
A BILL FOR AN ACT

RELATING TO THE VIOLATION OF RULES DURING EMERGENCY PERIODS.

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

1 SECTION 1. The legislature finds that the global pandemic
2 has created great challenges to the State's health, economy, and
3 way of life. The governor and county mayors have exercised
4 their emergency powers under chapter 127A, Hawaii Revised
5 Statutes, to impose rules in an attempt to control the spread of
6 COVID-19. The enforcement of these rules is essential to
7 control the spread of COVID-19, protect the health and safety of
8 those in the community, manage medical resources, and restart
9 the economy. However, section 127A-29, Hawaii Revised Statutes,
10 only allows the governor and county mayors to establish
11 misdemeanor offenses through rulemaking during emergency
12 periods. Misdemeanor offenses must be processed through the
13 court system. This has placed a heavy burden upon the criminal
14 justice system, which must be able to process these cases
15 appropriately to allow for meaningful and effective enforcement.
16 The legislature further finds that there are concerns that
17 the criminal justice system is unable to handle the great number



1 of cases being placed into the system. The county police
2 departments have issued tens of thousands of citations for
3 violations of emergency proclamations and orders, which must be
4 processed through the court system. These cases have inundated
5 the courts, which are also faced with operational complications
6 caused by the pandemic.

7 The legislature also finds that there cannot be meaningful
8 and effective enforcement when the cases cannot be processed in
9 a timely and appropriate manner, which also adversely impacts
10 the governor's and county mayors' ability to control the spread
11 of COVID-19.

12 The legislature believes that the governor and the county
13 mayors should be empowered to establish lesser offenses, which
14 will allow the governor and county mayors to promulgate
15 consequences that may be more proportionate to the offenses and
16 can free up judicial resources.

17 The purpose of this Act is to:

- 18 (1) Authorize the governor and county mayors to establish
19 lesser offenses during emergency periods, including
20 non-criminal violations or infractions; and



H.B. NO. 725

- 1 (2) Establish a more expeditious system for the processing
2 of these emergency period infractions, similar to the
3 existing process for the adjudication of traffic
4 infractions, which will:
- 5 (A) Eliminate the court arraignment proceeding for
6 many of the emergency period infractions;
- 7 (B) Facilitate and encourage the resolution of many
8 emergency period infractions through the payment
9 of a monetary assessment;
- 10 (C) Speed the disposition of contested cases through
11 a hearing, similar to small claims proceedings,
12 in which the rules of evidence will not apply and
13 the court will consider as evidence the notice of
14 infraction, applicable police reports, or other
15 written statements by the police officer who
16 issued the notice, any other relevant written
17 material, and any evidence or statements by the
18 defendant contesting the notice of infraction;
- 19 (D) In most cases, dispense with the need for
20 witnesses, including law enforcement officers, to



H.B. NO. 725

1 to chapter 127A that are specified in the emergency proclamation
2 or order as being an infraction subject to the adjudication
3 process of this chapter.

4 "Hearing" means a proceeding conducted by the district
5 court pursuant to section -7 at which the defendant to whom a
6 notice of infraction was issued either admits to the infraction,
7 contests the notice of infraction, or admits to the infraction
8 but offers an explanation to mitigate the monetary assessment
9 imposed.

10 "Notice of infraction" means the citation form that is
11 issued to the defendant at or after the time of the emergency
12 period infraction and notifies the defendant of the civil
13 infraction the defendant is charged with committing, whatever
14 its title or denomination.

15 "Related criminal offense" means any criminal violation or
16 crime, committed in the same course of conduct as an emergency
17 period infraction, for which the defendant is arrested or
18 charged.

19 "Trial" means a trial conducted by the district court
20 pursuant to the rules of the district court and Hawaii rules of
21 evidence.



