



GOV. MSG. NO. **1224**

EXECUTIVE CHAMBERS
HONOLULU

NEIL A BERECROMBIE
GOVERNOR

June 14, 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 June 14, 2011, the following bill was signed into law:

HB1094 HD1 SD2 CD1

RELATING TO COMMERCIAL DRIVER
LICENSING
Act 121 (11)

Olona
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

on JUN 14 2011

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

H.B. NO. 1094
H.D. 1
S.D. 2
C.D. 1

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) Authorization to change a driver's self-certification
6 pursuant to Title 49 Code of Federal Regulations
7 Section 383.71, to interstate, but operating
8 exclusively in transportation or operation excepted
9 from the Federal Motor Carrier Safety Regulations as
10 provided in Title 49 Code of Federal Regulations
11 Sections 390.3(f), 391.2, 391.62, and 398.2(b);

12 (2) Authorization to change a driver's self-certification
13 pursuant to Title 49 Code of Federal Regulations
14 Section 383.71, to intrastate only if the driver
15 qualifies under the State's physical qualification
16 requirements for intrastate only;

17 (3) Authorization to change a driver's self-certification
18 pursuant to Title 49 Code of Federal Regulations



1 Section 383.71, to intrastate, but operating
2 exclusively in transportation or operations excepted
3 from all or part of the state driver qualification
4 requirements; or

5 (4) Removing the commercial driver's license privilege
6 from the driver's license.

7 "Commercial driver's license information system driver
8 record" means the electronic record of an individual commercial
9 driver license driver's status and history stored by the state
10 of record as part of the commercial driver's license information
11 system established under Title 49 United States Code Section
12 31309."

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

15 "(a) No person shall be issued a commercial driver's
16 license unless that person meets the qualification standards of
17 Title 49 Code of Federal Regulations, Part 391, Subparts B and
18 E, has passed a knowledge and driving skills test for driving a
19 commercial motor vehicle [~~which~~] that complies with minimum
20 federal standards established by federal regulation enumerated
21 in Title 49 Code of Federal Regulations, Part 383, Subparts G
22 and H, is domiciled in this State as defined in Title 49 Code of



1 Federal Regulations, Part 383.5, and has satisfied all other
2 requirements of the Commercial Motor Vehicle Safety Act
3 [~~CMVSA~~] of 1986 [~~Title XII~~], Public Law 99-570[+], Title XII,
4 in addition to other requirements imposed by state law or
5 federal regulation. The tests shall be prescribed by the
6 director and administered by the respective county examiner of
7 drivers. As of January 30, 2012, the examiner of drivers shall
8 verify that the medical certification status of a driver who
9 self-certified according to Title 49 Code of Federal Regulations
10 Section 383.71(a)(1)(ii)(A), non-excepted interstate, is
11 certified. If a driver submits a current medical examiner's
12 certificate, the examiner of drivers shall date-stamp the
13 certificate and post all required information to the commercial
14 driver's license information system pursuant to Title 49 Code of
15 Federal Regulations Section 383.73(a)(5) and in accordance with
16 Title 49 Code of Federal Regulations Section 383.73(j). A
17 person who is not physically qualified to drive under Title 49
18 Code of Federal Regulations Section 391.41(b)(1), (2), or (3)
19 and who is otherwise qualified to drive a motor vehicle may be
20 granted an intrastate waiver by the director. The process for
21 granting intrastate waivers shall be the same as that for
22 interstate waivers in Title 49 Code of Federal Regulations[7



1 ~~Part]~~ Section 391.49, except that the intrastate waiver requests
2 shall be submitted to the director; provided that the director
3 shall adopt rules under chapter 91 to establish a screening
4 process, including approval by a licensed physician, for
5 granting an intrastate waiver to persons who are not physically
6 qualified under Title 49 Code of Federal Regulations Section
7 391.41(b)(3)."

