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# A BILL FOR AN ACT

RELATING TO EMERGENCY RULES.

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

1           SECTION 1. The legislature finds that the coronavirus  
2 disease 2019 (COVID-19) pandemic has created great challenges to  
3 global health, the economy, and way of life. The governor and  
4 county mayors have had to exercise their emergency powers under  
5 chapter 127A, Hawaii Revised Statutes, to impose rules aimed to  
6 control the spread of COVID-19. The enforcement of these rules  
7 is critical to efforts to limit the spread of COVID-19, protect  
8 the health and safety of the community, manage medical  
9 resources, and restart the economy. To allow for more  
10 meaningful and effective enforcement of emergency orders, the  
11 governor and mayors need flexibility to adopt a range of lesser  
12 penalties for emergency rules.

13           Accordingly, the purpose of this Act is to:

14           (1) Allow for lesser emergency period penalties to be  
15           adopted by the governor or a mayor;



1 (2) Amend the State's existing traffic infraction laws to  
2 incorporate emergency period infractions so that they  
3 are adjudicated in the same manner;

4 (3) Allow electronic copies of notices of infractions,  
5 infraction adjudication hearings, and notices of  
6 infraction judgments to be sent via electronic mail;  
7 and

8 (4) Grant the district court concurrent jurisdiction over  
9 emergency period rule infractions committed by minors.

10 SECTION 2. Section 127A-29, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~§~~§127A-29[~~]~~ ~~Misdemeanors.~~] Emergency period  
13 infractions, violations, petty misdemeanors, and misdemeanors.

14 (a) Any person violating any rule of the governor or mayor  
15 prescribed and [~~promulgated~~] adopted pursuant to this chapter  
16 and having the force and effect of law[~~7~~] shall, if it shall be  
17 so stated and designated in the rule, be guilty of a violation,  
18 petty misdemeanor, or misdemeanor. [~~Upon~~] The governor or mayor  
19 may state and designate the penalty applicable to the offense;  
20 provided that if a penalty is not stated and designated, the  
21 person shall be sentenced in accordance with chapter 706. If



1 the offense and penalty are not stated and designated in the  
2 rule, the person shall be guilty of a misdemeanor and upon  
3 conviction, the person shall be fined [~~not~~] no more than  
4 [\$5,000, ~~or~~] \$2,000, imprisoned [~~not~~] no more than one year, or  
5 both.

6 In lieu of a violation, petty misdemeanor, or misdemeanor,  
7 the governor or mayor may state and designate the noncompliance  
8 of a rule as an emergency period infraction, as defined in  
9 section 291D-2. Any emergency period infraction so stated and  
10 designated in the rule shall be adjudicated pursuant to  
11 chapter 291D. A person guilty of an emergency period infraction  
12 shall be fined \$200 for each occurrence; provided that the  
13 governor or mayor may state and designate in the rule a fine of  
14 a different amount.

15 (b) [~~Any~~] Notwithstanding subsection (a), any person who  
16 intentionally, knowingly, or recklessly destroys, damages, or  
17 loses any shelter, protective device, or warning or signal  
18 device, shall if the same was installed or constructed by the  
19 United States, the State, or a county, or is the property of the  
20 United States, the State, or a county, be fined the cost of  
21 replacement, [~~or~~] imprisoned [~~not~~] no more than one year, or



1 both. The governor or mayor[7] may, by rule, make further  
2 provisions for the protection from misuse of shelters,  
3 protective devices, or warning and signal devices."

4 SECTION 3. Chapter 291D, Hawaii Revised Statutes, is  
5 amended by amending the title to read as follows:

6 "[+]CHAPTER 291D[+]

7 ADJUDICATION OF [~~TRAFFIC~~] INFRACTIONS"

8 SECTION 4. Section 291D-1, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§291D-1[+] Purpose. (a) Act 222, Session Laws of  
11 Hawaii 1978, began the process of decriminalizing certain  
12 traffic offenses, not of a serious nature, to the status of  
13 violations. In response to a request by the legislature, the  
14 judiciary prepared a report in 1987 that recommended, among  
15 other things, further decriminalization of traffic offenses,  
16 elimination of most traffic arraignments, disposition of  
17 uncontested violations by mail, and informal hearings where the  
18 violation or the proposed penalty is questioned. The  
19 legislature finds that further decriminalization of certain  
20 traffic offenses and streamlining of the handling of those  
21 traffic cases will achieve a more expeditious system for the



