

The emergency ordinance may go into effect without hearing, notice, or publication, but the county or city shall promptly, after adoption, hold hearings to consider any necessary alterations in the ordinance. No ordinance may remain in effect after May 31 June 30, 1985. This section supersedes any inconsistent provision of law, charter, or ordinance.

Sec. 7. EFFECTIVE DATE.

Section 2 is effective within any Indian reservation where the governing body of the tribe having jurisdiction over that reservation has adopted an amendment to its tribal ordinance as provided by this section. The amendment to the tribal ordinance must provide that a nonintoxicating malt liquor or intoxicating liquor license issued to a non-Indian by a city, county, or town for an establishment located within Indian country, as defined under United States Code, title 18, section 1154, will be approved by the governing body of the tribe. The ordinance must also provide that no fee may be charged for approval.

Section 4 is effective upon approval by the Minneapolis city council and compliance with Minnesota Statutes, section 645.021. Sections 5 and 6 are effective the day following final enactment.

Approved June 7, 1985

CHAPTER 309 — H.F.No. 265

An act relating to commerce; providing for uninsured and underinsured motorist coverage; authorizing annual aggregate policy limits for dram shop insurance; providing for practices and procedures relating to dram shop actions; modifying provisions relating to the assigned risk plan; amending Minnesota Statutes 1984, sections 65B.43, by adding subdivisions; 65B.49, subdivision 4, and by adding a subdivision; 340.11, subdivisions 21 and 23, and by adding a subdivision; 340.12; 340.135; 340.95; and 340.951.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 65B.43, is amended by adding a subdivision to read:

Subd. 16. "Uninsured motor vehicle" means a motor vehicle or motorcycle for which a plan of reparation security meeting the requirements of sections 65B.41 to 65B.71 is not in effect.

Sec. 2. Minnesota Statutes 1984, section 65B.43, is amended by adding a subdivision to read:

Subd. 17. "Underinsured motor vehicle" means a motor vehicle or motorcycle to which a bodily injury liability policy applies at the time of the

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accident but its limit for bodily injury liability is less than the amount needed to compensate the insured for his or her actual damages.

Sec. 3. Minnesota Statutes 1984, section 65B.43, is amended by adding a subdivision to read:

Subd. 18. "Uninsured motorist coverage" means coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles.

Sec. 4. Minnesota Statutes 1984, section 65B.43, is amended by adding a subdivision to read:

Subd. 19. "Underinsured motorist coverage" means coverage for the protection of persons insured under that coverage who are legally entitled to recover damages for bodily injury from owners or operators of underinsured motor vehicles.

Sec. 5. Minnesota Statutes 1984, section 65B.49, subdivision 4, is amended to read:

Subd. 4. UNINSURED OR HIT-AND-RUN MOTOR VEHICLE COVERAGE AND UNDERINSURED MOTORIST COVERAGES. (1) No plan of reparation security may be renewed, delivered or issued for delivery, or executed in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is uninsured and underinsured motorist coverages are provided therein or supplemental thereto, in the amounts. The coverages combined, at a minimum, must provide limits of \$25,000 because of injury to or the death of one person in any accident, and subject to the said limit for one person, \$50,000 because of bodily injury to or the death of two or more persons in any one accident, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of injury. In the case of injury to, or the death of, two or more persons in any accident, the amount available to any one person must not exceed the coverage limit provided for injury to, or the death of, one person in any accident. For purposes of this subdivision, uninsured motorist coverage and underinsured motorist coverage shall be a single coverage.

(2) Every owner of a motor vehicle registered or principally garaged in this state shall maintain uninsured motor vehicle coverage and underinsured motorist coverages as provided in this subdivision.

(3) "Uninsured motor vehicle" means any motor vehicle or motorcycle for which a plan of reparation security meeting the requirements of sections 65B.41 to 65B.71 is not in effect No reparation obligor is required to provide limits of

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uninsured and underinsured motorist coverages in excess of the bodily injury liability limit provided by the applicable plan of reparation security.

