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## A BILL FOR AN ACT

RELATING TO DECRIMINALIZATION OF TRAFFIC INFRACTIONS WITHIN  
STATE RESERVES.

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

1           SECTION 1. The legislature has been engaged in an ongoing  
2 effort to make resolution of minor criminal offenses, including  
3 traffic violations, as simple as possible for the average  
4 citizen and to ensure that police, prosecutorial, and judicial  
5 resources are focused on the most serious criminal offenses.  
6 Since 1978, the legislature has undertaken comprehensive  
7 attempts to adjust the penalties for various minor criminal  
8 offenses, particularly those found outside the Hawaii penal  
9 code, so that they are more consistent with the nature of the  
10 offense, the seriousness with which the offenses are viewed, and  
11 the need to deter and prevent commission of such offenses.

12           For example, Act 222, Session Laws of Hawaii 1978, and Act  
13 214, Session Laws of Hawaii 1993 (Act 214), sought to delete  
14 criminal penalties for nonserious traffic offenses. Many  
15 offenses were changed from criminal offenses, which can result  
16 in a term of imprisonment, to violations, which are punishable



1 by a maximum fine of \$1,000. These included operating a motor  
2 carrier vehicle without a safety inspection decal, leaving  
3 vehicles derelict or abandoned, failing to use a triangular  
4 emblem on a vehicle designed to move at slow speeds, and most  
5 offenses relating to the operation of bicycles. Act 214 also  
6 established a new set of procedural provisions, chapter 291D,  
7 Hawaii Revised Statutes, designed to permit persons charged with  
8 minor offenses to pay fines by mail and to reduce the amount of  
9 time police officers and prosecutors spend in court.

10 Act 124, Session Laws of Hawaii 2005 (Act 124), called upon  
11 the legislative reference bureau to periodically identify,  
12 review, and analyze, to the extent possible, state statutes  
13 (other than the Hawaii penal code) and rules that establish:

- 14 (1) Criminal offenses specifically denominated as  
15 misdemeanors or petty misdemeanors; or  
16 (2) Criminal offenses that authorize imprisonment or fines  
17 in excess of \$1,000, or both,  
18 but that involve conduct for which, typically, only a fine is  
19 imposed.

20 Act 124 called upon the judiciary to review the list of  
21 offenses developed by the legislative reference bureau and to



1 then "identify any offenses that involve conduct for which,  
2 typically, only a fine is imposed and those that most frequently  
3 appear before the courts."

4 Act 124 further required the legislative reference bureau  
5 to "contact the state departments or agencies that have  
6 jurisdiction over the offenses identified by the judiciary and  
7 request their input as to whether and the extent to which the  
8 offenses can be decriminalized without undermining their ability  
9 to enforce laws within their jurisdiction." Finally, Act 124,  
10 required the legislative reference bureau to "recommend changes  
11 to the penalties imposed by the state statutes and rules  
12 identified . . . that would make the penalties more consistent  
13 with the penalties imposed for decriminalized traffic  
14 infractions."

15 Act 101, Session Laws of Hawaii 2008 (Act 101), was the  
16 first effort by the judiciary, various state departments, and  
17 the legislative reference bureau to fulfill the mandate of Act  
18 124 to identify minor criminal offenses for which typically only  
19 a fine is imposed and which may be decriminalized without  
20 undermining the ability of government to enforce laws within its  
21 jurisdiction. Act 101 also modified the procedure under Act



1 124, by which minor offenses are recommended for  
2 decriminalization to require that the judiciary, the legislative  
3 reference bureau, executive branch agencies, police, and  
4 prosecutors address the procedural implications of  
5 decriminalizing minor offenses. Act 101 also included  
6 decriminalization of traffic infractions within the department  
7 of land and natural resources' state park system.

8 The purpose of this Act is to make resolution of minor  
9 criminal offenses, including traffic infractions, as simple as  
10 possible for the average citizen and to ensure that police,  
11 prosecutorial, and judicial resources are focused on the most  
12 serious criminal offenses. This Act decriminalizes traffic  
13 infractions within the department of land and natural resources'  
14 natural area reserves and forest reserves so that they are  
15 consistent with the penalties for similar infractions,  
16 established for the state park system by Act 101.

17 SECTION 2. Section 183-5, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 " ~~§~~183-5 ~~§~~ General administrative penalties. (a)  
20 Except as otherwise provided by law, the board or its authorized  
21 representative may:



- 1 (1) Set, charge, and collect administrative fines;
- 2 (2) Bring legal action to recover administrative fines,
- 3 fees, and costs, including attorney's fees and costs
- 4 and costs associated with land or habitat restoration;
- 5 and
- 6 (3) Collect administrative fees and costs pursuant to
- 7 paragraph (2),
- 8 resulting from a violation of this chapter, any rule adopted, or
- 9 permit issued thereunder.