1 § -2 **Applicability.** (a) Notwithstanding any other
2 provision of law to the contrary, all emergency period
3 infractions, including emergency period infractions committed by
4 minors, shall be adjudicated pursuant to this chapter, except as
5 provided in subsection (b). This chapter shall be applied
6 uniformly throughout the State and in all counties. No
7 emergency period infraction shall be classified as a criminal
8 offense.

9 (b) Where a defendant is charged with an emergency period
10 infraction and the infraction is committed in the same course of
11 conduct as a criminal offense for which the offender is arrested
12 or charged, the emergency period infraction shall be adjudicated
13 pursuant to this chapter; provided that the court may schedule
14 any initial appearance, hearing, or trial on the emergency
15 period infraction at the same date, time, and place as the
16 arraignment, hearing, or trial on the related criminal offense.

17 Notwithstanding this subsection and subsection (c), the
18 court shall not schedule any initial appearance, hearing, or
19 trial on the emergency period infraction at the same date, time,
20 and place as the arraignment, hearing, or trial on the related
21 criminal offense where the related criminal offense is a felony



H.B. NO. 725

1 or misdemeanor for which the defendant has demanded a jury
2 trial.

3 (c) If the defendant requests a trial pursuant to
4 section -11, the trial shall be held in the district court of
5 the circuit in which the emergency period infraction was
6 committed. If the court schedules a concurrent trial pursuant
7 to paragraph (1), the concurrent trial shall be held in the
8 appropriate district or family court of the circuit in which the
9 emergency period infraction was committed, whichever has
10 jurisdiction over the related criminal offense charged pursuant
11 to the applicable statute or rule of court; provided that:

12 (1) The district or family court, for the purpose of
13 trial, may schedule a civil trial on the emergency
14 period infraction on the same date and at the same
15 time as a criminal trial on the related criminal
16 offense charged. The court shall enter a civil
17 judgment as to the emergency period infraction and a
18 judgment of conviction or acquittal as to the related
19 criminal offense following such concurrent trial; and

20 (2) If trial on the emergency period infraction is held
21 separately from and prior to trial on any related



H.B. NO. 725

1 criminal offense, the following shall be inadmissible
2 in the prosecution or trial of the related criminal
3 offense, except as expressly provided by the Hawaii
4 rules of evidence:

5 (A) Any written or oral statement made by the
6 defendant in proceedings conducted pursuant to
7 section 701-6(b); and

8 (B) Any testimony given by the defendant in the trial
9 on the emergency period infraction.

10 Such statements or testimony shall not be deemed a
11 waiver of the defendant's privilege against self-
12 incrimination in connection with any related criminal
13 offense.

14 (d) In no event shall section 701-109 preclude prosecution
15 for a related criminal offense where an emergency period
16 infraction committed in the same course of conduct has been
17 adjudicated pursuant to this chapter.

18 (e) If the defendant fails to appear at any scheduled
19 court date prior to the date of trial or concurrent trial and:

20 (1) The defendant's civil liability for the emergency
21 period infraction has not yet been adjudicated



1 pursuant to section -7, the court shall enter a
2 judgment by default in favor of the State for the
3 emergency period infraction unless the court
4 determines that good cause or excusable neglect exists
5 for the defendant's failure to appear; or

6 (2) The defendant's civil liability for the emergency
7 period infraction has been previously adjudicated
8 pursuant to section -7, the judgment earlier
9 entered in favor of the State shall stand unless the
10 court determines that good cause or excusable neglect
11 exists for the defendant's failure to appear.

12 (f) If the defendant fails to appear at any scheduled
13 court date prior to concurrent trial or fails to appear for
14 concurrent trial scheduled pursuant to subsection (c)(1), the
15 court shall enter a disposition pursuant to the Hawaii rules of
16 penal procedure for the criminal offense.

17 § -3 **Venue and jurisdiction.** (a) All emergency period
18 infractions shall be adjudicated in the district and circuit
19 where the alleged infraction occurred, except as otherwise
20 provided by law.