1 judicial processing of traffic infractions. The system of  
2 processing traffic infractions established by this chapter will:

3 (1) Eliminate the long and tedious arraignment proceeding  
4 for a majority of traffic matters;

5 (2) Facilitate and encourage the resolution of many  
6 traffic infractions through the payment of a monetary  
7 assessment;

8 (3) Speed the disposition of contested cases through a  
9 hearing, similar to small claims proceedings, in which  
10 the rules of evidence will not apply and the court  
11 will consider as evidence the notice of traffic  
12 infraction, applicable police reports, or other  
13 written statements by the police officer who issued  
14 the notice, any other relevant written material, and  
15 any evidence or statements by the person contesting  
16 the notice of traffic infraction;

17 (4) Dispense in most cases with the need for witnesses,  
18 including law enforcement officers, to be present and  
19 for the participation of the prosecuting attorney;



1 (5) Allow judicial, prosecutorial, and law enforcement  
2 resources to be used more efficiently and effectively;  
3 and

4 (6) Save the taxpayers money and reduce their frustration  
5 with the judicial system by simplifying the traffic  
6 court process.

7 The legislature further finds that this chapter will not require  
8 expansion of the current traffic division of the district  
9 courts, but will achieve greater efficiency through more  
10 effective use of existing resources of the district courts.

11 (b) The legislature finds that the pandemic related to the  
12 coronavirus disease 2019 necessitated the imposition of  
13 emergency period rules in an attempt to control the spread of  
14 the disease in the State. The thousands of violations of the  
15 emergency period rules caused an examination of the ability to  
16 impose infractions for lesser offenses as an alternative to  
17 using the Penal Code and to allow for more efficient use of the  
18 judicial system. The system of processing traffic infractions  
19 under this chapter was enacted in 1993 and has provided a useful  
20 mechanism for handling offenses deemed as infractions and is  
21 well-suited to certain types of violations of emergency period



1 rules that are designated infractions by the governor or mayor  
2 under the state's emergency management laws."

3 SECTION 5. Section 291D-2, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding one new definition to be appropriately  
6 inserted and to read:

7 "Emergency period infraction" means all occurrences of  
8 noncompliance with rules adopted by the governor or a mayor  
9 pursuant to chapter 127A, which are stated and designated in the  
10 rule as being an emergency period infraction."

11 2. By amending the definitions of "concurrent trial" and  
12 "hearing" to read:

13 "Concurrent trial" means a trial proceeding held in the  
14 district or family court in which the defendant is tried  
15 simultaneously in a civil case for any charged traffic  
16 infraction or emergency period infraction and in a criminal case  
17 for any related criminal offense, with trials to be held in one  
18 court on the same date and at the same time.

19 "Hearing" means a proceeding conducted by the district  
20 court pursuant to section 291D-8 at which the person to whom a  
21 notice of traffic infraction or notice of emergency period



1 infraction was issued either admits to the [~~traffic~~] infraction,  
2 contests the notice of traffic infraction[7] or notice of  
3 emergency period infraction, or admits to the traffic infraction  
4 or emergency period infraction but offers an explanation to  
5 mitigate the monetary assessment imposed."

6 3. By amending the definition of "related criminal  
7 offense" to read:

8 ""Related criminal offense" means any criminal violation or  
9 crime, committed in the same course of conduct as a traffic  
10 infraction[7] or emergency period infraction, for which the  
11 defendant is arrested or charged."

12 SECTION 6. Section 291D-3, Hawaii Revised Statutes, is  
13 amended by amending subsections (a) through (e) to read as  
14 follows:

15 "(a) Notwithstanding any other provision of law to the  
16 contrary, all traffic infractions[7] and emergency period  
17 infractions, including [~~traffic~~] infractions committed by  
18 minors, shall be adjudicated pursuant to this chapter, except as  
19 provided in subsection (b). This chapter shall be applied  
20 uniformly throughout the State and in all counties. No penal  
21 sanction that includes imprisonment shall apply to a violation



1 of a state statute or rule, or county ordinance or rule, that  
2 would constitute a traffic infraction or an emergency period  
3 infraction under this chapter. No traffic infraction or  
4 emergency period infraction shall be classified as a criminal  
5 offense.

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

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



1 criminal offense is a felony or is a misdemeanor for which the  
2 defendant has demanded a jury trial.