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

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

- 12 (1) "H" - Authorizes the driver to drive a vehicle
13 transporting hazardous materials;
- 14 (2) "K" - Restricts the driver to vehicles not equipped
15 with air brakes;
- 16 (3) "T" - Authorizes driving double and triple trailers;
- 17 (4) "P" - Authorizes driving vehicles carrying passengers;
- 18 (5) "N" - Authorizes driving tank vehicles;
- 19 (6) "X" - Represents a combination of hazardous materials
20 and tank vehicle endorsements;
- 21 (7) "S" - Authorizes driving school buses; [~~and~~]



1 (8) "V" - [~~Restricts the driver from operating in~~
2 ~~interstate commerce as defined in Title 49 Code of~~
3 ~~Federal Regulations Section 390.5.~~] Indicates there
4 is information about a medical variance on the
5 commercial driver's license information system driver
6 record; and

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

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

12 "~~§286-240 Disqualification [and], cancellation[-], and~~
13 ~~downgrade.~~ (a) The examiner of drivers shall disqualify any
14 person from driving a commercial motor vehicle for a period of
15 not less than one year if convicted of a first violation of:

16 (1) Driving a motor vehicle under the influence of
17 alcohol, a controlled substance, or any drug [~~which~~]
18 that impairs driving ability;

19 (2) Driving a commercial motor vehicle while the alcohol
20 concentration of the driver's blood is 0.04 per cent
21 or more by weight;



- 1 (3) Refusing to submit to a test to determine the driver's
2 alcohol concentration while driving a motor vehicle as
3 required under sections 286-243 and 291E-11;
- 4 (4) Using a motor vehicle in the commission of any felony;
- 5 (5) Leaving the scene of an accident involving the motor
6 vehicle driven by the person;
- 7 (6) Unlawful transportation, possession, or use of a
8 controlled substance while [~~on-duty time;~~] on duty;
- 9 (7) Driving a commercial motor vehicle when, as a result
10 of prior violations committed while operating a
11 commercial motor vehicle, the driver's commercial
12 driver's license [~~had been~~] is revoked, suspended, or
13 canceled, or the driver [~~was~~] is otherwise
14 disqualified from operating a commercial motor
15 vehicle; or
- 16 (8) Causing a fatality through the operation of a
17 commercial motor vehicle, including [~~but not limited~~
18 ~~to~~] through the commission of the crimes of
19 manslaughter and negligent homicide in any degree.
- 20 (b) The examiner of drivers shall disqualify any person
21 for a period of not less than three years for any conviction of
22 a violation of any offense listed in subsection (a) that is



1 committed while a hazardous material required to be placarded
2 under Title 49 Code of Federal Regulations, Part 172, Subpart F,
3 is being transported.

4 (c) The examiner of drivers shall disqualify any person
5 from driving a commercial motor vehicle for life if the person
6 is convicted two or more times for [~~violations of~~] any of the
7 offenses listed in subsection (a).

8 (d) The examiner of drivers shall disqualify any person
9 from driving a commercial motor vehicle for life if the person
10 uses a motor vehicle in the commission of any felony involving
11 the manufacturing, distributing, or dispensing of a controlled
12 substance, or possession with intent to manufacture, distribute,
13 or dispense a controlled substance.

14 (e) The examiner of drivers shall disqualify any person
15 from driving a commercial motor vehicle for a period of not less
16 than sixty days if the person is convicted of two serious
17 traffic violations, or one hundred twenty days if the person is
18 convicted of three serious traffic violations[~~7~~]; provided that
19 the violations are committed in a commercial motor vehicle
20 [~~arising~~] and arise from separate incidents occurring within a
21 three-year period. The one hundred twenty-day disqualification
22 period required for a third conviction within three years of a



1 ~~[A]~~serious traffic violation~~[A]~~, as defined in section 286-231,
2 shall be in addition to any other previously imposed period of
3 disqualification. ~~[These]~~ The disqualification periods
4 specified in this subsection shall also apply to offenses
5 committed while operating a noncommercial motor vehicle only if
6 the conviction for the offense results in the revocation,
7 cancellation, or suspension of the driver's license.

8 (f) The examiner of drivers shall disqualify any person
9 from driving a commercial motor vehicle or from resubmitting an
10 application for a period of not less than sixty days~~[7]~~ if the
11 examiner of drivers finds that a commercial driver's license
12 holder or applicant for a commercial driver's license has
13 falsified information or failed to report or disclose required
14 information either before or after issuance of a commercial
15 driver's license.

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



1 commercial motor vehicle transporting non-hazardous materials
2 arising from separate incidents occurring within a ten-year
3 period.