1 (b) Except as otherwise provided by law, jurisdiction is
2 in the district court of the circuit where the alleged emergency
3 period infraction occurred. Except as otherwise provided in
4 this chapter, district court judges shall adjudicate emergency
5 period infractions.

6 § -4 **Notice of infraction; form; determination final**
7 **unless contested.** (a) The notice of infraction shall include
8 the summons for the purposes of this chapter. Whenever a notice
9 of infraction is issued, the defendant's signature, driver's
10 license number or state identification number, current address,
11 and electronic mail address shall be noted on the notice. If
12 the defendant refuses to sign the notice of infraction, the law
13 enforcement officer shall record this refusal on the notice and
14 issue the notice to the defendant. Individuals to whom a notice
15 of infraction is issued under this chapter need not be arraigned
16 before the court, unless required by rule of the supreme court.

17 (b) The form for the notice of infraction shall be
18 prescribed by rules of the district court, which shall be
19 uniform throughout the State; provided that each judicial
20 circuit may include differing statutory, rule, or ordinance
21 provisions on its respective notice of infraction.



H.B. NO. 725

1 (c) A notice of infraction that is generated by the use of
2 electronic equipment or that bears the electronically stored
3 image of any person's signature, or both, shall be valid under
4 this chapter.

5 (d) The notice of infraction shall include the following:

6 (1) A statement of the specific emergency period

7 infraction for which the notice was issued;

8 (2) A brief statement of the facts;

9 (3) A statement of the total amount to be paid for each
10 emergency period infraction, which amount shall
11 include any fee, surcharge, or cost required by
12 statute, ordinance, or rule, and the monetary
13 assessment established pursuant to section -8, to
14 be paid by the defendant;

15 (4) A statement of the options provided in
16 section -5(b) for answering the notice and the
17 procedures necessary to exercise the options;

18 (5) A statement that the defendant to whom the notice is
19 issued must answer, choosing one of the options
20 specified in section -5(b), within twenty-one days
21 of issuance of the notice;



- 1 (6) A statement that failure to answer the notice of
2 infraction within twenty-one days of issuance shall
3 result in the entry of judgment by default for the
4 State and may result in the assessment of a late
5 penalty;
- 6 (7) A statement that, at a hearing requested to contest
7 the notice of infraction conducted pursuant to section
8 -7, no law enforcement officer shall be present
9 unless the defendant timely requests the court to have
10 the law enforcement officer present, and that the
11 standard of proof to be applied by the court is
12 whether a preponderance of the evidence proves that
13 the specified infraction was committed;
- 14 (8) A statement that, at a hearing requested for the
15 purpose of explaining mitigating circumstances
16 surrounding the commission of the emergency period
17 infraction or in consideration of a written request
18 for mitigation, the defendant shall be considered to
19 have committed the emergency period infraction;



H.B. NO. 725

1 (9) A space in which the signature of the defendant to
2 whom the notice of infraction was issued may be
3 affixed; and

4 (10) The date, time, and place at which the defendant to
5 whom the notice of infraction was issued must appear
6 in court, if the defendant is required by the notice
7 to appear in person at the hearing.

8 § -5 **Answer required.** (a) A defendant who receives a
9 notice of infraction shall answer the notice within twenty-one
10 days of the date of issuance of the notice. There shall be
11 included with the notice of infraction a preaddressed envelope
12 directed to the designated district court.

13 (b) Provided that the notice of infraction does not
14 require an appearance in person at a hearing as set forth in
15 section -4(d)(10), in answering a notice of infraction, a
16 defendant shall have the following options:

17 (1) Admit the commission of the emergency period
18 infraction in one of the following ways:

19 (A) By mail or in person, by completing the
20 appropriate portion of the notice of infraction
21 or preaddressed envelope and submitting it to the



1 authority specified on the notice together with
2 payment of the total amount stated on the notice
3 of infraction. Payment by mail shall be in the
4 form of a check, money order, or by an approved
5 credit or debit card. Payment in person shall be
6 in the form of United States currency, check,
7 money order, or by an approved credit or debit
8 card; or

