

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 PART I

2 SECTION 1. The legislature finds that the prevalence of  
3 drivers violating Hawaii's traffic laws, especially on the  
4 island of Oahu, has become intolerable, particularly drivers who  
5 run red lights. These violations endanger the lives of  
6 motorists and pedestrians and compound the already hazardous  
7 conditions on Hawaii's roads and highways. It has become  
8 increasingly common to hear reports of hit-and-run drivers who  
9 have run over children or the elderly. Disregarding traffic  
10 signals has also been the common denominator in many recent,  
11 highly-publicized motor vehicle crashes that have claimed a  
12 number of lives.

13 The legislature further finds that in other jurisdictions  
14 in the United States, in Canada, in Europe, and in other  
15 countries throughout the world, a technological innovation--  
16 namely, photo red light imaging detector systems--has already



1 demonstrated its reliability, efficiency, and effectiveness in  
2 identifying and deterring those who run red lights.

3 Photo red light imaging detector systems are safe, quick,  
4 cost-effective, and efficient. No traffic stop is involved, and  
5 a police officer is not at risk from passing traffic or armed  
6 violators. For photo red light imaging detector systems, a  
7 camera is positioned at intersections where red light violations  
8 are a major cause of collisions and serves as a twenty-four hour  
9 deterrent to run a red light. Sensors are buried under a  
10 crosswalk and lead to a self-contained camera system mounted on  
11 a nearby structure. When a vehicle enters the intersection and  
12 the traffic light is red, the camera takes a telephoto color  
13 picture of the rear of the car, capturing the license plate. A  
14 second wide-angle photograph takes in the entire intersection,  
15 including other traffic.

16 These systems provide numerous benefits. Not only are  
17 streets safer, but police officers are freed from time-consuming  
18 traffic enforcement activities and have more time to respond to  
19 priority calls. A violator is less likely to go to court, since  
20 the color photograph of the violation, imprinted with the time,  
21 date, and location of the violation, and the number of seconds  
22 the light had been red before the violator entered the



1 intersection, can be used as evidence in court. Few cases are  
2 contested in other jurisdictions using this system, and officers  
3 make fewer court appearances, saving court costs.

4 The system may also result in lower insurance costs for  
5 safe drivers through an overall reduction in crashes and  
6 injuries and places system costs on the violators who have  
7 created the need for the program--not on law-abiding taxpayers.  
8 Traffic laws are enforced without partiality, and safety and  
9 efficiency are increased by reducing the number of chases and  
10 the number of personnel required for traffic accident clean-up,  
11 investigation, and court testimony.

12 The legislature finds that the photo speed imaging detector  
13 system created by Act 234, Session Laws of Hawaii 1998, and  
14 implemented in January 2002, generated intense public opposition  
15 to this program. As a result of this opposition, the  
16 legislature repealed Act 234 in its entirety. However, the  
17 majority of the opposition to this program resulted from the  
18 method in which the program was implemented. The public  
19 perceived the program operated more to maximize revenue for the  
20 vendor administering the program than to improve traffic safety.  
21 In particular, vans in which the cameras were mounted were often  
22 placed at locations that did not necessarily have a history of



1 speed-related accidents and instead were used to monitor  
2 locations with heavy traffic flow at lower speeds. This  
3 permitted the vendor to issue the maximum number of citations in  
4 the shortest period of time and at the least cost, thereby  
5 maximizing the potential return to the vendor without improving  
6 traffic safety.

7 The purpose of this Act is to:

- 8 (1) Establish a three-year pilot photo red light imaging  
9 detector systems program to improve enforcement of the  
10 traffic signal laws in all counties with a population  
11 in excess of 500,000;
- 12 (2) Authorize fines collected under county programs to be  
13 deposited into a general fund;
- 14 (3) Authorize the county to expend funds from this general  
15 fund account for the establishment, operation,  
16 management, and maintenance of the photo red light  
17 imaging detector systems program; and
- 18 (4) Make an appropriation to the county for implementation  
19 and operation of the program.

