

JAN 26 2009

A BILL FOR AN ACT

RELATING TO COMMERCIAL DRIVERS.

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

1 SECTION 1. Section 291E-61, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) A person committing the offense of operating a
4 vehicle under the influence of an intoxicant shall be sentenced
5 as follows without possibility of probation or suspension of
6 sentence:

7 (1) Except as provided in [†]paragraph[†] (2), for the
8 first offense, or any offense not preceded within a
9 five-year period by a conviction for an offense under
10 this section or section 291E-4(a):

11 (A) A fourteen-hour minimum substance abuse
12 rehabilitation program, including education and
13 counseling, or other comparable program deemed
14 appropriate by the court;

15 (B) Ninety-day prompt suspension of license and
16 privilege to operate a vehicle during the
17 suspension period, or the court may impose, in

1 lieu of the ninety-day prompt suspension of
2 license, a minimum thirty-day prompt suspension
3 of license with absolute prohibition from
4 operating a vehicle and, for the remainder of the
5 ninety-day period, a restriction on [~~the~~] a
6 category (1), (2), or (3) license under section
7 286-102(b) license that allows the person to
8 drive for limited work-related purposes and to
9 participate in substance abuse treatment
10 programs;

11 (C) Any one or more of the following:

12 (i) Seventy-two hours of community service work;

13 (ii) Not less than forty-eight hours and not more
14 than five days of imprisonment; or

15 (iii) A fine of not less than \$150 but not more
16 than \$1,000;

17 (D) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and

19 (E) May be charged a surcharge of up to \$25 to be
20 deposited into the trauma system special fund if
21 the court so orders;

1 (2) For a first offense committed by a highly intoxicated
2 driver, or for any offense committed by a highly
3 intoxicated driver not preceded within a five-year
4 period by a conviction for an offense under this
5 section or section 291E-4(a):

6 (A) A fourteen-hour minimum substance abuse
7 rehabilitation program, including education and
8 counseling, or other comparable program deemed
9 appropriate by the court;

10 (B) Prompt suspension of a license and privilege to
11 operate a vehicle for a period of six months with
12 an absolute prohibition from operating a vehicle
13 during the suspension period;

14 (C) Any one or more of the following:

15 (i) Seventy-two hours of community service work;

16 (ii) Not less than forty-eight hours and not more
17 than five days of imprisonment; or

18 (iii) A fine of not less than \$150 but not more
19 than \$1,000;

20 (D) A surcharge of \$25 to be deposited into the
21 neurotrauma special fund; and

1 (E) May be charged a surcharge of up to \$50 to be
2 deposited into the trauma system special fund if
3 the court so orders;

4 (3) For an offense that occurs within five years of a
5 prior conviction for an offense under this section or
6 section 291E-4(a) by:

7 (A) Prompt suspension of license and privilege to
8 operate a vehicle for a period of one year with
9 an absolute prohibition from operating a vehicle
10 during the suspension period;

11 (B) Either one of the following:

12 (i) Not less than two hundred forty hours of
13 community service work; or

14 (ii) Not less than five days but not more than
15 fourteen days of imprisonment of which at
16 least forty-eight hours shall be served
17 consecutively;

18 (C) A fine of not less than \$500 but not more than
19 \$1,500;

20 (D) A surcharge of \$25 to be deposited into the
21 neurotrauma special fund; and

(E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;

(4) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):

(A) A fine of not less than \$500 but not more than \$2,500;

(B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;

(C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;

(D) A surcharge of \$25 to be deposited into the neurotrauma special fund;

(E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and

(F) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of

1 transportation shall provide storage for vehicles
2 forfeited under this subsection; and

3 (5) Any person eighteen years of age or older who is
4 convicted under this section and who operated a
5 vehicle with a passenger, in or on the vehicle, who
6 was younger than fifteen years of age, shall be
7 sentenced to an additional mandatory fine of \$500 and
8 an additional mandatory term of imprisonment of forty-
9 eight hours; provided that the total term of
10 imprisonment for a person convicted under this
11 paragraph shall not exceed the maximum term of
12 imprisonment provided in paragraph (1), (3), or (4)."

13 SECTION 2. Section 291E-61, Hawaii Revised Statutes, as
14 effective on July 1, 2010, is amended by amending subsection (b)
15 to read as follows:

16 "(b) A person committing the offense of operating a
17 vehicle under the influence of an intoxicant shall be sentenced
18 as follows:

19 (1) Except as provided in paragraphs (2) and (5), for the
20 first offense, or any offense not preceded within a
21 five-year period by a conviction for an offense under
22 this section or section 291E-4(a), and notwithstanding

1 section 706-623, by probation for not less than one
2 year nor more than two years on the following
3 conditions:

4 (A) A fourteen-hour minimum substance abuse
5 rehabilitation program, including education and
6 counseling, or other comparable program deemed
7 appropriate by the court;

8 (B) (i) Ninety-day prompt suspension of license and
9 privilege to operate a vehicle during the
10 suspension period, or the court may impose,
11 in lieu of the ninety-day prompt suspension
12 of license, a minimum thirty-day prompt
13 suspension of license with absolute
14 prohibition from operating a vehicle and,
15 for the remainder of the ninety-day period,
16 a restriction on ~~[the]~~ a category (1), (2),
17 or (3) license under section 286-102(b)
18 license that allows the person to drive for
19 limited work-related purposes and to
20 participate in substance abuse treatment
21 programs; or

