

JAN 22 2007

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# A BILL FOR AN ACT

RELATING TO DRIVER LICENSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to switch the  
2 State's burden of proof in driving without a license cases and  
3 to place that burden upon the defendant. This Act is necessary  
4 due to a decision by the Hawaii intermediate court of appeals in  
5 *State v. Matautia*, 81 Haw. 76, 82 (1996) that interpreted the  
6 law in a way that was not intended by the legislature. The  
7 court ruled that in a driving without a license case, the State  
8 must prove that the defendant:

9           (1) Operated any category of motor vehicle in section 286-  
10           102;

11           (2) Was not first "appropriately examined and duly  
12           licensed as a qualified driver of the category of  
13           motor vehicles;" and

14           (3) Was not excepted by statute from driver's licensing  
15           requirements.

16           As a practical matter, the State must prove, among other  
17 issues, that a person eighteen years old or older who is charged  
18 with driving without a license, did not possess a valid driver's



1 license from another accepted jurisdiction. Retrieving this  
2 information is very difficult because there is no available  
3 network that links the driver license databases for all accepted  
4 jurisdictions including the United States or the provinces or  
5 states in Canada or Mexico. Thus, inquiries to all of the  
6 individual states or provinces must be done separately. Given  
7 that each year there are over seventeen thousand driving without  
8 a license cases statewide, and over eleven thousand driving  
9 without a license cases in the city and county of Honolulu  
10 alone, there is insufficient time and resources to send  
11 inquiries to all of these jurisdictions in each and every  
12 driving without a license case. Besides, the legislature never  
13 intended that the burden of proof lie with the State in this  
14 regard.

15 The inability of the State to prove that a motorist is not  
16 validly licensed in other jurisdictions has markedly increased  
17 the number of motorists found not guilty of driving without a  
18 license and negatively impacts the State's efforts to promote  
19 traffic safety on Hawaii's roadway.

20 The purpose of this Act is to correct an unintentional  
21 consequence of the driving without a license law to more  
22 appropriately place the burden of proof in such cases upon the



1 defendant after the State proves that the defendant did not  
2 possess a valid Hawaii's driver's license as required by State  
3 law.

4 SECTION 2. Section 286-102, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) No person, except one [~~exempted under section~~  
7 ~~286-105, one~~] who holds an instruction permit under section  
8 286-110, one who holds a provisional license under section  
9 286-102.6, one who holds a commercial driver's license issued  
10 under section 286-239, or one who holds a commercial driver's  
11 license instruction permit issued under section 286-236, shall  
12 operate any category of motor vehicles listed in this section  
13 without first being appropriately examined and duly licensed as  
14 a qualified driver of that category of motor vehicles."

15 SECTION 3. Section 286-105, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "~~§286-105 [What persons are exempt from license. The~~  
18 ~~following persons are exempt from license:]~~ Affirmative  
19 defenses. It shall be an affirmative defense to a violation of  
20 section 286-102 that the person:

21 (1) [~~Any person while~~] Was driving or operating a motor  
22 vehicle in the service or employ of any branch or



1 agency of the federal government; provided that the  
2 person has received a license or permit from the  
3 branch or agency to operate and drive the motor  
4 vehicle; provided further that the branch or agency  
5 has been duly authorized by the federal government to  
6 issue the license or permit;

7 (2) [~~Any person while~~] Was driving or operating any road  
8 machine, farm tractor, or implement of husbandry  
9 temporarily operated or moved on a highway; provided  
10 that no person under the age of thirteen years shall  
11 be permitted to drive or operate any such road  
12 machine, farm tractor, or implement of husbandry on a  
13 highway;

14 (3) [~~Any person who is~~] Was at least eighteen years of age  
15 and [~~who has~~] had in the person's possession a valid  
16 driver's license to drive the categories of motor  
17 vehicles listed in section 286-102(b), except section  
18 286-102(b)(4), that is equivalent to a driver's  
19 license issued in this State but was issued to the  
20 person in another state of the United States, the  
21 Commonwealth of Puerto Rico, United States Virgin  
22 Islands, American Samoa, Guam, a province of the



1 Dominion of Canada, or the Commonwealth of the  
2 Northern Mariana Islands for that category of motor  
3 vehicle which the person is operating;

4 (4) [~~Any person who has~~] Had in the person's possession a  
5 valid commercial motor vehicle driver's license issued  
6 by any state of the United States, Mexico, or a  
7 province of the Dominion of Canada that issues  
8 licenses in accordance with the minimum federal  
9 standards for the issuance of commercial motor vehicle  
10 driver's licenses; and

11 (5) [~~Any person who drives or operates~~] Did drive or  
12 operate a state or county motor [vehicles] vehicle  
13 while employed by, in the service of, or volunteering  
14 for the state or county fire departments, provided  
15 that [~~they are~~] the person was trained and certified  
16 to drive category (4) motor vehicles as set forth in  
17 section 286-102(b)(4) by the state or county  
18 government, as appropriate, and provided that the  
19 person maintains a category (3) license as set forth  
20 in section 286-102(b)(3)."



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

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

6 SECTION 6. This Act shall take effect upon its approval;  
7 provided that amendments to section 286-102, Hawaii Revised  
8 Statutes, under this Act shall be retained after the section is  
9 reenacted on January 9, 2011 pursuant to Act 72, Session Laws of  
10 Hawaii 2005.

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INTRODUCED BY:

~~\_\_\_\_\_~~ B/R



**Report Title:**

Driver Licensing

**Description:**

Switches the burden of proof in driving without a license cases from the State to the defendant after the State proves a defendant was driving without a license.

