

H.B. NO. 1094

A BILL FOR AN ACT

RELATING TO COMMERCIAL DRIVER LICENSING.

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

1 SECTION 1. Section 286-231, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

4 ""Commercial Driver's License downgrade" means:

5 (1) Allowing the driver to change his or her self-
6 certification to interstate, but operating exclusively
7 in transportation or operation excepted from 49 Code
8 of Federal Regulations Part 391, as provided in
9 Sections 390.3(f), 391.2, 391.62 or 398.3 of the
10 Federal Motor Carrier Safety Regulations, 49 Code of
11 Federal Regulations Parts 350-399;

12 (2) Allowing the driver to change his or her self-
13 certification to intrastate only, if the driver
14 qualifies under that State's physical qualification
15 requirements for intrastate only;

16 (3) Allowing the driver to change his or her certification
17 to intrastate, but operating exclusively in

1 transportation or operations excepted from all or part
2 of the State driver qualification requirements; or
3 (4) Removing the Commercial Driver's License privilege
4 from the driver's license.

5 "Commercial Driver's License Information System driver
6 record" means the electronic record of an individual Commercial
7 Driver License driver's status and history stored by the State-
8 of-Record as part of the Commercial Driver's License Information
9 System established under 49 U.S.C. Section 31309."

10 SECTION 2. Section 286-236, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) No person shall be issued a commercial driver's
13 license unless that person meets the qualification standards of
14 49 Code of Federal Regulations, Part 391, Subparts B and E, has
15 passed a knowledge and driving skills test for driving a
16 commercial motor vehicle which complies with minimum federal
17 standards established by federal regulation enumerated in 49
18 Code of Federal Regulations, Part 383, Subparts G and H, is
19 domiciled in this State as defined in 49 Code of Federal
20 Regulations Part 383.5, and has satisfied all other requirements
21 of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986
22 (Title XII, Public Law 99-570) in addition to other requirements

1 imposed by state law or federal regulation. The tests shall be
2 prescribed by the director and administered by the respective
3 county examiner of drivers. As of January 30, 2012, the
4 examiner of drivers shall make certain that the medical
5 certification status of a driver that self-certified according
6 to 49 Code of Federal Regulations Section 383.71(a)(1)(ii)(A)
7 (non-excepted interstate) is "certified", and if the driver
8 submits a current medical examiner's certificate, shall date-
9 stamp the certificate and post all required information to the
10 Commercial Driver's License Information System according to 49
11 Code of Federal Regulations Section 383.73(a)(5). A person who
12 is not physically qualified to drive under 49 Code of Federal
13 Regulations Section 391.41(b)(1), (2), or (3) and who is
14 otherwise qualified to drive a motor vehicle may be granted an
15 intrastate waiver by the director. The process for granting
16 intrastate waivers shall be the same as that for interstate
17 waivers in 49 Code of Federal Regulations, Part 391.49, except
18 that the intrastate waiver requests shall be submitted to the
19 director; provided that the director shall adopt rules under
20 chapter 91 to establish a screening process, including approval
21 by a licensed physician, for granting an intrastate waiver to

1 persons who are not physically qualified under 49 Code of
2 Federal Regulations Section 391.41(b)(3)."

3 SECTION 3. Section 286-239, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) Commercial drivers' licenses may be issued with any
6 one or more of the following endorsements and restrictions:

- 7 (1) "H" - Authorizes the driver to drive a vehicle
8 transporting hazardous materials;
- 9 (2) "K" - Restricts the driver to vehicles not equipped
10 with air brakes;
- 11 (3) "T" - Authorizes driving double and triple trailers;
- 12 (4) "P" - Authorizes driving vehicles carrying passengers;
- 13 (5) "N" - Authorizes driving tank vehicles;
- 14 (6) "X" - Represents a combination of hazardous materials
15 and tank vehicle endorsements;
- 16 (7) "S" - Authorizes driving school buses; ~~and~~
- 17 (8) "V" - ~~[Restricts the driver from operating in~~
18 ~~interstate commerce as defined in Title 49 Code of~~
19 ~~Federal Regulations Section 390.5.]~~ Indicates there
20 is information about a medical variance on the
21 Commercial Driver's License Information System driver
22 record; and

1 (9) "W" - Restricts the driver from operating in
2 interstate commerce as defined in 49 Code of Federal
3 Regulations Section 390.5."

