

ACT 48

S.B. NO. 621

A Bill for an Act Relating to Traffic Infractions.

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

SECTION 1. Section 291D-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Notwithstanding any other provision of law to the contrary, all traffic infractions shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. ~~[Penal sanctions except fines]~~ No penal sanction that includes imprisonment shall [not] apply to a violation of a state statute or rule, or county ordinance or rule, that would constitute a traffic infraction under this chapter. [Traffic infractions] No traffic infraction shall [not] be classified as a criminal [offenses.] offense.

(b) ~~[Traffic infractions]~~ No traffic infraction that [involve] involves an accident resulting in personal injury or property damage [or are] and is committed in the same course of conduct as a criminal offense for which the offender is arrested or charged shall [not] be adjudicated pursuant to this chapter, but shall be adjudicated by the appropriate district or circuit court of the circuit in which the traffic infraction was committed, whichever has jurisdiction pursuant to the applicable statute or rules of court. In no event shall section 701-109 preclude prosecution for a criminal offense where a traffic infraction committed in the same course of conduct has been adjudicated pursuant to this chapter.”

SECTION 2. Section 291D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The form for the notice of traffic infraction shall be prescribed by rules of the district court which shall be uniform throughout the State. Except in the case of traffic infractions involving parking, the notice shall include the following:

- (1) A statement of the specific traffic infraction, including a brief statement of facts, for which the notice was issued;
- (2) A statement of the total amount to be paid for each traffic infraction, which amount shall include any fee, surcharge, or cost required by statute, ordinance or rule, and any monetary assessment, established for the particular traffic infraction pursuant to section 291D-9, to be paid by the driver, which shall be uniform throughout the State;
- (3) A statement of the options provided in section 291D-6(b) for answering the notice and the procedures necessary to exercise the options;
- (4) A statement that the person to whom the notice is issued must answer, choosing one of the options specified in section 291D-6(b), within ~~[fifteen]~~ twenty-one days;
- (5) A statement that failure to answer the notice of traffic infraction within ~~[fifteen]~~ twenty-one days shall result in the entry of judgment by default for the State and may result in the assessment of a late penalty [assessed], and, that if the driver fails to pay the [monetary-assessment] total amount specified in the default judgment within an additional thirty days or otherwise take action to set aside the default, notice shall be sent to the director of finance of the appropriate county that the person to whom the notice was issued shall not be permitted to renew or obtain a driver’s license or, where the notice was issued to a motor vehicle, the registered owner [will] shall not be permitted to register, renew the registration of, or transfer title to the motor vehicle until the traffic infraction is finally disposed of pursuant to this chapter;
- (6) A statement that, at a hearing requested to contest the notice of traffic infraction conducted pursuant to section 291D-8 or in consideration of a written statement contesting the notice of traffic infraction, no officer ~~[will]~~ shall be present unless the driver timely requests the court to have the officer present. The standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified traffic infraction was committed;
- (7) A statement that, at a hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or in consideration of a written request for mitigation, the person ~~[will]~~ shall be considered to have committed the traffic infraction;
- (8) A space in which the driver’s signature, current address, and driver’s license number may be affixed; and
- (9) The date, time, and place at which the driver must appear in court, if the driver ~~[chooses]~~ is required by the notice to go to hearing.”

SECTION 3. Section 291D-6, Hawaii Revised Statutes, is amended by amending subsection (a) & (b) to read as follows:

“(a) A person who receives a notice of traffic infraction shall answer the notice within ~~[fifteen]~~ twenty-one days of the date of the notice. There shall be included with the notice of traffic infraction a preaddressed envelope directed to the traffic violations bureau of the applicable district court.

