

## ACT 103

S.B. NO. 2995

A Bill for an Act Relating to Commercial Driver Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

““Driving a commercial motor vehicle while under the influence of an intoxicant” means committing any one or more of the following acts in a commercial motor vehicle:

- (1) Driving a commercial motor vehicle while the person’s alcohol concentration is 0.04 per cent or more by weight;
- (2) Driving under the influence of an intoxicant pursuant to section 291E-61; or
- (3) Refusing to undergo such testing as required by any state or jurisdiction in the enforcement of section 383.51(b) or 392.5(a)(2) of title 49, Code of Federal Regulations.

“Fatality” means the death of a person as a result of a motor vehicle accident.

“Imminent hazard” means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.

“Noncommercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle (CMV)” under section 286-2.

“School bus” means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events, but does not include a bus, as defined under section 286-2, used as a common carrier as defined under section 271-4.”

SECTION 2. Section 286-102, Hawaii Revised Statutes, is amended to read as follows:

**“§286-102 Licensing.** (a) No person, except one exempted under section 286-105, one who holds an instruction permit under section 286-110, one who holds a commercial driver’s license issued under section 286-239, or a commercial driver’s license instruction permit issued under section 286-236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of fifteen thousand one through twenty-six thousand pounds.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.

(c) No person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses in the person's possession. All licenses so surrendered shall be returned to the issuing authority, together with information that the person is licensed in this State; provided that with the exception of driver's licenses issued by any Canadian province, a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; and provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State. No person shall be permitted to hold more than one valid driver's license at any time.

(d) Before issuing a driver's license, the examiner of drivers shall complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall include but is not limited to the following:

- (1) A check of the applicant's driving record as maintained by the applicant's state of licensure;
- (2) A check with the commercial driver license information system;
- (3) A check with the National Driver Register; and
- (4) If the driver is renewing a commercial driver's license for the first time after September 30, 2002, a request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years; provided that a notation is made on the driving record confirming the check has been made and the date it was done.

[(d)] (e) In addition to other qualifications and conditions by or pursuant to this part, the right of an individual to hold a motor vehicle operator's license or permit issued by the county is subject to the requirements of section 576D-13.

Upon receipt of certification from the child support enforcement agency pursuant to section 576D-13 that an obligor or individual who owns or operates a motor vehicle is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the examiner of drivers shall suspend the license and right to operate motor vehicles and confiscate the license of the obligor. The examiner of drivers shall not reinstate an obligor's or individual's license until the child support enforcement agency, the office of child support hearings, or the family court issues an authorization that states the obligor or individual is in compliance with an order

of support or has complied with a subpoena or warrant relating to a paternity or child support hearing.

The licensing authority may adopt rules pursuant to chapter 91 to implement and enforce the requirements of this section.”

SECTION 3. Section 286-231, Hawaii Revised Statutes, is amended by amending the definitions of “disqualification”, “nonresident commercial driver’s license”, and “serious traffic violation” to read as follows:

““Disqualification” means [~~a prohibition against driving a commercial motor vehicle.~~] any of the following three actions:

- (1) The suspension, revocation, or cancellation of a commercial driver’s license by the state or jurisdiction of issuance;
- (2) Any withdrawal of a person’s privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or
- (3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under title 49, Code of Federal Regulations part 391.

“Nonresident commercial driver’s license” means a commercial driver’s license issued by a state [~~to an individual who resides in a foreign jurisdiction.~~] under either of the following two conditions:

- (1) To an individual domiciled in a foreign country meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(1); or
- (2) To an individual domiciled in another state meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(2).

“Serious traffic violation” means[~~;~~] conviction of any of the following offenses when operating a commercial motor vehicle, except for weight, defect, and parking violations:

- (1) [~~Driving at a speed of fifteen miles per hour or more above the posted speed limit;~~] Excessive speeding, involving any single offense for any speed of fifteen miles per hour or more above the posted speed limit;
- (2) [~~Driving a commercial motor vehicle in disregard of the safety of persons or property (reckless driving);~~] Reckless driving, or driving a commercial motor vehicle in disregard of the safety of persons or property, including but not limited to offenses of driving a commercial motor vehicle in wilful or wanton disregard for the safety of persons or property;
- (3) Improper or erratic traffic lane changes;
- (4) Following a vehicle ahead too closely; [or]
- (5) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident[~~;~~];
- (6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;
- (7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession; provided that this paragraph shall not apply to a citation issued under, or an offense disposed of pursuant to, section 286-116(a) or a substantially similar provision of law in another state; or
- (8) Driving a commercial motor vehicle without the proper class or endorsements of commercial driver’s license for the specific vehicle group being operated or for the passengers or type of cargo being transported.”

