



GOV. MSG. NO. 1170

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 26, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 26, 2011, the following bill was signed into law:

HB1093 HD1 SD2

RELATING TO COMMERCIAL DRIVER
LICENSING
Act 067 (11)

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

H.B. NO. 1093
H.D. 1
S.D. 2

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 0.04 or more grams of alcohol per
12 one hundred milliliters or cubic centimeters of blood;
13 (2) Driving under the influence of an intoxicant pursuant
14 to section 291E-61; or
15 (3) Refusing to undergo such testing as required by any
16 state or jurisdiction in the enforcement of Section
17 383.51(b) or 392.5(a)(2) of Title 49[~~7~~] Code of
18 Federal Regulations."



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

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

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

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

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

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

19 (5) Leaving the scene of an accident involving the motor
20 vehicle driven by the person;

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



- 1 (7) Driving a commercial motor vehicle when, as a result
2 of prior violations committed while operating a
3 commercial motor vehicle, the driver's commercial
4 driver's license had been revoked, suspended, or
5 canceled, or the driver was otherwise disqualified
6 from operating a commercial motor vehicle; or
- 7 (8) Causing a fatality through the operation of a
8 commercial motor vehicle, including ~~[but not limited~~
9 ~~to]~~ the crimes of manslaughter and negligent homicide
10 in any degree."

11 SECTION 3. Section 286-242, Hawaii Revised Statutes, is
12 amended by amending subsections (b) and (c) to read as follows:

13 "(b) A person who drives a commercial motor vehicle [~~while~~
14 ~~having an alcohol concentration of 0.01 per cent or more by~~
15 ~~weight]~~ with an alcohol concentration of 0.01 or more grams of
16 alcohol per two hundred ten liters of breath or with 0.01 or
17 more grams of alcohol per one hundred milliliters or cubic
18 centimeters of blood or who refuses to take a test as provided
19 by section 286-243 shall be issued a twenty-four-hour out-of-
20 service order. The driver shall also be placed out-of-service
21 for twenty-four hours if the results of a blood test are not
22 immediately available.



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

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

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



1 indicates an alcohol concentration of 0.04 or more grams of
2 alcohol per two hundred ten liters of breath or 0.04 or more
3 grams of alcohol per one hundred milliliters or cubic
4 centimeters of blood.

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

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

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

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

20 (3) Whether the law enforcement officer informed the
21 driver of the sanctions of section 286-240;



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

9 The amount of alcohol found in the driver's blood within three
10 hours after the time of the alleged violation as shown by
11 chemical analysis or other analytical techniques of the
12 defendant's blood or breath shall be competent evidence that the
13 defendant was under the influence of intoxicating liquor at the
14 time of the alleged violation. Nothing in this section shall be
15 construed as limiting the introduction of relevant evidence of a
16 person's blood alcohol content obtained more than three hours
17 after an alleged violation[~~7~~]; provided that the evidence is
18 offered in compliance with the Hawaii rules of evidence. If the
19 judge finds the statements contained in the affidavit are true,
20 the judge shall disqualify the driver from driving a commercial
21 motor vehicle as provided by section 286-240."

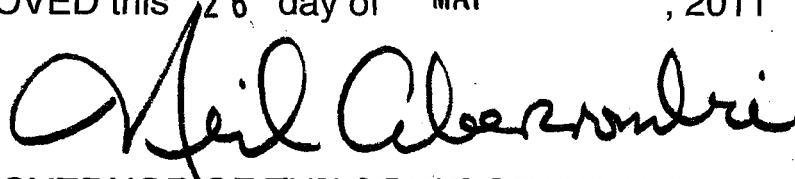


1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

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

APPROVED this 26 day of MAY, 2011



GOVERNOR OF THE STATE OF HAWAII