20 PART II

21 SECTION 2. **Definitions.** As used in this Act, unless the  
22 context otherwise requires:



1 "County" means any county with a population in excess of  
2 500,000.

3 "County highway" has the same meaning as used in section  
4 264-1, Hawaii Revised Statutes.

5 "Department" means the department of transportation.

6 "Motor vehicle" has the same meaning as defined in section  
7 291C-1, Hawaii Revised Statutes.

8 "Photo red light imaging detector" means a device used for  
9 traffic enforcement that includes a vehicle sensor that works in  
10 conjunction with a traffic-control signal and a camera or  
11 similar device to automatically produce a photographic, digital,  
12 or other visual image of a vehicle that has disregarded a steady  
13 red traffic-control signal in violation of section 291C-32,  
14 Hawaii Revised Statutes, and a photographic, digital, or other  
15 visual image of the driver of the motor vehicle.

16 "State highway" has the same meaning as used in section  
17 264-1, Hawaii Revised Statutes.

18 "Traffic-control signal" has the same meaning as defined in  
19 section 291C-1, Hawaii Revised Statutes.

20 SECTION 3. Photo red light imaging detector program;  
21 established. There is established a pilot photo red light  
22 imaging detector program, which may be implemented by any county



1 on state or county highways within the respective county to  
2 enforce the traffic-control signal laws of the State. The  
3 program shall cease to operate on July 1, 2012.

4       **SECTION 4. County powers and duties.** Each county may  
5 establish and implement, in accordance with this Act, a photo  
6 red light imaging detector system imposing monetary liability on  
7 the registered owner of a motor vehicle for failure to comply  
8 with traffic-control signal laws. Each county may provide for  
9 the procurement, location, installation, operation, maintenance,  
10 and repair of the photo red light imaging detector system.  
11 Where the photo red light imaging detector system affects state  
12 property, the department shall cooperate with and assist the  
13 county as needed to install, maintain, and repair the photo red  
14 light imaging detector system established pursuant to this Act.

15       **SECTION 5. Photo red light imaging detector system**  
16 **requirements.** (a) Photo red light imaging detector equipment  
17 shall be operated from a fixed pole, post, or other fixed  
18 structure on a state or county highway.

19       (b) Signs and other official traffic-control devices  
20 indicating that traffic signal laws are enforced by a photo red  
21 light imaging detector system shall be posted on all major  
22 routes entering the area in question to provide, as far as



1 practicable, notice to drivers of the existence and operation of  
2 the system.

3 (c) Proof of a traffic-control signal violation shall be  
4 as evidenced by information obtained from the photo red light  
5 imaging detector system authorized pursuant to this Act. A  
6 certificate, sworn to or affirmed by the county's agent or  
7 employee, or a facsimile thereof, based upon inspection of  
8 photographs, microphotographs, videotape, or other recorded  
9 images produced by the system, shall be prima facie evidence of  
10 the facts contained therein. Any photographs, microphotographs,  
11 videotape, or other recorded images evidencing a violation shall  
12 be available for inspection in any proceeding to adjudicate the  
13 liability for that violation.

14 (d) No summons or citation pursuant to the photo red light  
15 imaging detector program shall be issued unless it contains a  
16 clear and unobstructed photographic, digital, or other visual  
17 image of the driver of the motor vehicle.

18 (e) The conditions specified in this section shall not  
19 apply when the information gathered is used for highway safety  
20 research or to issue warning citations not involving a fine,  
21 court appearance, or a person's driving record.



1           SECTION 6.   **Summons or citations.**   (a)   Notwithstanding any  
2 law to the contrary, whenever any motor vehicle is determined to  
3 have disregarded a steady red signal in violation of section  
4 291C-32(a)(3), Hawaii Revised Statutes, by a photo red light  
5 imaging detector system, the county shall send a summons or  
6 citation, as described in this section, to the registered owner  
7 of the vehicle at the address on record at the vehicle licensing  
8 division, by certified or registered mail with a return receipt  
9 that is postmarked within seventy-two hours of the time of the  
10 incident.  If the end of the seventy-two hour period falls on a  
11 Saturday, Sunday, or holiday, then the ending period shall run  
12 until the end of the next day that is not a Saturday, Sunday, or  
13 holiday.