3 (c) If the defendant requests a trial pursuant to  
4 section 291D-13, the trial shall be held in the district court  
5 of the circuit in which the traffic infraction or emergency  
6 period infraction was committed. If the court schedules a  
7 concurrent trial pursuant to paragraph (1), the concurrent trial  
8 shall be held in the appropriate district or family court of the  
9 circuit in which the traffic infraction or emergency period  
10 infraction was committed, whichever has jurisdiction over the  
11 related criminal offense charged pursuant to the applicable  
12 statute or rule of court; provided that:

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



1           (2) If trial on the traffic infraction or emergency period  
2           infraction is held separately from and [~~prior to~~]  
3           before trial on any related criminal offense, the  
4           following shall be inadmissible in the prosecution or  
5           trial of the related criminal offense, except as  
6           expressly provided by the Hawaii rules of evidence:

7           (A) Any written or oral statement made by the  
8           defendant in proceedings conducted pursuant to  
9           section 291D-7(b); and

10          (B) Any testimony given by the defendant in the trial  
11          on the traffic infraction[~~-~~] or emergency period  
12          infraction.

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

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



1 (e) If the defendant fails to appear at any scheduled  
2 court date [~~prior to~~] before the date of trial or concurrent  
3 trial and:

4 (1) The defendant's civil liability for the traffic  
5 infraction or emergency period infraction has not yet  
6 been adjudicated pursuant to section 291D-8, the court  
7 shall enter a judgment by default in favor of the  
8 State for the traffic infraction or emergency period  
9 infraction unless the court determines that good cause  
10 or excusable neglect exists for the defendant's  
11 failure to appear; or

12 (2) The defendant's civil liability for the traffic  
13 infraction or emergency period infraction has been  
14 adjudicated previously pursuant to section 291D-8, the  
15 judgment earlier entered in favor of the State shall  
16 stand unless the court determines that good cause or  
17 excusable neglect exists for the defendant's failure  
18 to appear."

19 SECTION 7. Section 291D-4, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "[~~f~~]**§291D-4**[~~}]~~ **Venue and jurisdiction.** (a) All  
2 violations of state law, ordinances, or rules designated as  
3 traffic infractions or emergency period infractions in this  
4 chapter shall be adjudicated in the district and circuit where  
5 the alleged infraction occurred, except as otherwise provided by  
6 law.

7           (b) Except as otherwise provided by law, jurisdiction is  
8 in the district court of the circuit where the alleged traffic  
9 infraction or emergency period infraction occurred. Except as  
10 otherwise provided in this chapter, district court judges shall  
11 adjudicate traffic infractions[~~-~~] and emergency period  
12 infractions."

13           SECTION 8. Section 291D-5, Hawaii Revised Statutes, is  
14 amended by amending its title and subsections (a) through (d) to  
15 read as follows:

16           "**§291D-5 Notice of [~~traffie~~] infraction; form;**  
17 **determination final unless contested.** (a) The notice of  
18 traffic infraction for moving violations, and the notice of  
19 emergency period infraction, shall include the summons for the  
20 purposes of this chapter. Whenever a notice of traffic  
21 infraction or notice of emergency period infraction is issued



1 ~~[to the driver of a motor vehicle, the driver's]~~, the person's  
2 signature, driver's license number[-] or state identification  
3 number, electronic mail address, and current address shall be  
4 noted on the notice. If the ~~[driver]~~ person refuses to sign the  
5 notice of traffic infraction[-] or notice of emergency period  
6 infraction, the officer shall record this refusal on the notice  
7 and issue the notice to the ~~[driver. Individuals]~~ person.  
8 Anyone to whom a notice of traffic infraction or notice of  
9 emergency period infraction is issued under this chapter need  
10 not be arraigned before the court, unless required by rule of  
11 the supreme court.

12 (b) The ~~[form]~~ forms for the notice of traffic infraction  
13 and notice of emergency period infraction shall be prescribed by  
14 rules of the district court, which shall be uniform throughout  
15 the State; provided that each judicial circuit may include  
16 differing statutory, rule, or ordinance provisions on its  
17 respective notice of traffic infraction[-] or notice of  
18 emergency period infraction.

19 (c) A notice of traffic infraction or notice of emergency  
20 period infraction that is generated by the use of electronic



1 equipment or that bears the electronically stored image of any  
2 person's signature, or both, shall be valid under this chapter.