SECTION 4. Section 286-234, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No employer shall knowingly allow, require, permit, or authorize a driver to drive a commercial motor vehicle:

- (1) During any period in which the driver has a driver’s license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;
- (2) During any period in which the driver has more than one driver’s license;
- (3) During any period in which the driver, or the commercial motor vehicle the driver is driving, or the motor carrier operation, is subject to an out-of-service order; or
- (4) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.”

SECTION 5. Section 286-236, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The examiner of drivers may waive the driving skills test specified in this section for a commercial driver’s license applicant who meets the requirements of 49 Code of Federal Regulations [~~§383.77.~~] section 383.77 or 383.123(b).

(d) A commercial driver’s license or commercial driver’s instruction permit, including a provisional or temporary license or permit, shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person’s driver’s license is suspended, revoked, or canceled in any state; or while the person holds a driver’s license issued by any other state unless the person first surrenders that license.”

SECTION 6. Section 286-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The application for a commercial driver’s license or commercial driver’s instruction permit shall include the following with respect to the applicant:

- (1) The full name and current mailing, residential, and business addresses;
- (2) A physical description including sex and height;
- (3) Date of birth;
- (4) Social security number;
- (5) Signature;
- (6) Color photograph;
- (7) Certifications including those required by 49 Code of Federal Regulations, §383.71(a), except that this certification applies to both intrastate and interstate drivers; [~~and~~]
- (8) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years; and

[~~(8)~~] (9) Any other information required by section 286-111.

The applicant shall produce proof of residency to show the applicant’s state of domicile as defined in 49 Code of Federal Regulations [~~Part~~] part 383.5.”

SECTION 7. Section 286-239, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Commercial drivers’ licenses may be issued with any one or more of the following endorsements and restriction:

- (1) "H" - Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) "K" - Restricts the driver to vehicles not equipped with air brakes;
- (3) "T" - Authorizes driving double and triple trailers;
- (4) "P" - Authorizes driving vehicles carrying passengers;
- (5) "N" - Authorizes driving tank vehicles; [and]
- (6) "X" - Represents a combination of hazardous materials and tank vehicle endorsements[-]; and
- (7) "S" - Authorizes driving school buses."

2. By amending subsection (e) to read:

"(e) Before issuing a commercial driver's license, the examiner of drivers shall [obtain the applicant's driving record information through the commercial driver's license information system, the National Driver Register, and from the last state that issued the applicant a commercial driver's license.] complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall include but is not limited to the following:

- (1) A check of the applicant's driving record as maintained by the applicant's state of licensure;
- (2) A check with the commercial driver license information system;
- (3) A check with the National Driver Register; and
- (4) A request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years. This check is only required for drivers renewing a commercial driver's license for the first time after September 30, 2002, provided that a notation is made on the driver's record confirming the check has been made and the date it was done."

3. By amending subsection (h) to read:

"(h) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by section 286-238, providing updated information and required certifications. If the applicant desires to retain a hazardous materials endorsement, the knowledge test for a hazardous materials endorsement shall also be taken and passed[-] by the applicant. The examiner of drivers shall complete a check of the applicant's driving record as required under subsection (e)."

SECTION 8. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

**"§286-240 Disqualification and cancellation.** (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a [eommercial] motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) [Refusal] Refusing to submit to a test to determine the driver's alcohol concentration while driving a [eommercial] motor vehicle[-]; as required under sections 286-243 and 291E-11;
- (4) Using a [eommercial] motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the [eommercial] motor vehicle driven by the person; [or]

- (6) Unlawful transportation, possession, or use of a controlled substance while on-duty time[-];
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license had been revoked, suspended, or canceled, or the driver was otherwise disqualified from operating a commercial motor vehicle; or
- (8) Causing a fatality through the operation of a commercial motor vehicle, including but not limited to the crimes of manslaughter and negligent homicide in any degree.

(b) A person is disqualified for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded is being transported.

(c) A person is disqualified from driving a commercial motor vehicle for life if convicted two or more times for violations of any of the offenses listed in subsection (a).

(d) A person is disqualified from driving a commercial motor vehicle for life if the person uses a [eommercial] motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. These disqualification periods shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

(f) A person is disqualified from driving a commercial motor vehicle or from resubmitting an application for a period of not less than sixty days, if the examiner of drivers finds that a commercial driver's license holder or applicant for a commercial driver's license has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than ninety days and not more than one year for a first violation, or for at least one year and not more than five years for a second violation, or at least three years and not more than five years for a third or subsequent violation of [an] a driver or vehicle out-of-service order committed in a commercial motor vehicle arising from separate incidents occurring within a ten-year period.