14           (b)   The form and content of the summons or citation shall  
15 be as adopted or prescribed by the administrative judge of the  
16 district courts and shall be printed on a form identical with  
17 the form of other summonses or citations used in modern methods  
18 of arrest, so designed to include all necessary information to  
19 make the summons or citation valid within the laws of the State;  
20 provided that any summons or citation pursuant to the photo red  
21 light imaging detector program shall contain a clear and  
22 unobstructed photographic, digital, or other visual image of the





1 driver of the motor vehicle that is to be used as evidence of  
2 the violation.

3 (c) Every citation shall be consecutively numbered and  
4 each copy thereof shall bear the number of its respective  
5 original.

6 (d) Upon receipt of the summons or citation, the  
7 registered owner shall respond as provided for in chapter 291D,  
8 Hawaii Revised Statutes. A mail receipt signed by the  
9 registered owner is prima facie evidence of notification. The  
10 registered owner shall be determined by the identification of  
11 the vehicle's registration plates.

12 (e) The county, or the county's agent or employee, shall  
13 be available to testify as to the authenticity of the  
14 information provided pursuant to this section.

15 **SECTION 7. Registered owner's responsibility for a summons**  
16 **or citation.** In any proceeding for a violation of this Act, the  
17 information contained in the summons or citation mailed in  
18 accordance with section 6 shall be deemed evidence that the  
19 registered vehicle violated section 291C-32(a)(3), Hawaii  
20 Revised Statutes.

21 **SECTION 8. Prima facie evidence.** (a) Whenever the photo  
22 red light imaging detector system determines a motor vehicle to



1 be in violation of section 291C-32(a)(3), Hawaii Revised  
2 Statutes, evidence that the motor vehicle described in the  
3 citations or summons issued pursuant to this Act was operated in  
4 violation of the section, together with proof that the person to  
5 whom the summons or citation was sent was the registered owner  
6 of the motor vehicle at the time of the violation, shall  
7 constitute prima facie evidence that the registered owner of the  
8 motor vehicle was the person who committed the violation.

9 (b) The registered owner of the vehicle may rebut the  
10 evidence in subsection (a) by:

11 (1) Submitting a written statement as provided in section  
12 291D-6(b)(2), Hawaii Revised Statutes;

13 (2) Testifying in open court under oath that the person  
14 operating the motor vehicle was not the registered  
15 owner of the vehicle at the time of the alleged  
16 violation;

17 (3) Calling witnesses to testify in open court under oath  
18 that the person operating the motor vehicle was not  
19 the registered owner of the vehicle at the time of the  
20 alleged violation;



1           (4) Extrinsic evidence the person operating the motor  
2           vehicle was not the registered owner of the vehicle at  
3           the time of the alleged violation; or

4           (5) Presenting to the court adjudicating the alleged  
5           violation, prior to the return date established on the  
6           citation or summons issued pursuant to this Act, a  
7           letter of verification of loss from the police  
8           department indicating the vehicle had been reported  
9           stolen.

10           SECTION 9. Failure to comply with summons or citation;  
11           rebuttal of identification of operator. (a) If the registered  
12           owner of the vehicle does not return an answer in response to a  
13           summons or citation within a period of fifteen days upon receipt  
14           of the summons or citation, the district court shall issue,  
15           pursuant to section 291D-7(e), Hawaii Revised Statutes, a notice  
16           of entry of judgment of default to the registered owner of the  
17           vehicle, except if the registered owner rebuts the  
18           identification of the operator of the vehicle.

19           (b) The registered owner shall be given an opportunity by  
20           the district court to rebut the identification of the registered  
21           owner of the vehicle.