3 (d) The notice of traffic infraction or notice of  
4 emergency period infraction shall include the following:

5 (1) A statement of the specific [~~traffie~~] infraction for  
6 which the notice was issued;

7 (2) Except in the case of parking-related traffic  
8 infractions, a brief statement of the facts;

9 (3) A statement of the total amount to be paid for each  
10 [~~traffie~~] infraction, which amount shall include any  
11 fee, surcharge, or cost required by statute,  
12 ordinance, or rule, and any monetary assessment,  
13 established for the particular [~~traffie~~] infraction  
14 pursuant to section 291D-9, to be paid by the [~~driver~~  
15 ~~or registered owner of the vehicle,~~] person to whom  
16 the notice was issued, which shall be uniform  
17 throughout the State;

18 (4) A statement of the options provided in  
19 section 291D-6(b) for answering the notice and the  
20 procedures necessary to exercise the options;



- 1 (5) A statement that the person to whom the notice is  
2 issued [~~must~~] shall answer, choosing one of the  
3 options specified in section 291D-6(b), within  
4 twenty-one days of issuance of the notice;
- 5 (6) A statement that failure to answer the notice [~~of~~  
6 ~~traffic infraction~~] within twenty-one days of issuance  
7 shall result in the entry of judgment by default for  
8 the State and may result in the assessment of a late  
9 penalty;
- 10 (7) A statement that, at a hearing requested to contest  
11 the notice [~~of traffic infraction conducted~~], pursuant  
12 to section 291D-8, no officer shall be present unless  
13 the [~~driver~~] person to whom the notice was issued  
14 timely requests the court to have the officer present,  
15 and that the standard of proof to be applied by the  
16 court is whether a preponderance of the evidence  
17 proves that the specified [~~traffic~~] infraction was  
18 committed;
- 19 (8) A statement that, at a hearing requested for the  
20 purpose of explaining mitigating circumstances  
21 surrounding the commission of the infraction or in



1 consideration of a written request for mitigation, the  
2 person shall be considered to have committed the  
3 [~~traffie~~] infraction;

4 (9) A space in which the signature of the person to whom  
5 the notice was issued may be affixed; and

6 (10) The date, time, and place at which the person to whom  
7 the notice was issued [~~must~~] shall appear in court, if  
8 the person is required by the notice to appear in  
9 person at the hearing."

10 SECTION 9. Section 291D-6, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§291D-6 Answer required.** (a) A person who receives a  
13 notice of traffic infraction or notice of emergency period  
14 infraction shall answer the notice within twenty-one days of the  
15 date of issuance of the notice. There shall be included with  
16 the notice of traffic infraction or notice of emergency period  
17 infraction a preaddressed envelope directed to the traffic and  
18 emergency period violations bureau of the applicable district  
19 court.

20 (b) Provided that the notice of traffic infraction or  
21 notice of emergency period infraction does not require an



1 appearance in person at [†]a[†] hearing as set forth in  
2 section [†]291D-5(d)(10)[†], in answering a notice of traffic  
3 infraction[‡] or notice of emergency period infraction, a person  
4 shall have the following options:

5 (1) Admit the commission of the infraction in one of the  
6 following ways:

7 (A) By mail or in person, by completing the  
8 appropriate portion of the notice of traffic  
9 infraction, notice of emergency period  
10 infraction, or preaddressed envelope and  
11 submitting it to the authority specified on the  
12 notice together with payment of the total amount  
13 stated on the notice of traffic infraction[‡] or  
14 notice of emergency period infraction. Payment  
15 by mail shall be in the form of a check, money  
16 order, or by an approved credit or debit card.  
17 Payment in person shall be in the form of United  
18 States currency, check, money order, or by an  
19 approved credit or debit card; or

20 (B) Via the Internet or by telephone, by submitting  
21 payment of the total amount stated on the notice



1                   of traffic infraction[+] or notice of emergency  
2                   period infraction. Payment via the Internet or  
3                   by telephone shall be by an approved credit or  
4                   debit card;