(h) A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred eighty days or more than two years for a first violation, or for at least three years and not more than five years for any subsequent violation, of [an] a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting hazardous materials or designed to transport sixteen or more occupants, arising from separate incidents occurring within a ten-year period.

(i) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of a first violation, not less than one hundred twenty days if convicted of a second violation during any three-year period, or not less than one year if convicted of a third or subsequent violation during any three-year period for a violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;
- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(j) A person is disqualified from driving a commercial motor vehicle when the driver's driving is determined to constitute an imminent hazard, as defined in section 286-231, and the disqualification is imposed in accordance with the provisions of title 49 Code of Federal Regulations section 383.52."

SECTION 9. Section 286-241, Hawaii Revised Statutes, is amended to read as follows:

**"§286-241 Notification of suspension, revocation, or cancellation of commercial driver's licenses or permits.** After suspending, revoking, or canceling a commercial driver's license or permit, the records of the examiner of drivers shall be updated to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(j) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers shall notify the licensing authority of the state which issued the commercial driver's license within ten days."

SECTION 10. Section 286-244, Hawaii Revised Statutes, is amended to read as follows:

~~"§286-244 Notification of traffic convictions. [Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the examiner of drivers shall notify the driver's licensing authority in the licensing state of the conviction.] (a) Whenever a person who holds a commercial driver's license from another state is convicted of a violation of any state or county law relating to motor vehicle traffic control, other than a parking violation, in any type of vehicle, the examiner of drivers shall notify the licensing entity in the state where the driver is licensed of this conviction within the time period specified in subsection (c).~~

(b) Whenever a person who does not hold a commercial driver's license but is licensed to drive by another state is convicted of a violation in a commercial motor vehicle of any state or county law relating to motor vehicle traffic control, other than a parking violation, the examiner of drivers shall notify the licensing entity in the state where the driver is licensed of this conviction within the time period specified in subsection (c).

(c) The notification of a traffic violation conviction shall be made within thirty days of the conviction. Beginning on September 30, 2008, the notification shall be made within ten days of the conviction."

SECTION 11. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

~~“§286-245 Driving record information to be furnished. [Notwithstanding any other provision of law to the contrary, the state judiciary or the city and county of Honolulu shall furnish full information regarding the driving record of any person:~~

- ~~(1) To the driver's license administrator of any other state, Mexico, or province or territory of Canada, requesting that information; and~~
- ~~(2) To the person's employer or prospective employer.]~~

~~(a) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a holder of a commercial driver's license shall be recorded and maintained as part of the driver's record.~~

~~(b) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle and was required to have a commercial driver's license shall be recorded and maintained as part of the driver's record.~~

~~(c) No commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, shall be expunged or subject to deferred imposition of judgment, nor shall an individual be allowed to enter into a diversion program that would prevent the conviction from appearing on the driver's driving record, whether the driver was convicted for an offense committed in this state or another state.~~

~~(d) The state judiciary and the examiner of drivers shall make available information from any driver's record required by this section to the greatest extent possible, to the users designated in subsection (f), or their authorized agent, within ten days of:~~

- ~~(1) Receiving the conviction or disqualification information from another state; or~~
- ~~(2) Receiving the conviction for a violation occurring in this State.~~

~~(e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer as required under title 49 Code of Federal Regulations section 384.231(d).~~

~~(f) Only the following users or their authorized agents may obtain a driver's record:~~

- ~~(1) States may receive all information regarding any driver's record;~~
- ~~(2) The Secretary of Transportation may receive all information regarding any driver's record;~~
- ~~(3) A driver may receive only information related to that driver's record; and~~
- ~~(4) A motor carrier or prospective motor carrier may receive all information regarding a driver's history record, or the driver's driving record of a prospective driver; provided that the request is made by the driver.”~~

SECTION 12. Section 286-249, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A driver who is convicted of violating an out-of-service order shall be fined not less than [\$1,000] \$1,100 nor more than [\$2,500] \$2,750 in addition to the driving disqualification of subsection (a)(1)[-] and section 286-240(g) and (h).”

SECTION 13. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a)(1) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license



permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:

- (A) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
  - (B) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41[-]; or<sup>1</sup>
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (A) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section; ~~or~~
  - (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable[-]; or
  - (C) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b)."

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on September 30, 2005; provided that sections 1, 5, and the amendments made to section 286-239(c), Hawaii Revised Statutes, by section 7(1) of this Act shall take effect on October 18, 2004.

(Approved June 3, 2004.)

**Note**

- 1. Should be underscored.