4 (h) The examiner of drivers shall disqualify any person
5 from driving a commercial motor vehicle for a period of not less
6 than one hundred eighty days and not more than two years for a
7 first violation[~~7-08~~] and for at least three years and not more
8 than five years for any subsequent violation[~~7~~] of a driver or
9 vehicle out-of-service order committed in a commercial motor
10 vehicle transporting hazardous materials required to be
11 placarded under Title 49 Code of Federal Regulations, Part 172,
12 Subpart F, or designed to transport sixteen or more occupants
13 including the driver[~~7-arising~~]; provided that each violation
14 arises from separate incidents occurring within a ten-year
15 period.

16 (i) The examiner of drivers shall disqualify any person
17 from driving a commercial motor vehicle for a period of not less
18 than sixty days if the person is convicted of a first violation,
19 not less than one hundred twenty days if the person is convicted
20 of a second violation during any three-year period, [~~08~~] and not
21 less than one year if the person is convicted of a third or
22 subsequent violation during any three-year period [~~fer-a~~]



1 ~~violation~~] of a federal, state, or local law or regulation
2 pertaining to one of the following six offenses at a railroad-
3 highway grade crossing:

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

7 (2) For all drivers who are not required to always stop,
8 failing to stop before reaching the crossing, if the
9 tracks are not clear;

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

12 (4) For all drivers, failing to have sufficient space to
13 drive completely through the crossing without
14 stopping;

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

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

20 (j) The examiner of drivers shall disqualify any person
21 from driving a commercial motor vehicle [~~when~~] if the driver's
22 driving is determined to constitute an imminent hazard, as



1 defined in section 286-231[7] and [~~the disqualification is~~
2 ~~imposed~~] in accordance with the provisions of Title 49 Code of
3 Federal Regulations Section 383.52.

4 (k) Beginning January 30, 2014, if a driver fails to
5 provide the examiner of drivers with the certification required
6 under Title 49 Code of Federal Regulations Section
7 383.71(a)(1)(ii) or a current medical examiner's certificate if
8 the driver self-certifies according to Title 49 Code of Federal
9 Regulations Section 383.71(a)(1)(ii)(A) that the driver is
10 operating in non-excepted interstate commerce as required by
11 Title 49 Code of Federal Regulations Section 383.71(h), the
12 examiner of drivers shall mark the commercial driver's license
13 information system driver record as "not-certified" and initiate
14 a commercial driver's license downgrade."

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

17 **"§286-241 Notification of disqualification, suspension,**
18 **revocation, [~~or~~] cancellation, marking medical certification**
19 **status as "not-certified", or downgrading of commercial driver's**
20 **licenses or permits. (a) After disqualifying a person, or**
21 **suspending, revoking, [~~or~~] canceling, or marking a medical**
22 **certification status as not-certified for a commercial driver's**



1 license or permit, [~~the records of~~] the examiner of drivers
2 shall [~~be updated~~] update all records to reflect that action
3 within ten days. Any disqualification imposed in accordance
4 with section 286-240(j) and transmitted by the Federal Motor
5 Carrier Safety Administration shall become a part of the driving
6 record. After suspending, revoking, or canceling a nonresident
7 commercial driver's license or permit, the examiner of drivers
8 shall notify the licensing authority of the state [~~which~~] that
9 issued the commercial driver's license within ten days. The
10 notification shall include information regarding any
11 disqualification and the violation or violations that resulted
12 in the disqualification, revocation, suspension, or
13 cancellation.

14 (b) Beginning January 30, 2012, the examiner of drivers,
15 within ten calendar days of the expiration of a commercial
16 driver's license driver's medical certification status or the
17 expiration or rescission of a medical variance, shall change the
18 medical certification status of that driver to not-certified.

19 (c) Beginning January 30, 2012, within ten calendar days
20 of receiving information from the Federal Motor Carrier Safety
21 Administration regarding issuance or renewal of a medical
22 variance for a driver, the examiner of drivers shall update the



1 commercial driver's license information system driver record to
2 include the medical variance information provided by the Federal
3 Motor Carrier Safety Administration.