5           (2) Deny the commission of the infraction and request a  
6           hearing to contest the infraction by completing the  
7           appropriate portion of the notice of traffic  
8           infraction, notice of emergency period infraction, or  
9           preaddressed envelope and submitting it, either by  
10          mail or in person, to the authority specified on the  
11          notice. In lieu of appearing in person at a hearing,  
12          the person may submit a written statement of grounds  
13          on which the person contests the notice of traffic  
14          infraction[+] or notice of emergency period  
15          infraction, which shall be considered by the court as  
16          a statement given in court pursuant to  
17          section 291D-8(a); or

18          (3) Admit the commission of the infraction and request a  
19          hearing to explain circumstances mitigating the  
20          infraction by completing the appropriate portion of  
21          the notice of traffic infraction, notice of emergency



1           period infraction, or preaddressed envelope and  
 2           submitting it, either by mail or in person, to the  
 3           authority specified on the notice. In lieu of  
 4           appearing in person at a hearing, the person may  
 5           submit a written explanation of the mitigating  
 6           circumstances, which shall be considered by the court  
 7           as a statement given in court pursuant to  
 8           section 291D-8(b).

9           (c) When answering the notice of traffic infraction[~~7~~] or  
 10          notice of emergency period infraction, the person shall affix  
 11          the person's signature to the answer and shall state the address  
 12          at which the person will accept future mailings from the court.  
 13          No other response shall constitute an answer for purposes of  
 14          this chapter."

15          SECTION 10. Section 291D-7, Hawaii Revised Statutes, is  
 16          amended to read as follows:

17          "**§291D-7 Court action after answer or failure to answer.**

18          (a) When an admitting answer is received, the court shall enter  
 19          judgment in favor of the State in the total amount specified in  
 20          the notice of traffic infraction[~~7~~] or notice of emergency  
 21          period infraction.



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

3 (1) In the case of a traffic infraction or emergency  
4 period infraction where the person requests a hearing  
5 at which the person will appear in person to contest  
6 the infraction, the court shall notify the person in  
7 writing of the date, time, and place of hearing to  
8 contest the notice of traffic infraction[~~-~~] or notice  
9 of emergency period infraction. The notice of hearing  
10 shall be mailed to the address stated in the denying  
11 answer, or if none is given, to the address stated on  
12 the notice of traffic infraction[~~-~~] or notice of  
13 emergency period infraction. An electronic copy of  
14 the notice of hearing may be sent to the electronic  
15 mail address stated on the notice of infraction. The  
16 notification also shall advise the person that, if the  
17 person fails to appear at the hearing, the court shall  
18 enter judgment by default in favor of the State, as of  
19 the date of the scheduled hearing, that the total  
20 amount specified in the default judgment [~~must~~] shall



1 be paid within thirty days of entry of default  
2 judgment; and  
3 (2) When a denying answer is accompanied by a written  
4 statement of the grounds on which the person contests  
5 the notice of traffic infraction[7] or notice of  
6 emergency period infraction, the court shall proceed  
7 as provided in section 291D-8(a) and shall notify the  
8 person of its decision, including the total amount  
9 assessed, if any, by mailing the notice of entry of  
10 judgment within forty-five days of the postmarked date  
11 of the answer to the address provided by the person in  
12 the denying answer, or if none is given, to the  
13 address given when the notice of traffic infraction or  
14 notice of emergency period infraction was issued or,  
15 in the case of parking violations, to the address at  
16 which the vehicle is registered. An electronic copy  
17 of the notice of entry of judgment may be sent to the  
18 electronic mail address stated on the notice of  
19 infraction. The notice of entry of judgment also  
20 shall advise the person, if it is determined that the  
21 infraction was committed and judgment is entered in



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

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

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



1           or notice of emergency period infraction. An  
2           electronic copy of the notice of hearing may be sent  
3           to the electronic mail address stated on the notice of  
4           infraction. The notification also shall advise the  
5           person that, if the person fails to appear at the  
6           hearing, the court shall enter judgment by default in  
7           favor of the State, as of the date of the scheduled  
8           hearing, and that the total amount stated in the  
9           default judgment [~~must~~] shall be paid within thirty  
10          days of entry of default judgment; and

11          (2) If a written explanation is included with an answer  
12          admitting commission of the infraction, the court  
13          shall enter judgment for the State and, after  
14          reviewing the explanation, determine the total amount  
15          of the monetary assessments, fees, surcharges, or  
16          costs to be assessed, if any. The court shall then  
17          notify the person of the total amount to be paid for  
18          the infraction, if any. There shall be no appeal from  
19          the judgment. If the court assesses an amount for  
20          monetary assessments, fees, surcharges, or costs, the  
21          court shall also notify the person that the total



1 amount shall be paid within thirty days of entry of  
2 judgment.