(4) No recovery shall be permitted under the ~~uninsured motor vehicle provisions~~ and underinsured motorist coverages of this section for basic economic loss benefits paid or payable, or which would be payable but for any applicable deductible.

(5) If at the time of the accident the injured person is occupying a motor vehicle, the limit of liability for uninsured and underinsured motorist coverages available to the injured person is the limit specified for that motor vehicle. However, if the injured person is occupying a motor vehicle of which the injured person is not an insured, the injured person may be entitled to excess insurance protection afforded by a policy in which the injured party is otherwise insured. The excess insurance protection is limited to the extent of covered damages sustained, and further is available only to the extent by which the limit of liability for like coverage applicable to any one motor vehicle listed on the automobile insurance policy of which the injured person is insured exceeds the limit of liability of the coverage available to the injured person from the occupied motor vehicle.

If at the time of the accident the injured person is not occupying a motor vehicle, the injured person is entitled to select any one limit of liability for any one vehicle afforded by a policy under which the injured person is insured.

(6) Regardless of the number of policies involved, vehicles involved, persons covered, claims made, vehicles or premiums shown on the policy, or premiums paid, in no event shall the limit of liability for uninsured and underinsured motorist coverages for two or more motor vehicles be added together to determine the limit of insurance coverage available to an injured person for any one accident.

(7) The uninsured and underinsured motorist coverages required by this subdivision do not apply to bodily injury of the insured while occupying a motor vehicle owned by the insured, unless the occupied vehicle is an insured motor vehicle.

Sec. 6. Minnesota Statutes 1984, section 65B.49, is amended by adding a subdivision to read:

Subd. 4a. LIABILITY ON UNDERINSURED MOTOR VEHICLES.
With respect to underinsured motor vehicles, the maximum liability of an insurer is the lesser of the difference between the limit of underinsured motorist coverage and the amount paid to the insured by or for any person or organization who may be held legally liable for the bodily injury; or the amount of damages sustained but not recovered.

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Sec. 7. Minnesota Statutes 1984, section 340.11, subdivision 21, is amended to read:

Subd. 21. **LIABILITY INSURANCE.** Every person licensed to sell at retail intoxicating liquor or nonintoxicating malt liquor at on-sale or off-sale shall, after August 1, 1983, demonstrate proof of financial responsibility with regard to liability imposed by section 340.95, to the authority issuing the license as a condition of the issuance, maintenance, or renewal of his license, provided this subdivision does not apply to licensees who by affidavit establish that they are on-sale nonintoxicating malt liquor licensees with sales of less than \$10,000 of nonintoxicating malt liquor for the preceding year, or off-sale nonintoxicating malt liquor licensees with sales of less than \$20,000 of nonintoxicating malt liquor for the preceding year, or holders of on-sale wine licenses under subdivision 20, with sales of less than \$10,000 of wine for the preceding year. The issuing authority must submit to the commissioner the proof of financial responsibility or exemption affidavit submitted by the license applicant. Proof of financial responsibility may be given by filing:

(a) A certificate that there is in effect for the period covered by the license an insurance policy or pool providing the following minimum coverages;

(1) \$50,000 because of bodily injury to any one person in any one occurrence, and, subject to the limit for one person, in the amount of \$100,000 because of bodily injury to two or more persons in any one occurrence, and in the amount of \$10,000 because of injury to or destruction of property of others in any one occurrence;

(2) \$50,000 for loss of means of support of any one person in any one occurrence, and, subject to the limit for one person, \$100,000 for loss of means of support of two or more persons in any one occurrence; ~~or~~

(3) an annual aggregate policy limit for dramshop liability of not less than \$300,000 per policy year may be included in the policy provisions; or

(b) A bond of a surety company with minimum coverages as provided in clause (a);₂ or

(c) A certificate of the state treasurer that the licensee has deposited with him \$100,000 in cash or securities which may legally be purchased by savings banks or for trust funds having a market value of \$100,000.