(b) In ~~[an answer to]~~ answering a notice of traffic infraction, a person shall ~~[either:]~~ have the following options:

- (1) Admit the commission of the infraction [~~by completing the appropriate portion of the notice of traffic infraction and submitting it, either by~~] in one of the following ways:
 - (A) By mail or in person, by completing the appropriate portion of the notice of traffic infraction and submitting it to the authority specified on the notice together with payment~~[, except as provided in section 291D-9(d), in]~~ of the total amount [~~of the monetary assessment~~] stated on the notice of traffic infraction. Payment by mail shall be in the form of a check, money order, or by an approved credit or debit card. Payment in person shall be in the form of United States currency, check, money order, or by an approved credit or debit card; or
 - (B) Via the Internet or by telephone, by submitting payment of the total amount stated on the notice of traffic infraction. Payment via the Internet or by telephone shall be by an approved credit or debit card;
- (2) Deny the commission of the infraction and request a hearing to contest the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written statement of grounds on which the person contests the notice of traffic infraction, which shall be considered by the court as a statement given in court pursuant to section 291D-8(a); or
- (3) Admit the commission of the infraction and request a hearing to explain circumstances mitigating the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written explanation of the mitigating circumstances, which shall be considered by the court as a statement given in court pursuant to section 291D-8(b).”

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

“§291D-7 Court action after answer or failure to answer. (a) When an admitting answer is received, the court shall review the driver’s abstract. The court shall enter judgment in favor of the State in the total amount [~~of the monetary assessment~~] specified in the notice of traffic infraction. If the [~~monetary assessment~~] total amount is not submitted with the answer, the court shall take action as provided in section 291D-10.

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

- (1) In the case of a traffic infraction that does not involve parking[,] where the person requests a hearing to contest the infraction, the court shall [~~proceed as provided in section 291D-8(a).]~~ notify the person in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent to the address stated in the answer, or if none is given, to the address stated on the notice of traffic infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the total amount specified in the default judgment must be paid within thirty days from notice of default, and, if it is not paid, that the court shall take action as provided in section 291D-10;

- (2) In the case of a traffic infraction that involves parking, the court shall notify the person or registered owner or owners in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent ~~[within thirty days from the postmarked date of the answer]~~ to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the ~~[monetary assessment must]~~ total amount specified in the default judgment shall be paid within thirty days from notice of default, and, if it is not paid, that the court [will] shall take action as provided in section 291D-10[-]; and
- (3) When a denying answer is accompanied by a written statement of the grounds on which the person contests the notice of the traffic infraction, the court shall proceed as provided in section 291D-8(a) and shall notify the person of its decision, including the total amount [of the monetary assessment] assessed by mailing it within thirty days of the postmarked date of the answer to the address provided by the person in the answer, or if none is given, to the address given when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The decision also shall advise the person, if it is determined that the infraction was committed, that the person has the right, within thirty days, to request a trial and shall specify the procedures for doing so. The notice of decision shall also notify the person, if ~~[a monetary assessment]~~ an amount is assessed by the court[;] for fines, fees, surcharges, costs, or monetary assessments, that if the person does not request a trial, the ~~[assessment]~~ total amount assessed shall be paid within thirty days. The notice shall warn the person that if the [assessment] total amount is not paid within thirty days, the court shall take action as provided in section 291D-10.
- (c) When an answer admitting commission of the infraction but seeking to explain mitigating circumstances is received, the court shall proceed as follows:
- (1) In the case of a traffic infraction which does not involve parking[-] where the person requests a hearing to explain mitigating circumstances, the court shall [proceed as provided in section 291D-8(b)-] notify the person in writing of the date, time, and place of hearing to explain mitigating circumstances. The notice of hearing shall be sent to the address stated in the answer, or if none is given, to the address stated on the notice of traffic infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the total amount stated in the default judgment shall be paid within thirty days from notice of default, and, if it is not paid, that the court shall take action as provided in section 291D-10;
- (2) In the case of a traffic infraction which involves parking, the court shall notify the person in writing of the date, time, and place of the hearing. The notice shall be sent~~[-, within thirty days from the postmarked date of the answer,]~~ to the address at which the vehicle is registered. The notice of hearing on mitigating circumstances shall advise the person that the court ~~[will]~~ shall enter judgment for the State and the hearing ~~[will]~~ shall be limited to an explanation of the mitigating circumstances. The notice of hearing also shall state that if the person fails to