9 (B) Via the Internet or by telephone, by submitting
10 payment of the total amount stated on the notice
11 of infraction. Payment via the Internet or by
12 telephone shall be by an approved credit or debit
13 card;

14 (2) Deny the commission of the emergency period infraction
15 and request a hearing to contest the emergency period
16 infraction by completing the appropriate portion of
17 the notice of infraction or preaddressed envelope and
18 submitting it, either by mail or in person, to the
19 authority specified on the notice. In lieu of
20 appearing in person at a hearing, the defendant may
21 submit a written statement of grounds on which the



1 defendant contests the notice of infraction, which
2 shall be considered by the court as a statement given
3 in court pursuant to section -7(a); or

4 (3) Admit the commission of the emergency period
5 infraction and request a hearing to explain
6 circumstances mitigating the emergency period
7 infraction by completing the appropriate portion of
8 the notice of infraction or preaddressed envelope and
9 submitting it, either by mail or in person, to the
10 authority specified on the notice. In lieu of
11 appearing in person at a hearing, the defendant may
12 submit a written explanation of the mitigating
13 circumstances, which shall be considered by the court
14 as a statement given in court pursuant to
15 section -7(b).

16 (c) When answering the notice of infraction, the defendant
17 shall affix the defendant's signature to the answer and shall
18 state the address at which the defendant will accept future
19 mailings from the court. No other response shall constitute an
20 answer for purposes of this chapter.



H.B. NO. 725

1 § -6 Court action after answer or failure to answer.

2 (a) When an admitting answer is received, the court shall enter
3 judgment in favor of the State in the total amount specified in
4 the notice of infraction.

5 (b) When a denying answer is received, the court shall
6 proceed as follows:

7 (1) In the case of an emergency period infraction where
8 the defendant requests a hearing at which the
9 defendant will appear in person to contest the
10 emergency period infraction, the court shall notify
11 the defendant in writing of the date, time, and place
12 of hearing to contest the notice of infraction. The
13 notice of hearing shall be mailed to the address
14 provided by defendant in the denying answer, or if
15 none is given, to the address provided by defendant
16 when the notice of infraction was issued, or if none
17 was provided, to the electronic mail address provided
18 by defendant when the notice of infraction was issued.
19 The notification shall also advise the defendant that,
20 if the defendant fails to appear at the hearing, the
21 court shall enter judgment by default in favor of the



H.B. NO.725

1 State, as of the date of the scheduled hearing, that
2 the total amount specified in the default judgment
3 must be paid within thirty days of entry of default
4 judgment; and

- 5 (2) When a denying answer is accompanied by a written
6 statement of the grounds on which the defendant
7 contests the notice of infraction, the court shall
8 proceed as provided in section -7(a) and shall
9 notify the defendant of its decision, including the
10 total amount assessed, if any, by mailing the notice
11 of entry of judgment within forty-five days of the
12 postmarked date of the answer to the address provided
13 by the defendant in the denying answer, or if none is
14 given, to the address provided by defendant when the
15 notice of infraction was issued, or if none was
16 provided, to the electronic mail address provided by
17 defendant when the notice of infraction was issued.
18 The notice of entry of judgment shall also advise the
19 defendant, if it is determined that the emergency
20 period infraction was committed and judgment is
21 entered in favor of the State, that the defendant has



H.B. NO. 725

1 the right, within thirty days of entry of judgment, to
2 request a trial and shall specify the procedures for
3 doing so. The notice of entry of judgment shall also
4 notify the defendant, if an amount is assessed by the
5 court for monetary assessments, fees, surcharges, or
6 costs, that if the defendant does not request a trial
7 within the time specified in this paragraph, the total
8 amount assessed shall be paid within thirty days of
9 entry of judgment.