3 (d) If the person fails to answer within twenty-one days  
4 of issuance of the notice of traffic infraction<sup>[7]</sup> or notice of  
5 emergency period infraction, the court shall take action as  
6 provided in subsection (e).

7 (e) Whenever judgment by default in favor of the State is  
8 entered, the court shall mail a notice of entry of default  
9 judgment to the address provided by the person when the notice  
10 of traffic infraction or notice of emergency period infraction  
11 was issued or, in the case of parking infractions, to the  
12 address stated in the answer, if any, or the address at which  
13 the vehicle is registered. An electronic copy of the notice of  
14 entry of default judgment may be sent to the electronic mail  
15 address stated on the notice of infraction. The notice of entry  
16 of default judgment shall advise the person that the total  
17 amount specified in the default judgment shall be paid within  
18 thirty days of entry of default judgment and shall explain the  
19 procedure for setting aside a default judgment. Judgment by  
20 default for the State entered pursuant to this chapter may be  
21 set aside pending final disposition of the traffic infraction or



1 emergency period infraction upon written application of the  
2 person and posting of an appearance bond equal to the amount of  
3 the total amount specified in the default judgment and any other  
4 assessment imposed pursuant to section 291D-9. The application  
5 shall show good cause or excusable neglect for the person's  
6 failure to take action necessary to prevent entry of judgment by  
7 default. Thereafter, the court shall determine whether good  
8 cause or excusable neglect exists for the person's failure to  
9 take action necessary to prevent entry of judgment by default.  
10 If so, the application to set aside default judgment shall be  
11 granted, the default judgment shall be set aside, and the notice  
12 of traffic infraction or notice of emergency period infraction  
13 shall be disposed of pursuant to this chapter. If not, the  
14 application to set aside default judgment shall be denied, the  
15 appearance bond shall be forfeited and applied to satisfy  
16 amounts due under the default judgment, and the notice of  
17 traffic infraction or notice of emergency period infraction  
18 shall be finally disposed. In either case, the court shall  
19 determine the existence of good cause or excusable neglect and  
20 notify the person of its decision on the application in  
21 writing."



1 SECTION 11. Section 291D-8, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§291D-8 Hearings.** (a) In proceedings to contest a  
4 notice of traffic infraction or notice of emergency period  
5 infraction where the person to whom the notice was issued has  
6 timely requested a hearing and appears at such hearing:

7 (1) In lieu of the personal appearance by the officer who  
8 issued the notice of traffic infraction~~[r]~~ or notice  
9 of emergency period infraction, the court shall  
10 consider the notice of traffic infraction or notice of  
11 emergency period infraction, and any other written  
12 report made by the officer, if provided to the court  
13 by the officer, together with any oral or written  
14 statement by the person to whom the notice of  
15 infraction was issued, or in the case of traffic  
16 infractions involving parking or equipment, the  
17 operator or registered owner of the motor vehicle;

18 (2) The court may compel by subpoena the attendance of the  
19 officer who issued the notice of traffic infraction or  
20 notice of emergency period infraction, and other  
21 witnesses from whom it may wish to hear;



1           (3) The standard of proof to be applied by the court shall  
2           be whether, by a preponderance of the evidence, the  
3           court finds that the traffic infraction or emergency  
4           period infraction was committed; and

5           (4) After due consideration of the evidence and arguments,  
6           if any, the court shall determine whether commission  
7           of the traffic infraction or emergency period  
8           infraction has been established. Where the commission  
9           of the traffic infraction or emergency period  
10          infraction has not been established, judgment in favor  
11          of the defendant, dismissing the notice of traffic  
12          infraction or notice of emergency period infraction or  
13          any count therein with prejudice, shall be entered in  
14          the record. Where it has been established that the  
15          traffic infraction or emergency period infraction was  
16          committed, the court shall enter judgment in favor of  
17          the State and shall assess a monetary assessment  
18          pursuant to section 291D-9, together with any fees,  
19          surcharges, or costs. The court also shall inform the  
20          person of the right to request a trial pursuant to  
21          section 291D-13. If the person requests a trial at



1 the time of the hearing, the court shall provide the  
2 person with the trial date as soon as practicable.