- appear at the hearing, the ~~[monetary assessment must]~~ total amount specified in the default judgment shall be paid within thirty days of the scheduled hearing. The notice of hearing shall warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10[-]; and
- (3) If a written explanation is included with an answer admitting commission of the infraction, the court shall enter judgment for the State and, after reviewing the explanation, determine the total amount of the [monetary assessment] fines, fees, surcharges, costs, or monetary assessments to be assessed, if any. The court shall then notify the person of the ~~[monetary assessment]~~ total amount to be paid for the infraction, if any. There shall be no appeal from the order. If the court assesses ~~[a monetary assessment,]~~ an amount for fines, fees, surcharges, costs, or monetary assessments, the court shall also notify the person that the ~~[assessment]~~ total amount shall be paid within thirty days of the post-marked date of the decision. The notice ~~[shall]~~ also shall warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10.
- (d) If the person fails to answer within ~~[fifteen]~~ twenty-one days of issuance of the notice of traffic infraction, the court shall take action as provided in subsection (e).
- (e) Whenever judgment by default in favor of the State is entered, the court shall mail a notice of entry of judgment of default to the address provided by the person when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the answer, if any, or the address at which the vehicle is registered. The notice shall advise the person that the ~~[monetary assessment]~~ total amount specified in the default judgment shall be paid within thirty days and shall explain the procedure for setting aside a default judgment. The notice shall also warn the person that if the ~~[monetary assessment]~~ total amount is not paid within thirty days, the court shall take action as provided in section 291D-10. Judgment by default for the State entered pursuant to this chapter may be set aside pending final disposition of the traffic infraction upon written application of the person and posting of an appearance bond equal to the amount of the ~~[monetary assessment]~~ total amount specified in the default judgment and any other assessment imposed pursuant to section 291D-9. The application shall show good cause or excusable neglect for the person's failure to take action necessary to prevent entry of judgment by default. Upon receipt of the application, the court shall take action to remove the restriction placed on the person's driver's license or the motor vehicle's registration and title imposed pursuant to section 291D-10. Thereafter, the court shall determine whether good cause or excusable neglect exists for the person's failure to take action necessary to prevent entry of judgment by default. If so, the notice of traffic infraction shall be disposed of pursuant to this chapter. If not, the appearance bond shall be forfeited and the notice of traffic infraction shall be finally disposed. In either case, the court ~~[shall]~~, within thirty days, shall determine the existence of good cause or excusable neglect and notify the person of its decision in writing."

SECTION 5. Section 291D-10, Hawaii Revised Statutes, is amended to read as follows:

“[§291D-10] Restriction on driver's license and motor vehicle registration. (a) When the person issued a notice of traffic infraction not involving parking fails to pay ~~[a monetary assessment]~~ the total amount of fines, fees, surcharges, costs, or monetary assessments that has been ordered, the court shall cause an entry to be made in the driver's license record so as to prevent the person

~~[whose assessment is outstanding]~~ from acquiring or renewing the person's driver's license until the outstanding ~~[assessment]~~ amount is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter.

(b) In all cases where the registered owner of a motor vehicle to which a notice of traffic infraction has been issued fails to pay ~~[any]~~ the total amount of fines, fees, surcharges, costs, or monetary assessments that have been ordered, the court shall cause an entry to be made in the motor vehicle's record so as to prevent issuance or renewal of the motor vehicle's certificate of registration and transfer of title to the motor vehicle until the outstanding ~~[assessment]~~ amount is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter."

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on January 1, 2006; provided that section 1 shall take effect upon approval.

(Approved May 11, 2005.)