4 (d) Beginning January 30, 2012, if a driver's medical
5 certification or medical variance expires or if the Federal
6 Motor Carrier Safety Administration notifies the examiner of
7 drivers that a driver's medical variance was removed or
8 rescinded, the examiner of drivers shall:

9 (1) Notify the commercial driver's license holder of the
10 holder's not-certified medical certification status
11 and that the commercial driver's license privilege
12 will be removed from the driver's license unless the
13 driver submits a current medical certificate or
14 medical variance; and

15 (2) Initiate procedures for downgrading the license;
16 provided that the commercial driver's license
17 downgrade shall be completed and recorded within sixty
18 days of the driver's medical certification status
19 becoming not-certified to operate a commercial motor
20 vehicle.

21 (e) Beginning January 30, 2014, if a driver fails to
22 provide the examiner of drivers with the certification required



1 by Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)
2 or a current medical examiner's certificate if the driver
3 self-certifies according to Title 49 Code of Federal Regulations
4 Section 383.71(a)(1)(ii)(A) that the driver is operating in
5 non-excepted interstate commerce as required by Title 49 Code of
6 Federal Regulations Section 383.71(h) the examiner of drivers
7 shall mark the commercial driver's license information system
8 driver record as not-certified and initiate a commercial
9 driver's license downgrade."

10 SECTION 6. Section 286-241.4, Hawaii Revised Statutes, is
11 amended by amending its title and subsection (a) to read as
12 follows:

13 "§286-241.4 Authority of examiner of drivers to suspend,
14 revoke, [~~or~~] cancel, mark the medical certification status as
15 "not-certified", or downgrade commercial driver's license or
16 permit. (a) The examiner of drivers may suspend, revoke, [~~or~~]
17 cancel, mark the medical certification status as not-certified,
18 or downgrade any commercial driver's license or permit without a
19 hearing when the examiner of drivers has probable cause to
20 believe that the licensee is disqualified under section
21 286-240."



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

3 **"§286-245 Driving record information to be recorded and**
4 **furnished.** (a) Whenever a person is convicted of a moving
5 traffic violation based on a statute, ordinance, or rule, fails
6 to appear for a hearing, trial, or other court or administrative
7 proceeding on the moving traffic violation, or fails to pay a
8 fine or court cost ordered for a moving violation, the state
9 judiciary shall forward to the examiner of drivers the record of
10 the conviction. The record of conviction shall include whether
11 the offender was operating a commercial motor vehicle at the
12 time of the offense, whether the offender was transporting
13 hazardous materials requiring placarding under Title 49 Code of
14 Federal Regulations [~~Section~~] Part 172, Subpart F, the citation
15 date, the conviction date, the citation number, the court in
16 which the conviction occurred, and the [~~offense(s)~~] offenses for
17 which the person has been convicted [~~of~~]. No record of
18 conviction [~~se~~] transmitted and maintained in the statewide
19 traffic records system shall be used for purposes other than the
20 licensing of drivers[~~-~~], including any record of:



- 1 (1) Driving a motor vehicle under the influence of
- 2 alcohol, a controlled substance, or any drug that
- 3 impairs driving ability;
- 4 (2) Driving a commercial motor vehicle while the alcohol
- 5 concentration of the driver's blood is 0.04 per cent
- 6 or more by weight;
- 7 (3) Refusing to submit to a test to determine the driver's
- 8 alcohol concentration while driving a motor vehicle as
- 9 required under sections 286-243 and 291E-11;
- 10 (4) Using a motor vehicle in the commission of any felony;
- 11 (5) Leaving the scene of an accident involving the motor
- 12 vehicle driven by the person;
- 13 (6) Unlawful transportation, possession, or use of a
- 14 controlled substance while on duty;
- 15 (7) Driving a commercial motor vehicle if, as a result of
- 16 prior violations committed while operating a
- 17 commercial motor vehicle, the driver's commercial
- 18 driver's license has been revoked, suspended, or
- 19 canceled, or the driver has been otherwise
- 20 disqualified from operating a commercial motor
- 21 vehicle; or



1 (8) Causing a fatality through the operation of a
2 commercial motor vehicle, including in the commission
3 of the crimes of manslaughter and negligent homicide
4 in any degree.

5 (b) Within ten days of an in-state conviction[7] and
6 within ten days of the receipt of notice of an out-of-state
7 conviction, the examiner of drivers shall record and maintain as
8 part of the driver's record:

9 (1) All convictions, disqualifications, and other
10 licensing actions for violations [~~both~~] in this State
11 and out-of-state, of any law relating to motor vehicle
12 traffic control, other than a parking violation,
13 committed in any type of vehicle, by a holder of a
14 commercial driver's license; and

15 (2) All convictions, disqualifications, and other
16 licensing actions for violations [~~both~~] in this State
17 and out-of-state, of any law relating to motor vehicle
18 traffic control, other than a parking violation,
19 committed while the driver was operating a commercial
20 motor vehicle[7] and was required to have a commercial
21 driver's license.



