

JAN 26 2011

---

# 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 amending the definition of "driving a commercial  
3 motor vehicle while under the influence of an intoxicant" to  
4 read as follows:

5 ""Driving a commercial motor vehicle while under the  
6 influence of an intoxicant" means committing any one or more of  
7 the following acts in a commercial motor vehicle:

- 8 (1) Driving a commercial motor vehicle while the person's  
9 alcohol concentration is 0.04 [~~per cent or more by~~  
10 ~~weight.~~] or more grams of alcohol per two hundred ten  
11 liters of breath; or with 0.04 or more grams of  
12 alcohol per one hundred milliliters or cubic  
13 centimeters of blood;
- 14 (2) Driving under the influence of an intoxicant pursuant  
15 to section 291E-61; or
- 16 (3) Refusing to undergo such testing as required by any  
17 state or jurisdiction in the enforcement of Section

1           383.51(b) or 392.5(a) (2) of Title 49, Code of Federal  
2           Regulations."

3           SECTION 2. Section 286-240, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) The examiner of drivers shall disqualify any person  
6 from driving a commercial motor vehicle for a period of not less  
7 than one year if convicted of a first violation of:

8           (1) Driving a motor vehicle under the influence of  
9           alcohol, a controlled substance, or any drug which  
10           impairs driving ability;

11           (2) Driving a commercial motor vehicle while the alcohol  
12           concentration of the driver's blood is 0.04 [~~per cent~~  
13           ~~or more by weight.~~] or more grams of alcohol per two  
14           hundred ten liters of breath; or with 0.04 or more  
15           grams of alcohol per one hundred milliliters or cubic  
16           centimeters of blood;

17           (3) Refusing to submit to a test to determine the driver's  
18           alcohol concentration while driving a motor vehicle as  
19           required under sections 286-243 and 291E-11;

20           (4) Using a motor vehicle in the commission of any felony;

21           (5) Leaving the scene of an accident involving the motor  
22           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           SECTION 3. Section 286-242, Hawaii Revised Statutes, is  
14          amended by amending subsections (b) and (c) to read as follows:

15           "(b) A person who drives a commercial motor vehicle [~~while~~  
16          ~~having an alcohol concentration of 0.01 per cent or more by~~  
17          ~~weight]~~ with an alcohol concentration of 0.01 or more grams of  
18          alcohol per two hundred ten liters of breath; or with 0.01 or  
19          more grams of alcohol per one hundred milliliters or cubic  
20          centimeters of blood; or who refuses to take a test as provided  
21          by section 286-243 shall be issued a twenty-four-hour out-of-  
22          service order. The driver shall also be placed out-of-service

1 for twenty-four hours if the results of a blood test are not  
2 immediately available.

3 (c) It is unlawful for any person [~~who has 0.04 per cent~~  
4 ~~or more, by weight, of alcohol in the person's blood~~] with an  
5 alcohol concentration of 0.04 or more grams of alcohol per two  
6 hundred ten liters of breath; or with 0.04 or more grams of  
7 alcohol per one hundred milliliters or cubic centimeters of  
8 blood to drive a "commercial motor vehicle", as defined in  
9 section 286-2. Any person who violates this provision shall be  
10 subject to the penalties as provided in section 286-249."

11 SECTION 4. Section 286-243, Hawaii Revised Statutes, is  
12 amended by amending subsections (d) and (e) to read as follows:

13 "(d) If the driver refuses testing, or submits to a test  
14 which [~~discloses in the driver's body an alcohol concentration~~  
15 ~~of 0.04 per cent or more by weight,~~] results with an alcohol  
16 concentration of 0.04 or more grams of alcohol per two hundred  
17 ten liters of breath; or with 0.04 or more grams of alcohol per  
18 one hundred milliliters or cubic centimeters of blood, the law  
19 enforcement officer shall submit an affidavit to a district  
20 judge of the circuit in which the driver was stopped or detained  
21 stating that the test was authorized pursuant to subsection (a)  
22 and that the driver refused to submit to testing, or submitted

1 to a test which [~~disclosed in the driver's body an alcohol~~  
2 ~~concentration of 0.04 per cent or more by weight.~~] resulted with  
3 an alcohol concentration of 0.04 or more grams of alcohol per  
4 two hundred ten liters of breath; or with 0.04 or more grams of  
5 alcohol per one hundred milliliters or cubic centimeters of  
6 blood.