1           SECTION 10.   **Liability for rental or U-drive vehicle.**

2   Notwithstanding any law to the contrary, if the registered owner  
3   of record is the lessor of a rental or U-drive motor vehicle, as  
4   defined in section 286-2, Hawaii Revised Statutes, pursuant to a  
5   written lease agreement, the lessee at the time of the violation  
6   shall be responsible for the summons or citation; provided:

7           (1)   The lessor shall be responsible for the summons or  
8                citation if the lessor does not provide the court  
9                having jurisdiction over the summons or citation with  
10              the name and address of the lessee within thirty days  
11              after a notice containing the date, time, and location  
12              of the violation and the license number of the vehicle  
13              is sent to the lessor; and

14          (2)   The administrative judge of the court having  
15                jurisdiction over the summons or citation may waive  
16                the requirement of providing the name and address of  
17                the lessee and impose on the lessor an administrative  
18                fee of \$50 per citation.

19          SECTION 11.   **Penalty.**   The penalties for all consequences  
20   of a violation for disregarding a steady red signal initiated by  
21   the use of a photo red light imaging detector system shall be as  
22   provided in section 291C-161, Hawaii Revised Statutes.



1           SECTION 12. **Fines for unauthorized disclosure.** (a) The  
2 information obtained by a photo red light imaging detector, and  
3 any other information arising therefrom, shall be confidential  
4 for purposes of law enforcement and court proceedings.

5           (b) Any officer, employee, or agent of a county who  
6 intentionally discloses or provides a copy of personal and  
7 confidential information obtained from a photo red light imaging  
8 to any person or agency, with actual knowledge that disclosure  
9 is prohibited by the statutory provisions set forth in this Act,  
10 shall be fined up to \$1,000; provided that the fine shall not  
11 preclude the application of penalties or fines otherwise  
12 provided for by law.

13           SECTION 13. **Photo red light imaging detector program**  
14 **account established.** (a) There is established, as a special  
15 account within the general fund, a photo red light imaging  
16 detector program account, into which shall be paid revenues  
17 collected pursuant to this Act.

18           (b) All fines collected under this Act shall be deposited  
19 into the photo red light imaging detector program account.  
20 Moneys in the account shall be expended by the county in which  
21 the fine was imposed, for purposes including the establishment,



1 operation, management, and maintenance of a photo red light  
2 imaging detector system.

3 SECTION 14. **Rules.** The department shall adopt rules  
4 pursuant to chapter 91, Hawaii Revised Statutes, as may be  
5 necessary to implement this Act.

6 PART III

7 SECTION 15. Section 291C-161, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§291C-161 Penalties[-]; photo red light imaging detector  
10 system fines. (a) It is a violation for any person to violate  
11 any of the provisions of this chapter, except as otherwise  
12 specified in subsections (c) and (d) and unless the violation is  
13 by other law of this State declared to be a felony, misdemeanor,  
14 or petty misdemeanor.

15 (b) Except as provided in subsections (c) and (d), every  
16 person who is determined to have violated any provision of this  
17 chapter for which another penalty is not provided shall be  
18 fined:

- 19 (1) Not more than \$200 for a first violation thereof;  
20 (2) Not more than \$300 for a second violation committed  
21 within one year after the date of the first violation;  
22 and



1 (3) Not more than \$500 for a third or subsequent violation  
2 committed within one year after the date of the first  
3 violation[-];

4 provided that upon a conviction for a violation of section 291C-  
5 12, 291C-12.5, 291C-12.6, or 291C-95, the person shall be  
6 sentenced in accordance with that section.

7 (c) Every person convicted under or found in violation of  
8 section 291C-12, 291C-12.5, 291C-12.6, 291C-13, 291C-14, 291C-  
9 15, 291C-16, 291C-72, 291C-73, 291C-95, 291C-102, 291C-103,  
10 291C-104, or 291C-105 shall be sentenced or fined in accordance  
11 with [~~those sections.~~] that section.

