

ACT 311

S.B. NO. 2871

A Bill for an Act Relating to Commercial Driver's License.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291- Mobile electronic devices; use while operating a commercial motor vehicle prohibited. (a) No person with a commercial driver's license shall use a mobile electronic device, including using the mobile electronic device for texting as defined under section 286-231, while operating a commercial motor vehicle, as defined under section 286-2.

(b) The use of a mobile electronic device for the sole purpose of making a “911” emergency communication shall be an affirmative defense to this section.

(c) The following persons shall be exempt from the provisions of subsection (a):

- (1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;
 - (2) Drivers using two-way radios while in the performance and scope of their work-related duties and who are operating motor carrier vehicles as defined in section 286-201; and
 - (3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.
- (d) Any person who is convicted of violating subsection (a) shall be fined not more than \$2,750 in addition to the driving disqualification of section 286-240(e).

(e) As used in this section:

“Emergency responders” means any firefighters, emergency medical technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

“Mobile electronic device” means any handheld or other portable electronic equipment recognized by the citing officer or other witness to be capable of providing wireless or data communications, or both, between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, or any device to input, write, send, receive, or read text, but does not include any equipment installed in a commercial motor vehicle for the purpose of providing audio, navigation, or emergency assistance to the operator of the commercial motor vehicle or video entertainment to the passengers in the rear seats of the commercial motor vehicle. A “two-way radio” or Private Land Mobile Radio System as defined by Title 47 of the Code of Federal Regulations, Part 90, when used for business purposes, shall not be considered to be a “mobile electronic device”.

“Operate a commercial motor vehicle” means to drive or assume actual physical control of a commercial motor vehicle upon a public way, street, road, or highway in the State.

“Texting” means the same as defined under 286-231.

“Use or using a mobile electronic device” means holding a mobile electronic device while operating a commercial motor vehicle.”

SECTION 2. Section 286-231, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Texting” means manually entering alphanumeric text into, or reading text from, an electronic device, and includes short message service; e-mailing; instant messaging; a command or request to access a world wide web page; and engaging in any other form of electronic text retrieval or entry, for present or future communication.

“Texting” does not include:

- (1) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;
- (2) Inputting, selecting, or reading information on a global positioning system or navigation system; or
- (3) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones,

citizens band radios, and music players, for a purpose that is not otherwise prohibited in this part.”

2. By amending the definition of “serious traffic violation” to read: ““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) Excessive speeding[;] involving any single offense for any speed of fifteen miles per hour or more above the posted speed limit;
- (2) 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;
- (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; [ø]
- (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[;]; or
- (9) Texting while driving in violation of a state or county law or ordinance.”

SECTION 3. Section 286-235, Hawaii Revised Statutes, is amended to read as follows:

“§286-235 Commercial driver’s license required. (a) No person shall drive a commercial motor vehicle unless the person holds a valid commercial driver’s license and valid applicable endorsements for the vehicle the person is driving, except when driving under a commercial driver’s instruction permit and accompanied by the holder of a valid commercial driver’s license for the vehicle being driven.

(b) No person shall operate a commercial motor vehicle without a commercial driver’s license in such person’s possession.

~~[(b)] (c)~~ (c) No person shall drive a commercial motor vehicle while the person’s driver’s license or permit is suspended, revoked, or canceled, or while subject to a disqualification.

~~[(e)] (d)~~ (d) No person shall drive a commercial motor vehicle in violation of an out-of-service order.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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SECTION 6. This Act shall take effect upon its approval.
(Approved July 9, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.