4 SECTION 4. Section 286-240, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§286-240 Disqualification [and] cancellation** ~~[+]~~, **and**
7 **downgrade.** (a) The examiner of drivers shall disqualify any
8 person from driving a commercial motor vehicle for a period of
9 not less than one year if convicted of a first violation of:

- 10 (1) Driving a motor vehicle under the influence of
11 alcohol, a controlled substance, or any drug which
12 impairs driving ability;
- 13 (2) Driving a commercial motor vehicle while the alcohol
14 concentration of the driver's blood is 0.04 per cent
15 or more by weight;
- 16 (3) Refusing to submit to a test to determine the driver's
17 alcohol concentration while driving a motor vehicle as
18 required under sections 286-243 and 291E-11;
- 19 (4) Using a motor vehicle in the commission of any felony;
- 20 (5) Leaving the scene of an accident involving the motor
21 vehicle driven by the person;

1 (6) Unlawful transportation, possession, or use of a
2 controlled substance while on-duty time;

3 (7) Driving a commercial motor vehicle when, as a result
4 of prior violations committed while operating a
5 commercial motor vehicle, the driver's commercial
6 driver's license had been revoked, suspended, or
7 canceled, or the driver was otherwise disqualified
8 from operating a commercial motor vehicle; or

9 (8) Causing a fatality through the operation of a
10 commercial motor vehicle, including but not limited to
11 the crimes of manslaughter and negligent homicide in
12 any degree.

13 (b) The examiner of drivers shall disqualify any person
14 for a period of not less than three years for any conviction of
15 a violation of any offense listed in subsection (a) that is
16 committed while a hazardous material required to be placarded
17 under Title 49 Code of Federal Regulations, Part 172, Subpart F,
18 is being transported.

19 (c) The examiner of drivers shall disqualify any person
20 from driving a commercial motor vehicle for life if convicted
21 two or more times for violations of any of the offenses listed
22 in subsection (a).

1 (d) The examiner of drivers shall disqualify any person
2 from driving a commercial motor vehicle for life if the person
3 uses a motor vehicle in the commission of any felony involving
4 the manufacturing, distributing, or dispensing of a controlled
5 substance, or possession with intent to manufacture, distribute,
6 or dispense a controlled substance.

7 (e) The examiner of drivers shall disqualify any person
8 from driving a commercial motor vehicle for a period of not less
9 than sixty days if convicted of two serious traffic violations,
10 or one hundred twenty days if convicted of three serious traffic
11 violations, committed in a commercial motor vehicle arising from
12 separate incidents occurring within a three-year period. The
13 one hundred twenty-day disqualification period required for a
14 third conviction within three years of a "serious traffic
15 violation", as defined in section 286-231, shall be in addition
16 to any other previously imposed period of disqualification.
17 These disqualification periods shall also apply to offenses
18 committed while operating a noncommercial motor vehicle only if
19 the conviction for the offense results in the revocation,
20 cancellation, or suspension of the driver's license.

21 (f) The examiner of drivers shall disqualify any person
22 from driving a commercial motor vehicle or from resubmitting an

1 application for a period of not less than sixty days, if the
2 examiner of drivers finds that a commercial driver's license
3 holder or applicant for a commercial driver's license has
4 falsified information or failed to report or disclose required
5 information either before or after issuance of a commercial
6 driver's license.