7 (e) A hearing to determine the truth and correctness of an  
8 affidavit of a law enforcement officer submitted under  
9 subsection (d) shall be scheduled to commence before a district  
10 judge within twenty days after the affidavit is filed or as soon  
11 thereafter as is practicable.

12 The State shall be represented at the hearing by the  
13 prosecuting attorney of the county in which the alleged  
14 violation occurred. The district judge shall hear and  
15 determine:

16 (1) Whether the law enforcement officer who stopped or  
17 detained the driver had probable cause to believe that  
18 the driver had been either driving or in actual  
19 physical control of a commercial motor vehicle while  
20 having any alcohol in the driver's body;

21 (2) Whether the driver was lawfully stopped or detained;

- 1 (3) Whether the law enforcement officer informed the  
2 driver of the sanctions of section 286-240;
- 3 (4) Whether the driver submitted to a test or tests of the  
4 driver's breath or blood or refused to be tested; and
- 5 (5) If the driver submitted to a test or tests, whether  
6 the driver's alcohol concentration was 0.04 [~~per cent~~  
7 ~~or more by weight.~~] or more grams of alcohol per two  
8 hundred ten liters of breath; or with 0.04 or more  
9 grams of alcohol per one hundred milliliters or cubic  
10 centimeters of blood.

11 The amount of alcohol found in the driver's blood within three  
12 hours after the time of the alleged violation as shown by  
13 chemical analysis or other analytical techniques of the  
14 defendant's blood or breath shall be competent evidence that the  
15 defendant was under the influence of intoxicating liquor at the  
16 time of the alleged violation. Nothing in this section shall be  
17 construed as limiting the introduction of relevant evidence of a  
18 person's blood alcohol content obtained more than three hours  
19 after an alleged violation, provided that the evidence is  
20 offered in compliance with the Hawaii rules of evidence. If the  
21 judge finds the statements contained in the affidavit are true,

S.B. NO. 1320

1 the judge shall disqualify the driver from driving a commercial  
2 motor vehicle as provided by section 286-240."

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

5 SECTION 6. This Act shall take effect upon its approval.

6

7

INTRODUCED BY:

*AS. T. A.*

8

BY REQUEST

**Report Title:**

Commercial Driver Licensing; Alcohol Concentration

**Description:**

Amends the portions of the respective statutes concerning alcohol concentration for commercial motor vehicle drivers to make them consistent with current language.



JUSTIFICATION SHEET

DEPARTMENT: Transportation

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

PURPOSE: To amend the portion of the statutes that identify; (1) the alcohol concentration level of an individual driving a commercial motor vehicle with an alcohol concentration of .04 or more grams of alcohol per two hundred ten liters of breath or with .04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or (2) the alcohol concentration level of an individual driving a commercial motor vehicle with an alcohol concentration of .01 or more grams of alcohol per two hundred ten liters of breath or with .01 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

MEANS: Amend sections 286-231, 286-240(a), 286-242(b) and (c), and 286-243(d) and (e), Hawaii Revised Statutes.

JUSTIFICATION: The proposed amendments to the language of sections 286-231, 286-240, 286-242, and 286-243, HRS, will make it consistent with the current language of section 291E-61, HRS - Operating a vehicle under the influence of an intoxicant.

Amending these sections will mean consistent statewide enforcement and prosecution of those Commercial Motor Vehicle drivers who drive a commercial motor vehicle with alcohol levels that violate any of these sections.

Impact on the public: None.

Impact on the department and other agencies: There may be a slight increase of cases for all the county police departments and all the county prosecuting attorney's offices.

GENERAL FUND: None.

OTHER FUNDS: None.

PBS PROGRAM  
DESIGNATION: TRN 595.

OTHER AFFECTED  
AGENCIES: All county police departments and county  
prosecuting attorney offices.

EFFECTIVE DATE: Upon approval.