3 (b) In proceedings to explain mitigating circumstances  
4 where the person to whom the notice of traffic infraction or  
5 notice of emergency period infraction was issued has timely  
6 requested a hearing and appears at such hearing:

7 (1) The procedure shall be limited to the issue of  
8 mitigating circumstances. A person who requests to  
9 explain the circumstances shall not be permitted to  
10 contest the notice of traffic infraction[+] or notice  
11 of emergency period infraction;

12 (2) After the court has received the explanation, the  
13 court shall enter judgment in favor of the State and  
14 may assess a monetary assessment pursuant to  
15 section 291D-9, together with any fees, surcharges, or  
16 costs;

17 (3) The court, after receiving the explanation, may vacate  
18 the admission and enter judgment in favor of the  
19 defendant, dismissing the notice of traffic  
20 infraction, notice of emergency period infraction, or  
21 any count therein with prejudice, where the



1 explanation establishes that the infraction was not  
2 committed; and

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

4 (c) If a person for whom a hearing has been scheduled, to  
5 contest the notice of traffic infraction or notice of emergency  
6 period infraction, or to explain mitigating circumstances, fails  
7 to appear at the hearing, the court shall enter judgment by  
8 default for the State and take action as provided in  
9 section 291D-7(e)."

10 SECTION 12. Section 291D-9, Hawaii Revised Statutes, is  
11 amended by amending subsections (a) through (c) to read as  
12 follows:

13 "(a) A person found to have committed a traffic infraction  
14 or emergency period infraction shall be assessed a monetary  
15 assessment not to exceed the maximum fine specified in the  
16 [~~statute~~] law or rule defining the traffic infraction[~~-~~] or  
17 emergency period infraction.

18 (b) Notwithstanding section 291C-161 or any other law to  
19 the contrary, the district court of each circuit shall prescribe  
20 a schedule of monetary assessments for all traffic  
21 infractions[~~-~~] and emergency period infractions, and any



1 additional assessments to be imposed pursuant to subsection (c).  
2 The particular assessment to be entered on the notice of traffic  
3 infraction or notice of emergency period infraction pursuant to  
4 section 291D-5 shall correspond to the schedule prescribed by  
5 the district court. Except after proceedings conducted pursuant  
6 to section 291D-8 or a trial conducted pursuant to  
7 section 291D-13, monetary assessments assessed pursuant to this  
8 chapter shall not vary from the schedule prescribed by the  
9 district court having jurisdiction over the traffic  
10 infraction[-] or emergency period infraction.

11 (c) In addition to any monetary assessment imposed for a  
12 traffic infraction[-] or an emergency period infraction, the  
13 court may impose additional assessments for:

14 (1) Failure to pay a monetary assessment by the scheduled  
15 date of payment; or

16 (2) The cost of service of a penal summons issued pursuant  
17 to this chapter."

18 SECTION 13. Section 291D-12, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§291D-12 Powers of the district court judge sitting in**  
21 **the traffic and emergency period division.** (a) A district



1 court judge sitting in the traffic and emergency period division  
2 and hearing cases pursuant to this chapter shall have all the  
3 powers of a district court judge under chapter 604, including  
4 the following powers:

- 5 (1) To conduct traffic infraction and emergency period  
6 infraction hearings and to impose monetary  
7 assessments;
- 8 (2) To permit deferral of monetary assessment or impose  
9 community service in lieu thereof;
- 10 (3) To dismiss a notice of traffic infraction~~[7]~~ or notice  
11 of emergency period infraction, with or without  
12 prejudice, or to set aside a judgment for the State;
- 13 (4) To order temporary driver's license suspension or  
14 driver's license reinstatement;
- 15 (5) To approve the issuance or renewal of a driver's  
16 license or instruction permit pursuant to  
17 section 286-109(c);
- 18 (6) To issue penal summonses and bench warrants and  
19 initiate contempt of court proceedings in proceedings  
20 conducted pursuant to section 291D-13;



1 (7) To issue penal summonses and bench warrants and  
2 initiate failure to appear proceedings in proceedings  
3 conducted pursuant to section 291D-5(d)(10); and

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

6 (b) A district court judge sitting in the traffic and  
7 emergency period division and hearing cases pursuant to this  
8 chapter shall not order the director of finance to withhold  
9 issuing or renewing the driver's license, or registering,  
10 renewing the registration of, or issuing the title to a motor  
11 vehicle, of any person who has not paid a monetary assessment,  
12 has not performed community service in lieu thereof, or has not  
13 otherwise satisfied a judgment for the State entered pursuant to  
14 this chapter."