7 (g) The examiner of drivers shall disqualify any person
8 from driving a commercial motor vehicle for a period of not less
9 than one hundred eighty days and not more than one year for a
10 first violation, or for at least two years and not more than
11 five years for a second violation, or at least three years and
12 not more than five years for a third or subsequent violation of
13 a driver or vehicle out-of-service order committed in a
14 commercial motor vehicle transporting non-hazardous materials
15 arising from separate incidents occurring within a ten-year
16 period.

17 (h) The examiner of drivers shall disqualify any person
18 from driving a commercial motor vehicle for a period of not less
19 than one hundred eighty days and not more than two years for a
20 first violation, or for at least three years and not more than
21 five years for any subsequent violation, of a driver or vehicle
22 out-of-service order committed in a commercial motor vehicle

1 transporting hazardous materials required to be placarded under
2 Title 49 Code of Federal Regulations, Part 172, Subpart F, or
3 designed to transport sixteen or more occupants including the
4 driver, arising from separate incidents occurring within a ten-
5 year period.

6 (i) The examiner of drivers shall disqualify any person
7 from driving a commercial motor vehicle for a period of not less
8 than sixty days if convicted of a first violation, not less than
9 one hundred twenty days if convicted of a second violation
10 during any three-year period, or not less than one year if
11 convicted of a third or subsequent violation during any three-
12 year period for a violation of a federal, state, or local law or
13 regulation pertaining to one of the following six offenses at a
14 railroad-highway grade crossing:

15 (1) For all drivers who are not required to always stop,
16 failing to slow down and check that the tracks are
17 clear of an approaching train;

18 (2) For all drivers who are not required to always stop,
19 failing to stop before reaching the crossing, if the
20 tracks are not clear;

21 (3) For all drivers who are always required to stop,
22 failing to stop before driving onto the crossing;

1 (4) For all drivers, failing to have sufficient space to
2 drive completely through the crossing without
3 stopping;

4 (5) For all drivers, failing to obey a traffic control
5 device or the directions of an enforcement official at
6 the crossing; or

7 (6) For all drivers, failing to negotiate a crossing
8 because of insufficient undercarriage clearance.

9 (j) The examiner of drivers shall disqualify any person
10 from driving a commercial motor vehicle when the driver's
11 driving is determined to constitute an imminent hazard, as
12 defined in section 286-231, and the disqualification is imposed
13 in accordance with the provisions of Title 49 Code of Federal
14 Regulations Section 383.52.

15 (k) Beginning January 30, 2014, if a driver fails to
16 provide the examiner of drivers with the certification contained
17 in 49 Code of Federal Regulations Section 383.71(a)(1)(ii), or a
18 current medical examiner's certificate if the driver self-
19 certifies according to 49 Code of Federal Regulations Section
20 383.71(a)(1)(ii)(A) that he or she is operating in non-excepted
21 interstate commerce as required by 49 Code of Federal
22 Regulations Section 383.71(h), the examiner of drivers must mark

1 the Commercial Driver's License Information System driver record
2 as "not-certified" and initiate a Commercial Driver's License
3 downgrade."

4 SECTION 5. Section 286-241, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§286-241 Notification of disqualification, suspension,**
7 **revocation, [~~or~~] cancellation, marking medical certification**
8 **status "not-certified", or downgrading of commercial driver's**
9 **licenses or permits. (a)** After disqualifying a person, or
10 suspending, revoking, [~~or~~] canceling, or marking medical
11 certification status "not-certified" a commercial driver's
12 license or permit, the records of the examiner of drivers shall
13 be updated to reflect that action within ten days. Any
14 disqualification imposed in accordance with section 286-240(j)
15 and transmitted by the Federal Motor Carrier Safety
16 Administration shall become a part of the driving record. After
17 suspending, revoking, or canceling a nonresident commercial
18 driver's license or permit, the examiner of drivers shall notify
19 the licensing authority of the state which issued the commercial
20 driver's license within ten days. The notification shall
21 include information regarding any disqualification and the

1 violation or violations that resulted in the disqualification,
2 revocation, suspension, or cancellation.