(ii) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than \$150 but not more than \$1,000;

(D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;

(2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a), and notwithstanding

1 section 706-623, by probation for not less than two
2 years nor more than four years on the following
3 conditions:

4 (A) A fourteen-hour minimum substance abuse
5 rehabilitation program, including education and
6 counseling, or other comparable program deemed
7 appropriate by the court;

8 (B) A two-year revocation of license and privilege to
9 operate a vehicle during the revocation period
10 and installation during the revocation period of
11 an ignition interlock device on any vehicle
12 operated by the person;

13 (C) Any one or more of the following:

14 (i) Seventy-two hours of community service work;

15 (ii) Not less than forty-eight hours and not more
16 than five days of imprisonment; or

17 (iii) A fine of not less than \$150 but not more
18 than \$1,000;

19 (D) A surcharge of \$25 to be deposited into the
20 neurotrauma special fund; and

(E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;

(3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a), and notwithstanding section 706-623, by probation for not less than two years nor more than four years on the following conditions:

(A) A two-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(B) Either one of the following:

(i) Not less than two hundred forty hours of community service work; or

(ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;

(C) A fine of not less than \$500 but not more than \$1,500;

1 (D) A surcharge of \$25 to be deposited into the
2 neurotrauma special fund; and

3 (E) May be charged a surcharge of up to \$50 to be
4 deposited into the trauma system special fund if
5 the court so orders;

6 (4) For an offense that occurs within five years of two
7 prior convictions for offenses under this section or
8 section 291E-4(a), and notwithstanding section 706-
9 623, by probation for not less than three years nor
10 more than five years on the following conditions:

11 (A) A fine of not less than \$500 but not more than
12 \$2,500;

13 (B) Three-year revocation of license and privilege to
14 operate a vehicle during the revocation period
15 and installation during the revocation period of
16 an ignition interlock device on any vehicle
17 operated by the person;

18 (C) Not less than ten days but not more than thirty
19 days imprisonment of which at least forty-eight
20 hours shall be served consecutively;

21 (D) A surcharge of \$25 to be deposited into the
22 neurotrauma special fund; and

(E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and

(5) In addition to a sentence imposed under paragraphs (1) through (4), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4). Notwithstanding paragraph (1), the probation period for a person sentenced under this paragraph shall be not less than two years."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

S.B. NO. 979

1 SECTION 4. This Act shall take effect upon its approval.

2

3

INTRODUCED BY:

A handwritten signature in black ink, consisting of a horizontal line with a vertical stroke crossing it, and a small loop at the end of the horizontal line.

4

BY REQUEST

5.B. NO. 979

Report Title:

Commercial Driver's License

Description:

Revises standard for a court-issued license to drive for work-related purposes.

SB 979

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVERS.

PURPOSE: To conform court-issued license to drive law to the federal commercial driver licensing law for consistency with section 286-236, Hawaii Revised Statutes (HRS).

MEANS: Amend section 291E-61(b), Hawaii Revised Statutes.

JUSTIFICATION: Sections 286-236(d) and 291E-61, HRS are inconsistent and do not conform to federal regulations. Section 291E-61 is referred to as the "court-issued license to drive law" that allows the CDL driver a hardship license to operate a motor vehicle. This exception to allow the CDL to obtain a hardship license jeopardizes the State's federal funding.

The intent of the proposed change is to meet the requirements of a federal regulation (49 CFR §384-210) and improve enforcement by conforming the state statutes to the federal regulation. Currently, wording in section 286-236(d), HRS, does not conform to the federal regulation. In addition, for consistency, this change will apply to drivers with a category four driver's license who operate commercial vehicles.

The court-issued license to drive law allows the CDL driver a hardship license that is prohibited in the CDL program under 49 C.F.R. §384-210. This practice allows an unsafe commercial driver to continue to pose a risk to motorists and other roadway users by allowing the unsafe commercial driver continued operation on the highway. Legislation is needed to limit this restricted license to non-CDL holders and

bring state practice into compliance with the CDL requirement for identifying and removing drivers whose violations warrant such action.

Failure to enact the changes required in the FMCSA regulation could result in the loss of approximately \$4,600,000 (or 5 percent) of federal-aid highway funds (based on fiscal year 2007-2008 funding) for the first year of non-compliance and \$9,300,000 (or 10 percent) per year thereafter. Motor Carrier Safety Assistance Program (MCSAP) grant funds (\$660,667 in fiscal year 2007-2008) could also be withheld for each year of noncompliance.

Impact on the public:

Any holder of a commercial driver's license or a category four driver's license will not be allowed to drive a commercial motor vehicle for work related purposes after being convicted of operating a vehicle under the influence of an intoxicant.

Impact on the department and other agencies:

The court will not be able to issue a hardship license to a CDL holder.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PBS PROGRAM DESIGNATION:	TRN 597.
OTHER AFFECTED AGENCIES:	State Judiciary
EFFECTIVE DATE:	Upon approval.