

ACT 130

S.B. NO. 845

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part XIII to be appropriately designated and to read as follows:

“§286- Hazardous materials endorsement. The examiner of drivers shall not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver’s license to any individual unless the federal transportation security administration has determined that the individual does not pose a security risk warranting denial of the endorsement.”

SECTION 2. Section 286-2, Hawaii Revised Statutes, is amended as follows:
1. By adding two new definitions to be appropriately inserted and to read:

““Gross combination weight rating” means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon.

“Tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include but are not limited to cargo tanks and portable tanks, as defined in Title 49 Code of Federal Regulations Part 171. This definition does not include portable tanks having a rated capacity under one thousand gallons.”

2. By amending the definitions of “commercial motor vehicle”, “gross vehicle weight rating”, and “hazardous materials” to read:

““Commercial motor vehicle” means a motor vehicle [designed] or combination of motor vehicles used in commerce to transport passengers or property:

(1) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

[4)] (2) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

[2)] (3) If the vehicle is designed to transport sixteen or more occupants, including the driver; or

[3)] (4) If the vehicle, regardless of size, is [transporting] used in the transportation of hazardous materials [and is required to be placarded in accordance with 49 Code of Federal Regulations, Part 172, Subpart F-], as defined in this section.

“Gross vehicle weight rating” [(GVWR)] means the value specified by the [manufacturers] manufacturer as the [maximum] loaded weight of a single [or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the “gross combination weight rating” or GCWR) is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit.] vehicle.

“Hazardous materials” [has the meaning as that found in section 103 of the Hazardous Materials Transportation Act (49 United States Code app. §1801¹].

means any material that has been designated as hazardous under title 49 United States Code section 5103 and is required to be placarded under subpart F of part 172, title 49, Code of Federal Regulations, or any quantity of a material listed as a select agent or toxin in title 42 Code of Federal Regulations part 73.”

SECTION 3. Section 286-235.5, Hawaii Revised Statutes, is amended to read as follows:

“§286-235.5 Persons exempt from [license.] licensure. The following persons shall be exempt from licensure under this part:

- (1) ~~[Any active-duty military personnel while operating a commercial motor vehicle in the service of the United States Department of Defense, provided that the driver has a current valid license or permit from the Department of Defense to drive the commercial motor vehicle; and]~~ Individuals who operate commercial motor vehicles for military purposes. This exception is limited to active-duty military personnel, members of the military reserves, members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), and active-duty United States Coast Guard personnel. This exception is not applicable to United States reserve technicians; and
- (2) Federal, state, and county firefighters, and law enforcement officers who drive federal, state, or county fire trucks, including fire pumpers, aerial ladder trucks, and elevated platform trucks, or authorized emergency vehicles; provided that they are trained by the federal, state, or county government[-] and the commercial motor vehicles are equipped with audible and visual signals and are not subject to normal traffic regulation. For purposes of this [section,] paragraph, “authorized emergency vehicle” shall have the same meaning as in section 291C-1.”

SECTION 4. Section 286-236, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) The commercial driver’s instruction permit shall not be valid for a period in excess of [six months-] one year. When driving a commercial motor vehicle, the holder of a commercial driver’s instruction permit shall be accompanied by a person licensed to operate that category of commercial motor vehicle. The licensed person shall occupy the seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The permit may be reissued after the applicant requalifies meeting the requirements of subsection (e).

(g) The examiner of drivers may waive the knowledge and skills tests specified in this section for any person who is at least twenty-one years of age and who possesses a valid commercial driver’s license issued by any state of the United States, Mexico, or a province of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial driver’s licenses. To retain a hazardous materials endorsement, the applicant shall pass the knowledge test for a hazardous materials endorsement[-] and be determined by the federal transportation security administration not to pose a security risk warranting denial of the endorsement.”

SECTION 5. Section 286-239, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Commercial driver’s licenses may be issued with the following categories:

- (1) Category A – Any combination of vehicles with a gross [vehiele] combination weight rating [(GVWR)] of 26,001 pounds or more; provided that the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds;
- (2) Category B – Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, or ~~[if the gross vehicle weight rating of the vehicle being towed is]~~ any such vehicle towing a vehicle not in excess of 10,000 pounds; and
- (3) Category C – Any single vehicle or combination of vehicles that meets neither the definition of category A nor that of category B, but that is either:
 - (A) Designed to transport sixteen or more passengers, including the driver; or
 - (B) Used in the transportation of hazardous materials which requires the vehicle to comply with Title 49 Code of Federal Regulations, Part 172, Subpart F.

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

- (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;
- (6) “X” – Represents a combination of hazardous materials and tank vehicle endorsements; ~~[and]~~
- (7) “S” – Authorizes driving school buses[-]; and
- (8) “V” – Restricts the driver from operating in interstate commerce as defined in of² Title 49 Code of Federal Regulations Section 390.5.”

2. By amending subsections (e), (f), and (g) to read:

“(e) Before issuing a commercial 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 be made no earlier than twenty-four hours prior to the initial issuance or transfer and no sooner than ten days before renewals and upgrades of a commercial driver’s license. 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.

(f) Within ten days after issuing a commercial driver’s license, the examiner of drivers, in the following situations, shall [notify] provide the operator of the commercial driver’s license information system [of that fact, providing] with all

information ~~[required to ensure identification of]~~ obtained by the examiner that is necessary to identify the licensee[-.]:

- (1) The issuance of each commercial driver's license;
- (2) The notation of any changes in driver identification information; and
- (3) The notation of any changes to the driver's driving record relating to the transfer of a commercial driver's license from one state to another.