3 (b) Beginning January 30, 2012, the examiner of drivers
4 must, within ten calendar days of a Commercial Driver's License
5 driver's medical certification status expiring or a medical
6 variance expiring or being rescinded, update the medical
7 certification status of that driver as "not-certified".

8 (c) Beginning January 30, 2012, within ten calendar days
9 of receiving information from Federal Motor Carrier Safety
10 Administration regarding issuance or renewal of a medical
11 variance for a driver, the examiner of drivers must update the
12 CDLIS driver record to include the medical variance information
13 provided by Federal Motor Carrier Safety Administration.

14 (d) Beginning January 30, 2012, if a driver's medical
15 certification or medical variance expires, or Federal Motor
16 Carrier Safety Administration notifies the examiner of drivers
17 that a medical variance was removed or rescinded, the examiner
18 of drivers must:

19 (1) Notify the Commercial Driver's License holder of
20 his or her Commercial Driver's License "not-
21 certified" medical certification status and that
22 the Commercial Driver's License privilege will be

1 removed from the driver's license unless the
2 driver submits a current medical certificate or
3 medical variance; and

4 (2) Initiate procedures for downgrading the license.
5 The Commercial Driver's License downgrade must be
6 completed and recorded within sixty days of the
7 driver's medical certification status becoming
8 "not-certified" to operate a Commercial Motor
9 Vehicle.

10 (e) Beginning January 30, 2014, if a driver fails to
11 provide the examiner of drivers with the certification contained
12 in 49 Code of Federal Regulations Section 383.71(a)(1)(ii), or a
13 current medical examiner's certificate if the driver self-
14 certifies according to 49 Code of Federal Regulations Section
15 383.71(a)(1)(ii)(A) that he or she is operating in non-excepted
16 interstate commerce as required by 49 Code of Federal
17 Regulations Section 383.71(h), the examiner of drivers must mark
18 that Commercial Driver's License Information System driver
19 record as "not-certified" and initiate a Commercial Driver's
20 License downgrade."

1 SECTION 6. Section 286-241.4, Hawaii Revised Statutes, is
2 amended by amending the title and subsection (a) to read as
3 follows:

4 "§286-241.4 Authority of examiner of drivers to suspend,
5 revoke, [~~or~~] cancel, mark the medical certification status as
6 "not-certified", or downgrade commercial driver's license or
7 permit. (a) The examiner of drivers may suspend, revoke, [~~or~~]
8 cancel, mark medical certification status "not-certified", or
9 downgrade any commercial driver's license or permit without a
10 hearing when the examiner of drivers has probable cause to
11 believe that the licensee is disqualified under section 286-
12 240."

13 SECTION 7. Section 286-245, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§286-245 Driving record information to be recorded and
16 furnished. (a) Whenever a person is convicted of a moving
17 traffic violation based on a statute, ordinance, or rule, fails
18 to appear for a hearing, trial, or other court or administrative
19 proceeding on the moving traffic violation, or fails to pay a
20 fine or court cost ordered for a moving violation, the state
21 judiciary shall forward to the examiner of drivers the record of
22 the conviction. The record of conviction shall include whether

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1 the offender was operating a commercial motor vehicle at the
2 time of the offense, whether the offender was transporting
3 hazardous materials requiring placarding under Title 49 Code of
4 Federal Regulations Section 172, Subpart F, the citation date,
5 the conviction date, the citation number, the court in which the
6 conviction occurred, and the offense(s) convicted of. No record
7 of conviction so transmitted and maintained in the statewide
8 traffic records system shall be used for purposes other than the
9 licensing of drivers.