This subdivision does not prohibit a local governing unit from requiring higher insurance or bond coverages, or a larger deposit of cash or securities than is required hereunder, as a condition of issuance or renewal of a retail intoxicating liquor or nonintoxicating malt liquor on-sale or off-sale license.

This subdivision does not prohibit an insurer from providing the coverage required by this subdivision in combination with other insurance coverage.

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The commissioner of commerce shall advise licensees and municipalities subject to the financial responsibility requirements of this subdivision of those persons offering insurance coverage. The commissioner of commerce shall establish a program to assist licensees in obtaining insurance coverage. The program shall include a committee appointed by the commissioner of commerce of a that is representative group of insurance carriers and producers, liquor vendors, and the public. No less than one-half of the committee members shall represent casualty insurers and surplus lines agents or brokers. The commissioner of commerce or the commissioner's designated representative shall serve as an ex officio member of the committee. The committee shall review and act upon all properly executed applications requesting liquor liability market assistance. The market assistance program shall be established by the commissioner of commerce by August 1, 1983, and shall continue to function so long as its services are deemed by the commissioner of commerce to be necessary to relieve perceived availability problems in the liquor liability insurance market. If the committee finds that it cannot assist in securing insurance coverage it shall notify the applicant in writing with a full explanation and recommendation for enhancing its ability to secure insurance. The commissioner of commerce shall, if necessary, establish an assigned risk plan pursuant to subdivision 23.

Sec. 8. Minnesota Statutes 1984, section 340.11, is amended by adding a subdivision to read:

Subd. 21a. NOTIFICATION BY INSURER OF STATUS OF CLAIM. Upon the request of the insured, an insurer who is providing coverage required by subdivision 21 shall inform the insured of the status of any claims made under the policy. The information must include:

- (1) the employees of the insured that may be involved and the nature of their involvement;
- (2) any amount the insurer is holding in reserve for payment of a claim or has paid in the disposition of the claim; and
- (3) any amount paid in the defense of the claim.

This subdivision does not require disclosure of otherwise nondiscoverable information to an adverse party in litigation.

Sec. 9. Minnesota Statutes 1984, section 340.11, subdivision 23, is amended to read:

Subd. 23. ASSIGNED RISK PLAN. (1) The purpose of the assigned risk plan is to provide coverage required by subdivision 21 to persons rejected pursuant to this subdivision.

(2) An insurer who offers liquor liability insurance that refuses to write the coverage required by subdivision 21 shall furnish the applicant with a written notice of refusal. The rejected applicant shall file a copy of the notice of refusal

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with the commissioner of public safety and with the assigned risk plan at the time of application for coverage under the plan to the assigned risk plan and the market assistance program.

A written notice of refusal must be provided to any applicant who has requested only liquor liability insurance if the insurer chooses to only offer liquor liability insurance in combination with other types of insurance.

A written notice of refusal must be provided by an insurer to any applicant who receives an offer of coverage from that insurer that is in excess of the rate charged by the assigned risk plan for similar coverage and risk. A notice is not required if the rate for the coverage offered is less than 20 percent in excess of the assigned risk plan rates, provided that the offered rate is the rate that the insurer has filed with the commissioner of commerce if the insurer is required to file its rates with the commissioner. If the insurer is not required to file its rates with the commissioner, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

A notice of refusal is not required to be filed if there is not an insurer offering liquor liability insurance in the state.

To be eligible to participate in the assigned risk plan an applicant must apply for coverage through the market assistance program. Application to the market assistance program must be made no later than the time of application to the assigned risk plan. If the market assistance program is unable to secure coverage then coverage may be extended by the assigned risk plan.

(3) The commissioner of commerce may enter into service contracts as necessary or beneficial to accomplish the purposes of the assigned risk plan including servicing of policies or contracts of coverage, data management, and assessment collections. Services related to the administration of policies or contracts of coverages shall be performed by one or more qualified insurance companies licensed pursuant to section 60A.06, subdivision 1, clause (13) or a qualified vendor of risk management services. A qualified insurer or vendor of risk management services shall possess sufficient financial, professional, administrative, and personnel resources to provide the services required for operation of the plan. The cost of all services contracted for shall be an obligation of the assigned risk plan.