(g) An initial or renewed commercial driver's license with a hazardous materials endorsement shall expire no later than five years from its date of issuance, except if the licensee is seventy-two years of age or older. The expiration date of a commercial driver's license with a hazardous materials endorsement shall be the same expiration date as the hazardous materials endorsement. If the licensee is seventy-two years of age or older, the initial or renewed commercial driver's license with a hazardous materials endorsement shall not exceed two years. All other initial commercial driver's [license] licenses shall be valid for not less than³ two- or six-year period, beginning on the driver's birthday. [Renewal] All other renewed licenses shall be valid for not more than³ two- or six-year period from the expiration date of the previous valid license. [The] With the exception of a commercial driver's license with a hazardous materials endorsement, the commercial driver's license shall expire on the next birthday of the licensee occurring six years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that, unless sooner revoked, the license shall expire on the second birthday of the licensee following the issuance of the license if at that time the licensee is seventy-two years of age or older."

SECTION 6. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

“§286-240 Disqualification and cancellation. (a) [A] The examiner of drivers shall disqualify any 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 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) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (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] The examiner of drivers shall disqualify any 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 under Title 49 Code of Federal Regulations, Part 172, Subpart F, is being transported.

(c) [A] The examiner of drivers shall disqualify any 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] The examiner of drivers shall disqualify any person ~~[is disqualified]~~ from driving a commercial motor vehicle for life if the person uses a 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] The examiner of drivers shall disqualify any 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. The one hundred twenty-day disqualification period required for a third conviction within three years of a "serious traffic violation," as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. 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] The examiner of drivers shall disqualify any 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] The examiner of drivers shall disqualify any 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 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] The examiner of drivers shall disqualify any 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 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] The examiner of drivers shall disqualify any 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] The examiner of drivers shall disqualify any 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 7. Section 286-241, Hawaii Revised Statutes, is amended to read as follows:

"§286-241 Notification of ~~disqualification~~, suspension, revocation, or cancellation of commercial driver's licenses or permits. After ~~disqualifying a person, or~~ 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. The notification shall include information regarding any disqualification and the violation or violations that resulted in the disqualification, revocation, suspension, or cancellation."

SECTION 8. Section 286-242, Hawaii Revised Statutes, is amended to read as follows:

"§286-242 Commercial drivers prohibited from operating with any alcohol in their body. (a) Notwithstanding any other provision of this chapter, a person may not drive a commercial motor vehicle while having any alcohol in that person's body.

(b) A person who drives a commercial motor vehicle while having an alcohol concentration of 0.01 per cent or more by weight or who refuses to take a test as provided by section 286-243 shall be issued a twenty-four-hour out-of-service order. The driver shall also be placed out-of-service for twenty-four hours if the results of a blood test are not immediately available.

(c) It is unlawful for any person who has 0.04 per cent or more, by weight, of alcohol in the person's blood to drive a "commercial motor vehicle," as defined in section 286-2. Any person who violates this provision shall be subject to the penalties as provided in section 286-249."

SECTION 9. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

"§286-245 Driving record information to be recorded and furnished. [(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.]~~

(a) Whenever a person is convicted of a moving traffic violation based on a statute, ordinance, or rule, fails to appear for a hearing, trial, or other court or administrative proceeding on the moving traffic violation, or fails to pay a fine or court cost ordered for a moving violation, the state judiciary shall forward to the examiner of drivers the record of the conviction. The record of conviction shall include whether the offender was operating a commercial motor vehicle at the time of the offense, whether the offender was transporting hazardous materials requiring placarding under Title 49 Code of Federal Regulations Section 172, Subpart F, the citation date, the conviction date, the citation number, the court in which the conviction occurred, and the offense(s) convicted of. No record of conviction so transmitted and maintained in the statewide traffic records system shall be used for purposes other than the licensing of drivers.

(b) Within ten days of an in-state conviction, and within ten days of the receipt of notice of an out-of-state conviction, the examiner of drivers shall record and maintain as part of the driver's record:

- (1) All convictions, disqualifications, and other licensing actions for violations both in this state and out-of-state, of any 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; and
- (2) All convictions, disqualifications, and other licensing actions for violations both in this state and out-of-state, of any 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.

(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 state⁴ 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] Title⁵ 49 Code of Federal Regulations [section]⁶ 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]~~ driving record, or the driver's driving record of a prospective driver; provided that the request is made by the driver.

(g) The traffic violations bureaus of the district courts, upon request, shall furnish users designated in subsection (f), a certified driver record listing all convictions, disqualifications, and all licensing actions in this state and notification of any action received from other states that are recorded and maintained by the examiner of drivers. The traffic violations bureaus shall collect a fee for those requests by users designated in subsection (f)(3) and (4), not to exceed \$9, of which \$5 shall be deposited into the general fund, \$2 shall be deposited into the judiciary computer system special fund, and \$2 shall be deposited into the highway fund."

SECTION 10. 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
- (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;
 - (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) unless the conditional license permit is restricted to a category 1, 2, or 3 license under section 286-102(b).”

SECTION 11. Section 286-237, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁷

SECTION 13. This Act shall take effect upon its approval.

(Approved May 24, 2006.)

Notes

1. Prior to amendment, ending parenthesis appeared here.
2. So in original.
3. Prior to amendment “a” appeared here.
4. Prior to amendment “state” was “State”.

5. Prior to amendment "title" was "Title".
6. Prior to amendment "section" was "Section".
7. Edited pursuant to HRS §23G-16.5.