10 (c) When an answer admitting commission of the emergency
11 period infraction but seeking to explain mitigating
12 circumstances is received, the court shall proceed as follows:

13 (1) In the case of an emergency period infraction where
14 the defendant requests a hearing at which the
15 defendant will appear in person to explain mitigating
16 circumstances, the court shall notify the defendant in
17 writing of the date, time, and place of the hearing to
18 explain mitigating circumstances. The notice of
19 hearing shall be mailed to the address provided by
20 defendant in the answer, or if none is given, to the
21 address provided by defendant when the notice of



H.B. NO. 725

1 infraction was issued, or if none was provided, to the
2 electronic mail address provided by defendant when the
3 notice of infraction was issued. The notification
4 shall also advise the defendant that, if the defendant
5 fails to appear at the hearing, the court shall enter
6 judgment by default in favor of the State, as of the
7 date of the scheduled hearing, and that the total
8 amount stated in the default judgment must be paid
9 within thirty days of entry of default judgment; and
10 (2) If a written explanation is included with an answer
11 admitting commission of the emergency period
12 infraction, the court shall enter judgment for the
13 State and, after reviewing the explanation, determine
14 the total amount of the monetary assessments, fees,
15 surcharges, or costs to be assessed, if any. The
16 court shall then notify the defendant of the total
17 amount to be paid for the emergency period infraction,
18 if any. There shall be no appeal from the judgment.
19 If the court assesses an amount for monetary
20 assessments, fees, surcharges, or costs, the court



H.B. NO. 725

1 shall also notify the defendant that the total amount
2 shall be paid within thirty days of entry of judgment.

3 (d) If the defendant fails to answer within twenty-one
4 days of issuance of the notice of infraction, the court shall
5 take action as provided in subsection (e).

6 (e) Whenever judgment by default in favor of the State is
7 entered, the court shall mail a notice of entry of default
8 judgment to the address provided by the defendant when the
9 notice of infraction was issued, or if none was provided, to the
10 electronic mail address provided by defendant when the notice of
11 infraction was issued. The notice of entry of default judgment
12 shall advise the defendant that the total amount specified in
13 the default judgment shall be paid within thirty days of entry
14 of default judgment and shall explain the procedure for setting
15 aside a default judgment. Judgment by default for the State
16 entered pursuant to this chapter may be set aside pending final
17 disposition of the emergency period infraction upon written
18 application of the defendant and posting of an appearance bond
19 equal to the amount of the total amount specified in the default
20 judgment and any other assessment imposed pursuant to
21 section -8. The application shall show good cause or



1 excusable neglect for the defendant's failure to take action
2 necessary to prevent entry of judgment by default. Thereafter,
3 the court shall determine whether good cause or excusable
4 neglect exists for the defendant's failure to take action
5 necessary to prevent entry of judgment by default. If so, the
6 application to set aside default judgment shall be granted, the
7 default judgment shall be set aside, and the notice of
8 infraction shall be disposed of pursuant to this chapter. If
9 not, the application to set aside default judgment shall be
10 denied, the appearance bond shall be forfeited and applied to
11 satisfy amounts due under the default judgment, and the notice
12 of infraction shall be finally disposed. In either case, the
13 court shall determine the existence of good cause or excusable
14 neglect and notify the defendant of its decision on the
15 application in writing.

16 § -7 **Hearings.** (a) In proceedings to contest a notice
17 of infraction where the defendant to whom the notice was issued
18 has timely requested a hearing and appears at the hearing:

19 (1) In lieu of the personal appearance by the law
20 enforcement officer who issued the notice of
21 infraction, the court shall consider the notice of



H.B. NO. 725

1 infraction and any other written report made by the
2 law enforcement officer, if provided to the court by
3 the law enforcement officer, together with any oral or
4 written statement by the defendant to whom the notice
5 of infraction was issued;

6 (2) The standard of proof to be applied by the court shall
7 be whether, by a preponderance of the evidence, the
8 court finds that the emergency period infraction was
9 committed; and