10 (b) ~~[The]~~ Except as provided in subsection (d), the  
11 administrative fines for violation of this chapter shall be as  
12 follows:

- 13 (1) For a first violation, or any violation not preceded
- 14 within a five-year period by a violation of this
- 15 chapter, a fine of not more than \$2,500 per violation;
- 16 (2) For a second violation within five years of a previous
- 17 violation of this chapter, a fine of not more than
- 18 \$5,000 per violation; and
- 19 (3) For a third or subsequent violation within five years
- 20 of the last violation of this chapter, a fine of not
- 21 more than \$10,000 per violation.



1 (c) In addition:

2 (1) A fine of up to \$10,000 per violation of section 183-  
3 17 may be levied for each destroyed or harvested koa  
4 tree, or portion thereof, larger than six inches in  
5 diameter at ground level; and

6 (2) A fine of up to \$2,000 per violation of section 183-17  
7 may be levied for each destroyed or harvested tree or  
8 plant, other than koa, or portion thereof, larger than  
9 six inches in diameter at ground level.

10 (d) Any person who violates any rule adopted by the  
11 department under this chapter regulating vehicular parking or  
12 traffic movement shall have committed a traffic infraction as  
13 set forth in chapter 291D, the adjudication of which shall be  
14 subject to the provisions contained therein. A person found to  
15 have committed such a traffic infraction shall be fined not more  
16 than:

17 (1) \$100 for a first violation;

18 (2) \$200 for a second violation; and

19 (3) \$500 for a third or subsequent violation.

20 ~~[(d)]~~ (e) Any criminal prosecution for any violation of  
21 this chapter or any rule adopted thereunder shall not be deemed



1 to preclude the State from recovering additional administrative  
2 fines, fees, and costs, including attorney's fees and costs.

3 ~~[(e)]~~ (f) No person shall be sanctioned pursuant to this  
4 section for the exercise of native Hawaiian gathering rights and  
5 traditional cultural practices as authorized by law or as  
6 permitted by the department pursuant to article ~~[xii,]~~ XII,  
7 section 7, of the Hawaii state constitution.

8 ~~[(f)]~~ (g) The department shall submit an annual report  
9 outlining the revenues generated by the penalties to the  
10 legislature at least twenty days before the convening of each  
11 regular session."

12 SECTION 3. Section 195-8, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§195-8 Penalty.** (a) ~~[Any]~~ Except as provided in  
15 subsection (b), any person who violates any of the laws and  
16 rules applicable to the reserves system, upon conviction  
17 thereof, shall be guilty of a misdemeanor and shall be fined not  
18 less than \$1,000 or imprisoned not more than one year, or both,  
19 for each offense.

20 (b) Any person who violates any rule adopted by the  
21 department under this chapter regulating vehicular parking or



1 traffic movement shall have committed a traffic infraction as  
2 set forth in chapter 291D, the adjudication of which shall be  
3 subject to the provisions contained therein. A person found to  
4 have committed such a traffic infraction shall be fined not more  
5 than:

- 6       (1) \$100 for a first violation;  
7       (2) \$200 for a second violation; and  
8       (3) \$500 for a third or subsequent violation.

9       ~~[(b)]~~ (c) Except as otherwise provided by law, the board or  
10 its authorized representative by proper delegation is authorized  
11 to set, charge, and collect administrative fines or bring legal  
12 action to recover administrative fees and costs as documented by  
13 receipts or affidavit, including ~~[attorneys']~~ attorney's fees  
14 and costs; or bring legal action to recover administrative  
15 fines, fees, and costs, including ~~[attorneys']~~ attorney's fees  
16 and costs, or payment for damages or for the cost to correct  
17 damages resulting from a violation of this chapter or any rule  
18 adopted thereunder. The administrative fines shall be as  
19 follows:

- 20       (1) For a first violation, a fine of not more than \$2,500;





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1 (2) For a second violation within five years of a previous  
2 violation, a fine of not more than \$5,000; and

3 (3) For a third or subsequent violation within five years of  
4 the last violation, a fine of not more than \$10,000.

5 [~~e~~] (d) Any criminal action against a person for any  
6 violation of this chapter or any rule adopted thereunder shall  
7 not be deemed to preclude the State from pursuing civil legal  
8 action to recover administrative fines and costs against that  
9 person. Any civil legal action against a person to recover  
10 administrative fines and costs for any violation of this chapter  
11 or any rule adopted thereunder shall not be deemed to preclude  
12 the State from pursuing any criminal action against that  
13 person."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.  
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INTRODUCED BY:

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**Report Title:**

Traffic Infractions; State Reserve Lands

**Description:**

Decriminalizes traffic infractions within natural area reserves and forest reserves of the Department of Land and Natural Resources.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