15 SECTION 14. Section 291D-13, Hawaii Revised Statutes, is  
16 amended by amending subsections (a) through (c) to read as  
17 follows:

18 "(a) There shall be no right to trial unless the defendant  
19 contests the notice of traffic infraction or notice of emergency  
20 period infraction pursuant to section 291D-8. If, after  
21 proceedings to contest the notice of traffic infraction[7] or



1 emergency period infraction, a determination is made that the  
2 defendant committed the traffic infraction[7] or emergency  
3 period infraction, judgment shall enter in favor of the State.  
4 The defendant may request a trial pursuant to the Hawaii rules  
5 of evidence and the rules of the district court; provided that  
6 any request for trial shall be made within thirty days of entry  
7 of judgment. If, after appearing in person at a hearing to  
8 contest the notice of traffic infraction[7] or notice of  
9 emergency period infraction, the person requests a trial at the  
10 conclusion of the hearing, the court shall provide the person  
11 with the trial date as soon as practicable.

12 (b) At the time of trial, the State shall be represented  
13 by a prosecuting attorney of the county in which the infraction  
14 occurred. The prosecuting attorney shall orally recite the  
15 charged civil traffic infraction or emergency period infraction  
16 in court [~~prior to~~] before commencement of the trial. Proof of  
17 the defendant's commission of the traffic infraction or  
18 emergency period infraction shall be by a preponderance of the  
19 evidence.

20 (c) If trial on the traffic infraction or emergency period  
21 infraction is held [~~prior to~~] before trial on any related



1 criminal offense, the following shall be inadmissible in the  
2 subsequent prosecution or trial of the related criminal offense:

3 (1) Any written or oral statement made by the defendant in  
4 proceedings conducted pursuant to section 291D-7(b);  
5 and

6 (2) Any testimony given by the defendant in the traffic  
7 infraction or emergency period infraction trial.

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

11 SECTION 15. Section 291D-14, Hawaii Revised Statutes, is  
12 amended by amending subsections (c) and (d) to read as follows:

13 "(c) Notwithstanding section 604-17, while the court is  
14 sitting in any matter pursuant to this chapter, the court shall  
15 not be required to preserve the testimony or proceedings, except  
16 proceedings conducted pursuant to section 291D-13 and  
17 proceedings in which the traffic infraction or emergency period  
18 infraction is heard on the same date and time as any related  
19 criminal offense.

20 (d) The prosecuting attorney shall not participate in  
21 traffic infraction or emergency period infraction proceedings



1 conducted pursuant to this chapter, except proceedings pursuant  
2 to section 291D-13 and proceedings in which a related criminal  
3 offense is scheduled for arraignment, hearing, or concurrent  
4 trial."

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

7 "(f) The judge, or the senior judge if there is more than  
8 one, may by order confer concurrent jurisdiction on a district  
9 court created under chapter 604 to hear and dispose of cases of  
10 violation of traffic laws [~~or~~], ordinances, or emergency period  
11 rules by children, provision to the contrary in section 571-11  
12 or elsewhere notwithstanding. The exercise of jurisdiction over  
13 children by district courts shall, nevertheless, be considered  
14 noncriminal in procedure and result in the same manner as though  
15 the matter had been adjudicated and disposed of by a family  
16 court."

17 SECTION 17. Sections 286-109, 286-245, 287-3, 291C-225,  
18 and 431:10C-117, Hawaii Revised Statutes, are amended by  
19 substituting the phrase "traffic and emergency period violations  
20 bureau", or similar phrase, wherever the phrase "traffic



1 violations bureau", or similar phrase, appears, as the context  
2 requires.

3 SECTION 18. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 19. This Act shall take effect upon its approval.



**Report Title:**

Emergency Period Infractions; Violations; Petty Misdemeanors;  
Misdemeanors

**Description:**

Allows for lesser emergency period penalties to be adopted by the governor or a mayor. Allows for the emergency period infractions to be processed under the traffic adjudication process. Allows electronic copies of notices of infractions, infraction adjudication hearings, and notices of infraction judgments to be sent via electronic mail. Grants the district court concurrent jurisdiction over emergency period rule infractions committed by minors. (HD2)

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