10 (3) After due consideration of the evidence and arguments,
11 if any, the court shall determine whether commission
12 of the emergency period infraction has been
13 established. Where the commission of the emergency
14 period infraction has not been established, judgment
15 in favor of the defendant, dismissing the notice of
16 infraction or any count therein with prejudice, shall
17 be entered in the record. Where it has been
18 established that the emergency period infraction was
19 committed, the court shall enter judgment in favor of
20 the State and shall assess a monetary assessment
21 pursuant to section -8, together with any fees,



H.B. NO. 125

1 surcharges, or costs. The court also shall inform the
2 defendant of the right to request a trial pursuant to
3 section -11. If the defendant requests a trial at
4 the time of the hearing, the court shall provide the
5 defendant with the trial date as soon as practicable.

6 (b) In proceedings to explain mitigating circumstances
7 where the defendant to whom the notice of infraction was issued
8 has timely requested a hearing and appears at the hearing:

9 (1) The procedure shall be limited to the issue of
10 mitigating circumstances. A defendant who requests to
11 explain the circumstances shall not be permitted to
12 contest the notice of infraction;

13 (2) After the court has received the explanation, the
14 court may enter judgment in favor of the State and may
15 assess a monetary assessment pursuant to
16 section -8, together with any fees, surcharges, or
17 costs;

18 (3) The court, after receiving the explanation, may vacate
19 the admission and enter judgment in favor of the
20 defendant, dismissing the notice of infraction or any



H.B. NO. 725

1 count therein with prejudice, where the explanation
2 establishes that the infraction was not committed; and

3 (4) There shall be no appeal from the judgment.

4 (c) If a defendant for whom a hearing has been scheduled
5 to contest the notice of infraction or to explain mitigating
6 circumstances fails to appear at the hearing, the court shall
7 enter judgment by default for the State and take action as
8 provided in section -6(e).

9 **§ -8 Monetary assessments; disposition of revenue.** (a)

10 A defendant found to have committed an emergency period
11 infraction shall be assessed a monetary assessment of no less
12 than \$50 and no more than \$500, with the amount of each
13 infraction to be established by the emergency order.

14 (b) In addition to any monetary assessment imposed for an
15 emergency period infraction, the court may impose additional
16 assessments for:

17 (1) Failure to pay a monetary assessment by the scheduled
18 date of payment;

19 (2) The cost of service of a penal summons issued pursuant
20 to this chapter; or



H.B. NO. 725

1 (3) The administrative costs of \$20 for each noncompliance
2 with a rule associated with the processing of
3 emergency period infractions, in addition to any
4 monetary assessment imposed by the court, whether or
5 not such monetary assessment is suspended.

6 (c) The clerk of the district court shall deposit the
7 administrative costs collected into the judiciary computer
8 system special fund pursuant to section 601-3.7. All other
9 moneys collected under this chapter shall be deposited in the
10 general fund.

11 (d) The court may grant to a defendant claiming inability
12 to pay an extension of the period in which the monetary
13 assessment shall be paid or may impose community service in lieu
14 of the monetary assessment.

15 **§ -9 Time computation.** In computing any period of time
16 prescribed or allowed by this chapter, the day of the act,
17 event, or default from which the period of time begins to run
18 shall not be included. The last day of the period so computed
19 shall be included, unless it is a Saturday, Sunday, or legal
20 holiday, in which event the period runs until the end of the
21 next day that is not a Saturday, Sunday, or legal holiday.



H.B. NO. 725

1 Intermediate Saturdays, Sundays, and legal holidays shall be
2 included. Whenever an act required to be performed under this
3 chapter may be accomplished by mail, the act shall be deemed to
4 have been performed on the date of the postmark on the mailed
5 article.