1 (c) No commercial driver's license driver's conviction for
2 any violation[7] in any type of motor vehicle[7] of a state or
3 local traffic control law, except a parking violation, shall be
4 expunged or subject to deferred imposition of judgment[7] nor
5 shall an individual be allowed to enter into a diversion program
6 that would prevent the conviction from appearing on the driver's
7 driving record, whether the driver was convicted for an offense
8 committed in this State or another state.

9 (d) The state judiciary and the examiner of drivers shall
10 make available to the greatest extent possible information from
11 any driver's record required [by] for enforcement of this
12 section [~~to the greatest extent possible,~~] to the users
13 designated in subsection (f) [7] or their authorized agent,
14 within ten days of:

- 15 (1) Receiving the conviction or disqualification
16 information from another state; or
17 (2) Receiving the conviction information for a violation
18 occurring in this State.

19 (e) All convictions, disqualifications, and other
20 licensing actions for violations shall be retained on each
21 driver's record for at least three years or longer [as] if



1 required under Title 49 Code of Federal Regulations Section
2 384.231(d).

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

5 (1) States may receive all information regarding any
6 driver's record;

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

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

11 (4) A motor carrier employer or prospective motor carrier
12 employer may receive all information regarding [a] an
13 employee driver's driving record, or the [~~driver's~~]
14 driving record of a prospective employee driver;
15 provided that the request is made by the driver.

16 (g) The traffic violations bureaus of the district courts,
17 upon request, shall furnish users designated in subsection

18 (f) [~~7~~] with a certified driver record listing all convictions,
19 disqualifications, and [~~all~~] licensing actions in this State and
20 notification of any action received from other states that are
21 recorded and maintained by the examiner of drivers. The traffic
22 violations bureaus shall collect a fee for [~~these~~] requests by



1 users designated in subsection (f) (3) and (4), not to exceed \$9,
2 of which \$5 shall be deposited into the general fund, \$2 shall
3 be deposited into the judiciary computer system special fund,
4 and \$2 shall be deposited into the highway fund.

5 (h) Beginning January 30, 2012, the examiner of drivers
6 shall:

- 7 (1) Post on the commercial driver's license information
8 system and maintain as part of the driver's record the
9 driver's self-certification of type of driving under
10 Title 49 Code of Federal Regulations Section
11 383.71(a)(1)(ii);
- 12 (2) Retain for at least three years after the date of
13 issuance the original or a copy of the medical
14 certificate of any driver required to provide
15 documentation of physical qualification;
- 16 (3) Post within ten calendar days the information from the
17 medical examiner's certificate to the commercial
18 driver's license information system driver record,
19 including:
- 20 (A) The medical examiner's name;
- 21 (B) The medical examiner's telephone number;



- 1 (C) The date of issuance of the medical examiner's
- 2 certificate;
- 3 (D) The medical examiner's license number and the
- 4 state that issued it;
- 5 (E) The medical examiner's number issued by the
- 6 national registry of medical examiners as
- 7 required under Title 49 United States Code
- 8 Section 31149(d);
- 9 (F) The driver's medical certification status as
- 10 certified or not-certified;
- 11 (G) The expiration date of the medical examiner's
- 12 certificate;
- 13 (H) The existence of any medical variance on the
- 14 medical certificate, such as an exemption or
- 15 skill performance evaluation;
- 16 (I) Any restrictions including corrective lenses,
- 17 hearing aids, or a requirement to have possession
- 18 of an exemption letter or skill performance
- 19 evaluation certificate while on duty; and
- 20 (J) The date the medical examiner's certificate
- 21 information was posted to the commercial driver's
- 22 license information system driver record; and




1 (4) Record the commercial driver's license downgrade
2 within sixty days of the driver's medical
3 certification status becoming not-certified to operate
4 a commercial driver's license."

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on July 1, 2011.

APPROVED this 14 day of JUN , 2011



GOVERNOR OF THE STATE OF HAWAII