(4) The commissioner of commerce may assess all insurers licensed pursuant to section 60A.06, subdivision 1, clause (13) an amount sufficient to fully fund the obligations of the assigned risk plan, if the commissioner of commerce determines that the assets of the assigned risk plan are insufficient to meet its obligations. The assessment of each insurer shall be in a proportion equal to the proportion which the amount of insurance written as reported on page 14 of the annual statement under line 5, commercial multi-peril, and line 17,

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other liability, during the preceding calendar year by that insurer bears to the total written by all such carriers for such lines.

(5) Policies and contracts of coverage issued pursuant to this subdivision shall contain the usual and customary provisions of liability insurance policies, and shall contain the minimum coverage required by subdivision 21 or the local governing unit.

(6) Assigned risk policies and contracts of coverage shall be subject to premium tax pursuant to section 60A.15.

(7) Insureds served by the assigned risk plan shall be charged premiums based upon a rating plan approved by the commissioner of commerce. Assigned risk premiums shall not be lower than rates generally charged by insurers for the business. The commissioner of commerce shall fix the compensation received by the agent of record.

(8) The rating plan may be amended by rule pursuant to chapter 14 or by the following expedited procedures:

(a) Any person may, by written petition served upon the commissioner, request that a hearing be held to amend the rating plan.

(b) The commissioner shall forward a copy of the petition to the chief administrative law judge within three business days of its receipt. The chief administrative law judge shall, within three business days of receipt of the copy of the petition or a request for a hearing by the commissioner, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be set no less than 60 days nor more than 90 days from the date of receipt of the petition by the commissioner.

(c) The commissioner of commerce shall publish a notice of the hearing in the state register at least 30 days before the hearing date. The notice should be similar to that used for rulemaking under the administrative procedures act. Approval by the administrative law judge of the notice prior to publication is not required.

(d) The hearing and all matters taking place after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

(e) The commissioner shall render a decision within ten business days of the receipt of the administrative law judge's report.

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(f) If all parties to the proceeding agree, any of the previous requirements may be waived or modified.

(g) A petition for a hearing to amend the rating plan received by the commissioner within 180 days of the date of the commissioner's decision in a prior proceeding to amend the rating plan is invalid and requires no action.

(9) A liquor vendor shall be denied or terminated from coverage through the assigned risk plan if the liquor vendor disregards safety standards, laws, rules, or ordinances pertaining to the offer, sale, or other distribution of liquor.

The commissioner may by rule establish other conditions for denial or termination from coverage through the assigned risk plan.

~~(8)~~ (10) The commissioner of commerce shall adopt rules, including emergency rules, as may be necessary to implement this subdivision. The rules may include:

- (a) appeal procedures from actions of the assigned risk plan;
- (b) formation of an advisory committee composed of insurers, vendors of risk management services and licensees, to advise the commissioner of commerce regarding operation of the plan; and
- (c) applicable rating plans and rating standards.

Sec. 10. Minnesota Statutes 1984, section 340.12, is amended to read:

340.12 APPLICATION FOR LICENSE.

Every person desiring a license from the commissioner of public safety, shall file with him a verified written application in the form prescribed by the commissioner. All applicants for manufacturer's and wholesaler's licenses to sell intoxicating liquor shall file with the commissioner of public safety a bond with corporate surety to be approved by the commissioner of public safety before granting the license or cash or United States government bonds in the sum of \$10,000, according to the character of the license, made payable to the state of Minnesota. All applicants for a license to sell intoxicating liquors on any railroad train or other common carrier shall file with the commissioner of public safety a bond with corporate surety to be approved by the commissioner of public safety before granting the license or cash or United States government bonds in the sum of \$1,000. All manufacturers and wholesalers of wines containing not more than 25 percent of alcohol by weight and manufacturers and wholesalers of beer containing more than 3.2 percent of alcohol by weight shall file with the commissioner of public safety a bond with corporate surety to be approved by the commissioner of public safety before granting the license or cash or United States government bonds in the sum of \$5,000.