- 10 (1) Driving a motor vehicle under the influence of
11 alcohol, a controlled substance, or any drug which
12 impairs driving ability;
- 13 (2) Driving a commercial motor vehicle while the alcohol
14 concentration of the driver's blood is 0.04 per cent
15 or more by weight;
- 16 (3) Refusing to submit to a test to determine the driver's
17 alcohol concentration while driving a motor vehicle as
18 required under sections 286-243 and 291E-11;
- 19 (4) Using a motor vehicle in the commission of any felony;
- 20 (5) Leaving the scene of an accident involving the motor
21 vehicle driven by the person;

- 1 (6) Unlawful transportation, possession, or use of a
2 controlled substance while on-duty time;
- 3 (7) Driving a commercial motor vehicle when, as a result
4 of prior violations committed while operating a
5 commercial motor vehicle, the driver's commercial
6 driver's license had been revoked, suspended, or
7 canceled, or the driver was otherwise disqualified
8 from operating a commercial motor vehicle; or
- 9 (8) Causing a fatality through the operation of a
10 commercial motor vehicle, including but not limited to
11 the crimes of manslaughter and negligent homicide in
12 any degree.
- 13 (b) Within ten days of an in-state conviction, and within
14 ten days of the receipt of notice of an out-of-state conviction,
15 the examiner of drivers shall record and maintain as part of the
16 driver's record:
- 17 (1) All convictions, disqualifications, and other
18 licensing actions for violations both in this State
19 and out-of-state, of any law relating to motor vehicle
20 traffic control, other than a parking violation,
21 committed in any type of vehicle, by a holder of a
22 commercial driver's license; and

1 (2) All convictions, disqualifications, and other
2 licensing actions for violations both in this State
3 and out-of-state, of any law relating to motor vehicle
4 traffic control, other than a parking violation,
5 committed while the driver was operating a commercial
6 motor vehicle, and was required to have a commercial
7 driver's license.

8 (c) No commercial driver's license driver's conviction for
9 any violation, in any type of motor vehicle, of a state or local
10 traffic control law, except a parking violation, shall be
11 expunged or subject to deferred imposition of judgment, nor
12 shall an individual be allowed to enter into a diversion program
13 that would prevent the conviction from appearing on the driver's
14 driving record, whether the driver was convicted for an offense
15 committed in this State or another state.

16 (d) The state judiciary and the examiner of drivers shall
17 make available information from any driver's record required by
18 this section to the greatest extent possible, to the users
19 designated in subsection (f), or their authorized agent, within
20 ten days of:

21 (1) Receiving the conviction or disqualification
22 information from another state; or

1 (2) Receiving the conviction for a violation occurring in
2 this State.

3 (e) All convictions, disqualifications, and other
4 licensing actions for violations shall be retained on each
5 driver's record for at least three years or longer as required
6 under Title 49 Code of Federal Regulations Section 384.231(d).

7 (f) Only the following users or their authorized agents
8 may obtain a driver's record:

9 (1) States may receive all information regarding any
10 driver's record;

11 (2) The Secretary of Transportation may receive all
12 information regarding any driver's record;

13 (3) A driver may receive only information related to that
14 driver's record; and

15 (4) A motor carrier or prospective motor carrier may
16 receive all information regarding a driver's driving
17 record, or the driver's driving record of a
18 prospective driver; provided that the request is made
19 by the driver.

20 (g) The traffic violations bureaus of the district courts,
21 upon request, shall furnish users designated in subsection (f),
22 a certified driver record listing all convictions,

1 disqualifications, and all licensing actions in this State and
2 notification of any action received from other states that are
3 recorded and maintained by the examiner of drivers. The traffic
4 violations bureaus shall collect a fee for those requests by
5 users designated in subsection (f)(3) and (4), not to exceed \$9,
6 of which \$5 shall be deposited into the general fund, \$2 shall
7 be deposited into the judiciary computer system special fund,
8 and \$2 shall be deposited into the highway fund.