12 (d) Every person who violates section 291C-13 or 291C-18  
13 shall:

14 (1) Be fined not more than \$200 or imprisoned not more  
15 than ten days for a first conviction thereof;

16 (2) Be fined not more than \$300 or imprisoned not more  
17 than twenty days or both for conviction of a second  
18 offense committed within one year after the date of  
19 the first offense; and

20 (3) Be fined not more than \$500 or imprisoned not more  
21 than six months or both for conviction of a third or



1 subsequent offense committed within one year after the  
2 date of the first offense.

3 (e) The court may assess a sum not to exceed \$50 for the  
4 cost of issuing a penal summons upon any person who fails to  
5 appear at the place within the time specified in the citation  
6 issued to the person for any traffic violation.

7 (f) The court may require a person who violates any of the  
8 provisions of this chapter to attend a course of instruction in  
9 driver retraining as deemed appropriate by the court, in  
10 addition to any other penalties imposed.

11 (g) Fines collected for violation of section 291C-32  
12 pursuant to the photo red light imaging detector system  
13 established pursuant to Act , Session Laws of Hawaii 2009,  
14 shall be deposited into the photo red light imaging detector  
15 system program account and shall be expended by the county in  
16 which the fine was imposed, for purposes including the  
17 establishment, operation, management, and maintenance of a photo  
18 red light imaging detector system."

19 SECTION 16. Section 291C-163, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:





1           "(a) This chapter shall not be deemed to prevent counties  
2 with respect to streets and highways under their jurisdiction  
3 from:

- 4           (1) Regulating or prohibiting stopping, standing, or  
5                 parking except as provided in section 291C-111;
- 6           (2) Regulating traffic by means of police officers or  
7                 official traffic-control devices;
- 8           (3) Regulating or prohibiting processions or assemblages  
9                 on the highways;
- 10          (4) Designating particular highways or roadways for use by  
11                 traffic moving in one direction;
- 12          (5) Establishing speed limits for vehicles in public  
13                 parks;
- 14          (6) Designating any highway as a through highway or  
15                 designating any intersection as a stop or yield  
16                 intersection;
- 17          (7) Restricting the use of highways;
- 18          (8) Regulating the operation and equipment of and  
19                 requiring the registration and inspection of bicycles,  
20                 including the requirement of a registration fee;
- 21          (9) Regulating or prohibiting the turning of vehicles or  
22                 specified types of vehicles;



- 1       (10) Altering or establishing speed limits;
- 2       (11) Requiring written accident reports;
- 3       (12) Designating no-passing zones;
- 4       (13) Prohibiting or regulating the use of controlled-access
- 5             roadways by any class or kind of traffic;
- 6       (14) Prohibiting or regulating the use of heavily traveled
- 7             streets by any class or kind of traffic found to be
- 8             incompatible with the normal and safe movement of
- 9             traffic;
- 10       (15) Establishing minimum speed limits;
- 11       (16) Designating hazardous railroad grade crossing;
- 12       (17) Designating and regulating traffic on play streets;
- 13       (18) Prohibiting pedestrians from crossing a roadway in a
- 14             business district or any designated highway except in
- 15             a crosswalk;
- 16       (19) Restricting pedestrian crossing at unmarked
- 17             crosswalks;
- 18       (20) Regulating persons propelling push carts;
- 19       (21) Regulating persons upon skates, coasters, sleds, and
- 20             other toy vehicles;



1 (22) Adopting and enforcing such temporary or experimental  
2 regulations as may be necessary to cover emergencies  
3 or special conditions;

4 (23) Adopting maximum and minimum speed limits on streets  
5 and highways within their respective jurisdictions;

6 (24) Adopting requirements on stopping, standing, and  
7 parking on streets and highways within their  
8 respective jurisdictions except as provided in section  
9 291C-111;

10 (25) Implementing a photo red light imaging detector system  
11 pursuant to Act \_\_\_\_\_, Session Laws of Hawaii 2009; or

12 [~~+25~~] (26) Adopting [~~such~~] other traffic regulations as  
13 [~~are~~] specifically authorized by this chapter."