6 **§ -10 Powers of the district court judge hearing cases**
7 **pursuant to this chapter.** (a) A district court judge hearing
8 cases pursuant to this chapter shall have all the powers of a
9 district court judge under chapter 604, including the following
10 powers:

- 11 (1) To conduct emergency period infraction hearings and
12 impose monetary assessments;
- 13 (2) To permit deferral of monetary assessments or impose
14 community service in lieu of monetary assessments;
- 15 (3) To dismiss a notice of infraction, with or without
16 prejudice, or set aside a judgment for the State;
- 17 (4) To issue penal summonses and bench warrants and
18 initiate contempt of court proceedings in proceedings
19 conducted pursuant to section -11;



H.B. NO. 725

1 (5) To issue penal summonses and bench warrants and
2 initiate failure to appear proceedings in proceedings
3 conducted pursuant to section -4(d)(10); and

4 (6) To exercise other powers the court finds necessary and
5 appropriate to carry out the purposes of this chapter.

6 § -11 **Trial and concurrent trial.** (a) There shall be
7 no right to trial unless the defendant contests the notice of
8 infraction pursuant to section -7. If, after proceedings to
9 contest the notice of infraction, a determination is made that
10 the defendant committed the emergency period infraction,
11 judgment shall enter in favor of the State. The defendant may
12 request a trial pursuant to the Hawaii rules of evidence and the
13 rules of the district court; provided that any request for trial
14 shall be made within thirty days of entry of judgment. If,
15 after appearing in person at a hearing to contest the notice of
16 infraction, the defendant requests a trial at the conclusion of
17 the hearing, the court shall provide the defendant with the
18 trial date as soon as practicable.

19 (b) At the time of trial, the State shall be represented
20 by a prosecuting attorney of the county in which the emergency
21 period infraction occurred. The prosecuting attorney shall



1 orally recite the charged infraction in court prior to
2 commencement of the trial. Proof of the defendant's commission
3 of the emergency period infraction shall be by a preponderance
4 of the evidence.

5 (c) Appeals from judgments entered after a trial on the
6 notice of infraction may be taken in the manner provided for
7 appeals from district court civil judgments.

8 (d) If trial on the emergency period infraction is held
9 prior to trial on any related criminal offense, the following
10 shall be inadmissible in the subsequent prosecution or trial of
11 the related criminal offense:

12 (1) Any written or oral statement made by the defendant in
13 proceedings conducted pursuant to section -6(b);
14 and

15 (2) Any testimony given by the defendant in the trial on
16 the emergency period infraction.

17 The statement or testimony, or both, shall not be deemed a
18 waiver of the defendant's privilege against self-incrimination
19 in connection with any related criminal offense.

20 (e) In any concurrent trial, the State shall be
21 represented by a prosecuting attorney of the county in which the



H.B. NO. 725

1 emergency period infraction and related crime occurred. Proof
2 of the defendant's commission of the emergency period infraction
3 shall be by a preponderance of the evidence, and proof of the
4 related criminal offense shall be by proof beyond a reasonable
5 doubt. The concurrent trial shall be conducted pursuant to the
6 rules of the appropriate court, Hawaii rules of evidence, and
7 Hawaii rules of penal procedure.

8 § -12 **Rules.** (a) The supreme court may adopt rules of
9 procedure for the conduct of all proceedings pursuant to this
10 chapter.

11 (b) Chapter 626 shall not apply in proceedings conducted
12 pursuant to this chapter, except for the rules governing
13 privileged communications, and proceedings conducted under
14 section -11.

15 (c) Notwithstanding section 604-17, while the court is
16 sitting in any matter pursuant to this chapter, the court shall
17 not be required to preserve the testimony or proceedings, except
18 proceedings conducted pursuant to section -11 and proceedings
19 in which the emergency period infraction is heard on the same
20 date and time as any related criminal offense.



1 (d) The prosecuting attorney shall not participate in
2 emergency period infraction proceedings conducted pursuant to
3 this chapter, except proceedings pursuant to section -11 and
4 proceedings in which a related criminal offense is scheduled for
5 arraignment, hearing, or concurrent trial.