Every person desiring a license from a local governing body shall file with the clerk of the municipality, or in the case of a public corporation organized and

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existing under sections 473.601 to 473.679, with the executive director thereof, a verified written application in the form prescribed by the commissioner with the additional information the local governing body requires. An applicant for an "off sale" license shall file with the clerk of the proper municipality a bond with corporate surety or cash or United States government bonds in a sum not less than \$1,000 and not more than \$3,000 as the local governing body of such municipality determines. The bond shall be approved by the local governing body and the commissioner of public safety.

Every application for the issuance or renewal of a license for the sale of intoxicating or nonintoxicating liquor must include a copy of each summons received by the applicant under section 340.951 during the preceding year.

An applicant for an "on sale" license shall file with the clerk of the proper municipality, or in the case of a public corporation organized and existing under sections 473.601 to 473.679, with the executive director thereof, a bond with corporate surety or cash or United States government bonds in a sum not less than \$3,000 nor more than \$5,000 as the local governing body of such municipality determines. The bond shall be approved by the local governing body.

A liability insurance policy required by section 340.11, subdivision 21 shall provide that it may not be canceled for any cause either by the insured or the insurance company without first giving ten days' notice to the municipality in writing of intention to cancel it, addressed to the city clerk of the municipality, or in the case of a public corporation organized and existing under sections 473.601 to 473.679, to the executive director thereof. The operation of an "off sale" or "on sale" business without having on file at all times with the municipality the liability insurance policy herein referred to shall be grounds for immediate revocation of the license.

Bonds of manufacturers, wholesalers, and common carriers shall run to the state of Minnesota. Bonds of "on sale" and "off sale" retail dealers shall run to the municipality in which the license is issued. The bonds shall be conditioned as follows:

As to manufacturers, wholesalers and common carriers:

- (a) That the licensee will obey the law relating to the licensed business;
- (b) That the licensee shall pay to the state when due all taxes, license fees, penalties and other charges payable by him under this act or any other law relating to the manufacture, distribution, or sale of intoxicating liquor;
- (c) That in the event of any violation of the provisions of law, the bond shall be forfeited to the state of Minnesota as hereinafter provided.

As to "off sale" and "on sale" dealers:

- (a) That the licensee will obey the law relating to the licensed business;

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(b) That the licensee will pay to the municipality when due all taxes, license fees, penalties and other charges provided by law;

(c) That in the event of any violation of the provisions of any law relating to the retail "off sale" and retail "on sale" of intoxicating liquor, the bond or policy shall be forfeited to the municipality in which the license was issued.

All bonds shall be for the benefit of the obligee and all persons suffering damages by reason of the breach of the conditions thereof. In the event of the forfeiture of any bond for violation of law, the district court of the county wherein the licensed business was carried on may forfeit the penal sum of the bond, or any part thereof, to the state or municipality named as obligee in the bond.

Sec. 11. Minnesota Statutes 1984, section 340.135, is amended to read:

340.135 LICENSES; REVOCATION; SUSPENSION.

The authority issuing or approving any license or permit pursuant to the intoxicating liquor act ~~may~~ shall either suspend for not to exceed 60 days or revoke such license or permit or impose a civil fine not to exceed \$2,000 for each violation upon a finding that the licensee or permit holder has failed to comply with any applicable statute, regulation or ordinance relating to intoxicating liquor. No suspension or revocation shall take effect until the licensee or permit holder has been afforded an opportunity for a hearing pursuant to sections 14.57 to 14.70.