14 SECTION 17. Section 291C-165, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

16 "(b) In every case when a citation is issued, the original  
17 of the citation shall be given to the violator; provided that:

18 (1) In the case of an unattended vehicle, the original of  
19 the citation shall be affixed to the vehicle as  
20 provided for in section 291C-167; [~~or~~]

21 (2) In the case of:



1 (A) A vehicle utilizing the high occupancy vehicle  
2 lane illegally; or

3 (B) A vehicle illegally utilizing a parking space  
4 reserved for persons with disabilities, where the  
5 violator refuses the citation; or

6 (3) In the case of a motor vehicle determined by a photo  
7 red light imaging detector system established pursuant  
8 to Act \_\_\_\_\_, Session Laws of Hawaii 2009, to have  
9 disregarded a steady red signal in violation of  
10 section 291C-32(a)(3);

11 the original of the citation shall be sent by certified or  
12 registered mail, with a return receipt that is postmarked within  
13 forty-eight hours of the time of the incident, as provided in  
14 section 291C-223 for vehicles illegally utilizing the high  
15 occupancy vehicle lane, or to the registered owner of the  
16 vehicle at the address on record at the vehicle licensing  
17 division for vehicles disregarding a steady red signal in  
18 violation of section 291C-32(a)(3), as determined by means of a  
19 photo red light imaging detector system, or within seventy-two  
20 hours of the time of the incident for vehicles illegally  
21 utilizing a parking space reserved for persons with  
22 disabilities, to the registered owner of the vehicle at the



1 address on record at the vehicle licensing division. If the end  
2 of the applicable forty-eight or seventy-two hour period falls  
3 on a Saturday, Sunday, or holiday, then the ending period shall  
4 run until the end of the next day which is not a Saturday,  
5 Sunday, or holiday; provided that the administrative judge of  
6 the district courts may allow a carbon copy of the citation to  
7 be given to the violator or affixed to the vehicle and provide  
8 for the disposition of the original and any other copies of the  
9 citation."

10 PART IV

11 SECTION 18. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$ , or so  
13 much thereof as may be necessary for fiscal year 2009-2010, and  
14 the same sum or so much thereof as may be necessary for fiscal  
15 year 2010-2011, for implementation and operation of the pilot  
16 photo red light imaging detector system.

17 The sums appropriated shall be expended by the city and  
18 county of Honolulu for the purposes of this Act.

19 PART V

20 SECTION 19. It is the intent of this Act not to jeopardize  
21 the receipt of any federal aid nor to impair the obligation of  
22 the State or any agency thereof to the holders of any bond



1 issued by the State or by any such agency, and to the extent,  
2 necessary to effectuate this intent, the governor may modify the  
3 strict provisions of this Act, but shall promptly report any  
4 such modification with reasons therefore to the legislature at  
5 its next session for review.

6 SECTION 20. If any provision of this Act, or the  
7 application thereof to any person or circumstance is held  
8 invalid, the invalidity does not affect other provisions or  
9 applications of the Act which can be given effect without the  
10 invalid provision or application, and to this end the provisions  
11 of this Act are severable.

12 SECTION 21. This Act does not affect rights and duties  
13 that matured, penalties that were incurred, and proceedings that  
14 were begun, before its effective date.

15 SECTION 22. Upon enactment, the revisor of statutes shall  
16 insert the number of this Act into sections 291C-161, 291C-163,  
17 and 291C-165, Hawaii Revised Statutes, where indicated in  
18 sections 15, 16, and 17 of this Act, respectively.

19 SECTION 23. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



1 SECTION 24. This Act shall take effect on July 1, 2009,  
2 and shall be repealed on July 1, 2012; provided that sections  
3 291C-161, 291C-163(a), and 291C-165(b), Hawaii Revised Statutes,  
4 shall be reenacted in the form in which they read on the day  
5 before the effective date of this Act.

6

INTRODUCED BY:

Will Espero  
Mike Gabbard



**Report Title:**

Highway Safety; Appropriation

**Description:**

Establishes a three-year pilot photo red light imaging detector systems program. Appropriates funds for implementation and operation of the program. Authorizes counties to administer the program.