9 "(h) Beginning January 30, 2012, the examiner of drivers
10 shall record and maintain as part of the driver's record the
11 following medical information:

12 (1) Post on Commercial Driver's License Information System
13 and maintain the driver's self-certification of type
14 of driving under 49 Code of Federal Regulations
15 Section 383.71(a)(1)(ii).

16 (2) Retain the original or a copy of the medical
17 certificate of any driver required to provide
18 documentation of physical qualification for three
19 years beyond the date the certificate was issued.

20 (3) Post the information from the medical examiner's
21 certificate within ten calendar days to the Commercial

- 1 Driver's License Information System driver record,
2 including:
- 3 (A) Medical examiner's name;
4 (B) Medical examiner's telephone number;
5 (C) Date of medical examiner's certificate issuance;
6 (D) Medical examiner's license number and the state
7 that issued it;
8 (E) Medical examiner's National Registry
9 identification number (if required by the
10 National Registry of Medical Examiners under 49
11 United States Code 31149(d);
12 (F) The medical certification status as "certified"
13 or "not-certified";
14 (G) Expiration date of the medical examiner's
15 certificate;
16 (H) Existence of any medical variance on the medical
17 certificate, such as an exemption or Skill
18 Performance Evaluation;
19 (I) Any restrictions, including but not limited to
20 corrective lenses, hearing aids, requirement to
21 have possession of an exemption letter or Skill
22 Performance Evaluation certificate while on-duty;

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- 1 (J) Date the medical examiner's certificate
- 2 information was posted to the Commercial Driver's
- 3 License Information System driver record; and
- 4 (K) Record the Commercial Driver's License downgrade
- 5 within sixty days of the driver's medical
- 6 certification status becoming "not-certified" to
- 7 operate a Commercial Driver's License."

8 SECTION 8. Statutory material to be repealed is bracketed

9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect on approval.

11

12

13

INTRODUCED BY: Calvin K. Boy

BY REQUEST

JAN 24 2011

Report Title:

Commercial Driver Licensing

Description:

Amends seven sections of the Hawaii Revised Statutes relating to the Commercial Driver Licensing process and driver medical requirements. The amendments are designed to put the State in compliance with Federal Motor Carrier Safety Regulations.

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVER LICENSING.

PURPOSE: The amendments proposed in this bill are designed to make the Hawaii Revised Statutes provisions concerning commercial driver licensing conform to Federal Motor Carrier Safety Regulations. Failure to comply will result in significant penalties in the form of withholding federal funds every year that the State is not in compliance.

MEANS: Amend sections 286-231, 286-236(a), 286-239(c), 286-240, 286-241.4 title and subsection (a), and 286-245, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill will amend section 286-231, HRS, to include definitions for "Commercial Driver's License downgrade" and "Commercial Driver's License Information System driver record"; amend section 286-236, HRS, to require verification of the medical certification status of a CDL driver beginning January 30, 2012; amend section 286-239, HRS, to conform the Hawaii "V" restriction to the federal "V" restriction; amend section 286-240, HRS, by adding a license downgrade; amend section 286-241, HRS, to include notification to drivers when their records are marked "not-certified" for CDL operation and setting time requirements for posting medical status information; amend section 286-241.4, HRS, to give the examiner of drivers authority to mark a driver's record "not-certified"; and amend section 286-245, HRS to include medical recordkeeping requirements for the examiner of drivers. The proposed amendments will put the State be in compliance with the Federal Motor Carrier Safety Regulations. The proposed downgrade is needed when a driver

fails to meet the physical requirements for licensure. Currently the examiner of drivers has authority to withhold driving privileges only when a driver commits a violation or is an immediate threat to highway safety.

Impact on the public: This will promote highway safety by helping to ensure that drivers of commercial vehicles are physically qualified to drive.

Impact on the department and other agencies: There will be added administrative requirements.

GENERAL FUND: None.

OTHER FUNDS: None.

PBS PROGRAM
DESIGNATION: TRN 597.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.