

ACT 81

H.B. NO. 631

A Bill for an Act Relating to Financial Hardship.

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

SECTION 1. Section 286-136, Hawaii Revised Statutes, is amended to read as follows:

**“§286-136 Penalty.** (a) Except as provided in subsection (b), any person who violates section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be fined ~~[not]~~ no more than \$1,000 or imprisoned ~~[not]~~ no more than thirty days, or both. Any person who violates any other section in this part shall be fined ~~[not]~~ no more than \$1,000.

(b) Any person who is convicted of violating section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be subject to a minimum fine of \$500 and a maximum fine of \$1,000, or imprisoned ~~[not]~~ no more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five-year period.

(c) Notwithstanding subsections (a) and (b), a minor under the age of eighteen under the jurisdiction of the family court who is subject to this section shall either lose the right to drive a motor vehicle until the age of eighteen or be subject to a fine of \$500.

(d) Any person subject to a fine under this section and who fails to timely pay the fine shall be given an opportunity to petition the court to demonstrate

that the person's nonpayment or inability to pay is not wilful; provided that if the person petitions the court, the court shall make an individualized assessment of the person's ability to pay based upon the totality of the circumstances, including the person's disposable income, financial obligations, and liquid assets; provided further that if the court determines that the person's nonpayment or inability to pay is not wilful, the court may enter an order that allows additional time for payment; reduces the amount of each installment; revokes the fee or fine, or unpaid portion thereof, in whole or in part; or converts any outstanding fine to community service."

SECTION 2. Section 291D-9, Hawaii Revised Statutes, is amended to read as follows:

**“[§291D-9] Monetary assessments.** (a) A person found to have committed a traffic infraction shall be assessed a monetary assessment not to exceed the maximum fine specified in the statute defining the traffic infraction. The court shall consider a person's financial circumstances, if disclosed, in determining the monetary assessment.

(b) Notwithstanding section 291C-161 or any other law to the contrary, the district court of each circuit shall prescribe a schedule of monetary assessments for all traffic infractions, and any additional assessments to be imposed pursuant to subsection (c). The particular assessment to be entered on the notice of traffic infraction pursuant to section 291D-5 shall correspond to the schedule prescribed by the district court. Except after proceedings conducted pursuant to section 291D-8 or a trial conducted pursuant to section 291D-13, monetary assessments assessed pursuant to this chapter shall not vary from the schedule prescribed by the district court having jurisdiction over the traffic infraction.

(c) In addition to any monetary assessment imposed for a traffic infraction, the court may impose additional assessments for:

- (1) Failure to pay a monetary assessment by the scheduled date of payment; or
- (2) The cost of service of a penal summons issued pursuant to this chapter.

(d) [The] Upon request of a person claiming inability to pay a monetary assessment, the court may grant [to a person claiming inability to pay,] an extension of the period in which the monetary assessment shall be paid or may impose community service in lieu thereof.

(e) At any point before full payment of a monetary assessment, any person who suffers a change in financial circumstances may request a hearing to modify the monetary assessment or to request community service in lieu thereof."

SECTION 3. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a)(1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle operated in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the traffic violations bureau of the district court of the first circuit;
- (2) Notwithstanding any provision of the Hawaii Penal Code:
    - (A) Each violation shall be deemed a separate offense and shall be subject to a fine of ~~not~~ no less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B); and

- (B) If the person is convicted of not having had a motor vehicle insurance policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior offense; provided that the ~~judge~~ court:
  - (i) Shall have the discretion to suspend all or any portion of the fine if the defendant provides proof of having a current motor vehicle insurance policy; provided further that upon the defendant's request, the ~~judge~~ court may grant community service in lieu of the fine, of ~~not~~ no less than seventy-five hours and ~~not~~ no more than one hundred hours for the first offense, and ~~not~~ no less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and
  - (ii) May grant community service in lieu of the fine for subsequent offenses at the ~~judge's~~ court's discretion;
- (3) In addition to the fine in paragraph (2), the court shall either:
  - (A) Suspend the driver's license of the driver or of the registered owner for:
    - (i) Three months for the first conviction; and
    - (ii) One year for any subsequent offense within a five-year period from a previous offense; provided that the driver or the registered owner shall not be required to obtain proof of financial responsibility pursuant to section 287-20; or
  - (B) Require the driver or the registered owner to keep a nonrefundable motor vehicle insurance policy in force for six months;
- (4) Any person subject to a fine under this section and who fails to timely pay the fine shall be given an opportunity to petition the court to demonstrate that the person's nonpayment or inability to pay is not wilful; provided that if the person petitions the court, the court shall make an individualized assessment of the person's ability to pay based upon the totality of the circumstances, including the person's disposable income, financial obligations, and liquid assets; provided further that if the court determines that the person's nonpayment or inability to pay is not wilful, the court may enter an order that allows additional time for payment; reduces the amount of each installment; revokes the fee or fine, or unpaid portion thereof, in whole or in part; or converts any outstanding fine to community service;
- ~~(4)~~ (5) Any person cited under this section shall have an opportunity to present a good faith defense, including ~~[but not limited to]~~ lack of knowledge or proof of insurance~~[-The]~~; provided that the general penalty provision of this section shall not apply to:
  - (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving;
  - (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or
  - (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured;
- ~~(5)~~ (6) In the case of multiple convictions for driving without a valid motor vehicle insurance policy within a five-year period from any prior

offense, the court, in addition to any other penalty, shall impose the following penalties:

- (A) Imprisonment of ~~[not]~~ no more than thirty days;
  - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
  - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
  - (D) Any combination of those penalties; and
- ~~[(6)]~~ (7) Any violation as provided in ~~[subsection (a)(2)(B)]~~ paragraph (2)(B) shall not be deemed to be a traffic infraction as defined by chapter 291D.”

SECTION 4. Section 706-644, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) The term of imprisonment for nonpayment of fee, fine, or restitution shall be specified in the order of commitment, and shall not exceed one day for each ~~[\$25]~~ \$250 of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of ~~[\$25]~~ \$250 per day.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 24, 2021.)