor vehicle; or
- (2) In a motor vehicle with a minor under the age of twelve.”

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- ; 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. Section 437D-13, Hawaii Revised Statutes, is amended¹ amending its title and subsection (a) to read as follows:

~~“§437D-13 Notice and posting required concerning [seat belt, child passenger restraint, and operating a vehicle under the influence] motor vehicle laws.~~ (a) Every lessor shall display at all times in a conspicuous place in each rental motor vehicle offered to the public, a decal, written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii’s seat belt and child passenger restraint laws and the prohibition against operating a vehicle under the influence of an intoxicant[;] and leaving a child unattended in a motor vehicle; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, ~~and~~ operating a vehicle under the influence of an intoxicant[-], and leaving a child unattended in a motor vehicle.

The requirements and penalties of Hawaii’s seat belt laws and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and penalties for operating a vehicle under the influence of an intoxicant, as provided in section 291E-61, and leaving a child unattended in a motor vehicle, as provided in section 291C-, shall be printed on a card which shall be placed in the glove compartment of every rental motor vehicle offered to the public.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval; provided that sections 3 and 4 shall take effect on October 1, 2008; and further provided that the amendments made to section 286-108, Hawaii Revised Statutes, shall not be repealed when that section is repealed and reenacted on January 9, 2011, by Act 72, Session Laws of Hawaii 2005.

(Approved June 13, 2008.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.