
A BILL FOR AN ACT

RELATING TO DRIVER LICENSING.

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

1 SECTION 1. The purpose of this Act is to address a
2 decision by the Hawaii intermediate court of appeals that would
3 make it difficult, if not impossible, for the State to prove
4 that the defendant drove without a license. The Hawaii
5 intermediate court of appeals in *State v. Matautia*, 81 Haw. 76
6 (1996), interpreted the law in a way that was not intended by
7 the legislature. The court ruled that in a case involving
8 driving without a license, the State must prove that the
9 defendant:

- 10 (1) Operated any category of motor vehicle in section 286-
11 102, Hawaii Revised Statutes;
- 12 (2) Was not first "appropriately examined and duly
13 licensed as a qualified driver of the category of
14 motor vehicles"; and
- 15 (3) Was not excepted by statute from driver's licensing
16 requirements.

17 As a practical matter, the decision required the State to
18 prove, among other issues, that the defendant did not possess a



1 valid driver's license from another accepted jurisdiction.
2 However, retrieving this information is very difficult because
3 there is no available network that links the driver's license
4 databases for all accepted jurisdictions, including the United
5 States or the provinces or states of Canada or Mexico. Thus,
6 inquiries to all of the individual states or provinces must be
7 conducted separately. Given that each year, there are over
8 seventeen thousand cases involving driving without a license
9 statewide, and over eleven thousand cases involving driving
10 without a license in the city and county of Honolulu alone,
11 there are insufficient time and resources to send inquiries to
12 all of these jurisdictions in each and every case involving
13 driving without a license. The legislature did not intend that
14 the burden of proof lie with the State in this manner.

15 The inability of the State to prove that a motorist is not
16 validly licensed in other jurisdictions has markedly raised the
17 number of motorists found not guilty of driving without a
18 license and adversely affects the State's efforts to promote
19 traffic safety on Hawaii's roadways.

20 The purpose of this Act is to relieve the prosecutors of a
21 burden of proof on possession of an out-of-state license, and to
22 provide that possession of an out-of-state license is an



1 affirmative defense that is available to the defendant after the
2 State proves that the defendant did not possess a valid Hawaii's
3 driver's license as required by state law.

4 SECTION 2. Section 286-102, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) No person, except [~~one exempted under section~~
7 ~~286-105,~~] one who holds an instruction permit under section
8 286-110, one who holds a provisional license under section
9 286-102.6, one who holds a commercial driver's license issued
10 under section 286-239, or one who holds a commercial driver's
11 license instruction permit issued under section 286-236, shall
12 operate any category of motor vehicles listed in this section
13 without first being appropriately examined and duly licensed as
14 a qualified driver of that category of motor vehicles."

15 SECTION 3. Section 286-105, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§286-105 What persons are exempt from license[+];
18 affirmative defense. The following persons are exempt from
19 license[+]; provided that it shall be an affirmative defense to
20 a violation of section 286-102 that the person:

21 (1) [~~Any person while~~] was driving or operating a motor
22 vehicle in the service or employ of any branch or



1 agency of the federal government; provided that the
2 person has received a license or permit from the
3 branch or agency to operate and drive the motor
4 vehicle; provided further that the branch or agency
5 has been duly authorized by the federal government to
6 issue the license or permit;

7 (2) [~~Any person while~~] Was driving or operating any road
8 machine, farm tractor, or implement of husbandry
9 temporarily operated or moved on a highway; provided
10 that no person under the age of thirteen years shall
11 be permitted to drive or operate any such road
12 machine, farm tractor, or implement of husbandry on a
13 highway;

14 (3) [~~Any person who is~~] Was at least eighteen years of age
15 and [~~who has~~] had in the person's possession a valid
16 driver's license to drive the categories of motor
17 vehicles listed in section 286-102(b), except section
18 286-102(b)(4), that is equivalent to a driver's
19 license issued in this State but was issued to the
20 person in another state of the United States, the
21 Commonwealth of Puerto Rico, United States Virgin
22 Islands, American Samoa, Guam, a province of [the



1 ~~Dominion of~~] Canada, or the Commonwealth of the
2 Northern Mariana Islands for that category of motor
3 vehicle which the person is operating;

4 (4) [~~Any person who has~~] Had in the person's possession a
5 valid commercial motor vehicle driver's license issued
6 by any state of the United States, Mexico, or a
7 province of [~~the Dominion of~~] Canada that issues
8 licenses in accordance with the minimum federal
9 standards for the issuance of commercial motor vehicle
10 driver's licenses; [~~and~~] or

11 (5) [~~Any person who drives or operates~~] Did drive or
12 operate a state or county motor [~~vehicles~~] vehicle
13 while employed by, in the service of, or volunteering
14 for the state or county fire departments[~~7~~]; provided
15 that [~~they are~~] the person was trained and certified
16 to drive category (4) motor vehicles as set forth in
17 section 286-102(b)(4) by the state or county
18 government, as appropriate[~~7~~]; provided further
19 that the person maintains a category (3) license as
20 set forth in section 286-102(b)(3)."



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

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

6 SECTION 6. This Act shall take effect upon its approval;
7 provided that the amendments in this Act to section 286-102(a),
8 Hawaii Revised Statutes, shall not be repealed when that section
9 is reenacted on January 9, 2011, pursuant to Act 72, Session
10 Laws of Hawaii 2005.



Report Title:
Driver Licensing

Description:

Specifies that proof that a defendant possessed an out-of-state driver's license is an affirmative defense to the charge of driving without a license, that must be proved by the defendant. Repeals statutory cross-reference to an exemption to relieve the burden of proof on prosecutors. (SD1)