Sec. 12. Minnesota Statutes 1984, section 340.95, is amended to read:

340.95 INJURIES CAUSED BY INTOXICATION, CIVIL ACTIONS.

Subdivision 1. CAUSE OF ACTION. Every husband, wife, child, parent, guardian, employer, or other person who is injured in person or property, or means of support, ~~or incurs other pecuniary loss~~ by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling or bartering intoxicating liquors or non-intoxicating malt liquors, caused the intoxication of that person, for all damages sustained. All damages recovered by a minor under this section shall be paid either to the minor or to his parent, guardian, or next friend, as the court directs. All suits for damages under this section shall be by civil action in any court of this state having jurisdiction. Actions for damages based upon liability imposed by this section shall be governed by section 604.01. ~~The provisions of section 604.01, as applied under this section, do not apply to actions for injury to person, property, or loss of means of support brought by a husband, wife, child, parent, guardian or other dependent of an intoxicated person.~~

Subd. 2. SUBROGATION CLAIMS DENIED. There shall be no recovery by any insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of

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a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or part under this section. The provisions of section 65B.53, subdivision 3, do not apply to actions under this section.

Subd. 3. PRESUMED DAMAGES IN CASE OF DEATH. In the case of an individual who is deceased and where a person is found liable under this section for a person's death, the individual or those claiming damages on the person's behalf, shall be conclusively presumed collectively to be damaged in a minimum amount of \$30,000; provided, however, that nothing herein shall prevent a claimant from recovering a greater amount of damages to the extent allowable and proven under this section.

Sec. 13. Minnesota Statutes 1984, section 340.951, is amended to read:

340.951 NOTICE OF INJURY; DISCOVERY BEFORE ACTIONS.

Subdivision 1. NOTICE REQUIRED. Every person who claims damages, and every person or his insurer who claims contribution or indemnity, from any municipality owning and operating a municipal liquor store or from the licensee of any licensed establishment for the sale of intoxicating liquor or non-intoxicating malt liquor for or on account of any injury within the scope of section 340.95, shall give a written notice to the governing body of the municipality or the licensee, as the case may be, stating:

(1) The time and date when, and person to whom the liquor was sold or bartered;

(2) The name and address of the person or persons who were injured or whose property was damaged;

(3) The approximate time and date and the place where any injury to person or property occurred. Every municipality or licensee who claims contribution or indemnification from any other licensee or municipality shall give a written notice in the form and manner specified in this section to the other municipality or licensee.

No error or omission in the notice shall void the effect of the notice, if otherwise valid, unless the error or omission is of a substantially material nature.

In the case of claims for contribution or indemnity this notice shall be served within 120 days after the injury occurs, or within 60 days after receiving written notice of a claim for contribution or indemnity, whichever is applicable, and no action for contribution or indemnity therefor shall be maintained unless the notice has been given. In the case of a claim for damages the notice shall be served by the claimant's attorney within 120 days of the date of entering an attorney-client relationship with the person in regard to the claim, and no action for damages shall be maintained unless the notice has been given.

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If requested to do so, a municipality or licensee receiving a notice shall promptly furnish claimant's attorney the names and addresses of other municipalities or licensees who sold or bartered liquor to the person identified in the notice, if known.

Actual notice of sufficient facts to reasonably put the governing body of the municipality or the licensee, as the case may be, or its insurer, on notice of a possible claim, shall be construed to comply with the notice requirements herein.

No action shall be maintained for injury under section 340.95 unless commenced within two years after the injury.

Subd. 2. BAD FAITH NOTICE. A claimant who in bad faith gives notice to a licensee who did not sell or barter liquor to the alleged intoxicated person is subject to liability for actual damages, which shall include the reasonable out-of-pocket attorney fees incurred by the licensee in the defense of the bad faith notice.

Sec. 14. EFFECTIVE DATE.

Sections 1 to 6 are effective July 1, 1985, and apply to all insurance policies providing benefits for injuries arising out of the maintenance or use of a motor vehicle or motorcycle that are executed, issued, issued for delivery, delivered, continued, or renewed in this state after June 30, 1985."

Sections 7 and 9 are effective the day following final enactment. Section 12 is effective July 1, 1985, and applies to causes of action arising on or after that date.

Approved June 7, 1985

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