6 (e) Chapter 91 shall not apply in proceedings before the
7 court.

8 (f) Except as otherwise provided in section -2, chapter
9 571 and the Hawaii family court rules shall not apply in any
10 proceedings conducted pursuant to this chapter."

11 SECTION 3. Section 127A-29, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~§~~§127A-29[~~§~~] **Misdemeanors[~~-~~], petty misdemeanors, and**
14 **emergency period infractions.** Any person violating any rule of
15 the governor or mayor prescribed and promulgated pursuant to
16 this chapter and having the force and effect of law, shall, if
17 it shall be so stated and designated in the rule, be guilty of a
18 misdemeanor[~~-~~] or petty misdemeanor. Upon conviction, the
19 person shall be [~~fined not more than \$5,000, or imprisoned not~~
20 ~~more than one year, or both.~~] sentenced pursuant to chapter 706.



H.B. NO. 725

1 The governor or mayor may also prescribe or promulgate the
2 noncompliance with a rule as an emergency period infraction, as
3 defined in section -1; provided that it is specified in the
4 emergency proclamation or order as being an emergency period
5 infraction subject to the adjudication process of chapter .

6 Any person who intentionally, knowingly, or recklessly
7 destroys, damages, or loses any shelter, protective device, or
8 warning or signal device, shall if the same was installed or
9 constructed by the United States, the State, or a county, or is
10 the property of the United States, the State, or a county, be
11 fined the cost of replacement, or imprisoned not more than one
12 year, or both. The governor or mayor, may, by rule, make
13 further provisions for the protection from misuse of shelters,
14 protective devices, or warning and signal devices."

15 SECTION 4. Section 571-41, Hawaii Revised Statutes, is
16 amended by amending subsection (f) to read as follows:

17 "(f) The judge, or the senior judge if there is more than
18 one, may by order confer concurrent jurisdiction on a district
19 court created under chapter 604 to hear and dispose of cases of
20 violation of traffic laws [~~or~~], ordinances, or emergency period
21 infraction rules established pursuant to chapter 127A, by



H.B. NO. 725

1 children, provision to the contrary in section 571-11 or
2 elsewhere notwithstanding. The exercise of jurisdiction over
3 children by district courts shall, nevertheless, be considered
4 noncriminal in procedure and result in the same manner as though
5 the matter had been adjudicated and disposed of by a family
6 court."

7 SECTION 5. Section 601-3.7, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) There is established in the state treasury a special
10 fund to be known as the judiciary computer system special fund,
11 which shall contain the following:

12 (1) Moneys collected from administrative fees pursuant to
13 section 287-3(a);

14 (2) Fees prescribed by the supreme court by rule of court
15 for electronic document certification, electronic
16 copies of documents, and for providing bulk access to
17 electronic court records and compilations of data; and

18 (3) Fees pursuant to sections 607-4(b)(10) [~~and~~],
19 607-5(c)(32) [~~+~~], and -8(b)(3) ."

20 SECTION 6. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$40,000 or so much



H.B. NO. 725

1 thereof as may be necessary for fiscal year 2021-2022 to process
2 and adjudicate emergency rule infractions.

3 The sum appropriated shall be expended by the judiciary for
4 the purposes of this Act.

5 SECTION 7. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

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

10 SECTION 9. This Act shall take effect upon its approval.

11

INTRODUCED BY: *Linde Lehner*
JAN 25 2021



H.B. NO. 725

Report Title:

Violation of Rules During an Emergency Period; Emergency Period
Infractions; Adjudication; Appropriation

Description:

Authorizes the governor and the county mayors to establish lesser petty misdemeanor offenses and violations during emergency periods, including non-criminal infractions. Establishes an expeditious adjudication system for the processing of emergency period infractions. Establishes a fine of no less than \$50 and no more than \$500 for an emergency period infraction, with the amount per infraction to be set by the emergency order. Makes an appropriation.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

