

**ACT 185**

H.B. NO. 1827

A Bill for an Act Relating to Transportation of Hazardous Materials, Hazardous Waste, and Etiologic Agents.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the safe and proper transportation of hazardous materials and hazardous waste by motor carrier in commerce is dependent upon a cooperative and uniform enforcement effort undertaken by the federal and state government. Also, the legislature recognizes that there is a distinct possibility that shippers and motor carriers may not be cognizant of the fact that any size or type of motor vehicle used to transport hazardous materials, hazardous substances, or hazardous waste in commerce in the State of Hawaii is subject to inspection in accordance with the rules adopted by the State of Hawaii. It is the purpose of this part and the policy of this State to protect the public health and safety and the environment from improper, inadequate, unsound, or unsafe methods that could degrade or severely impact on the safe and proper transportation and handling of hazardous materials, hazardous substances, and hazardous waste on public highways, streets, or property; to permit the nature of hazardous materials

involved in a transportation incident to be readily identifiable to emergency response personnel; to promote uniformity of federal and state laws and regulations regarding the safe transportation of hazardous materials, hazardous substances, and hazardous waste; and administer and enforce the safe transportation of hazardous materials, hazardous substances, and hazardous waste by motor carrier in the State.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . TRANSPORTATION OF HAZARDOUS MATERIALS,  
HAZARDOUS WASTE, AND ETIOLOGIC AGENTS**

**§286- Definitions.** As used in this part, unless the context otherwise requires:

"Etiologic agent" means a viable microorganism, or its toxin, which causes or may cause human disease.

"Extremely hazardous substance" means for transportation purposes, chemicals transported in commerce that could cause serious health effects following short-term exposure from accidental releases and which are listed in part 355 of title 40 of the Code of Federal Regulations.

"Hazardous material" means a substance or material, including a hazardous substance, which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous materials incident" means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of an extremely hazardous substance, hazardous substance, hazardous material, hazardous waste, or etiologic agent during the course of transportation in commerce including loading, unloading, or temporary storage.

"Hazardous substance" means for transportation purposes, shipments of particular quantities of hazardous substances that are significant enough to be a substantial threat to public health and the environment, and which are listed in part 172 of title 49 of the Code of Federal Regulations.

"Hazardous waste" means any material designated in part 261 of title 40, of the Code of Federal Regulations and which are subject to the hazardous waste manifest requirements of part 262 of title 40, Code of Federal Regulations.

"Transportation-related release" means a release of a hazardous material, hazardous substance, extremely hazardous substance, hazardous waste, or etiologic agent that occurs during the course of transportation in commerce including storage incidental to transportation while under active shipping papers or manifests and which has not reached the ultimate consignee.

**§286- General powers.** (a) The department of transportation may regulate the transportation of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier in commerce.

(b) The department shall annually adopt the hazardous materials regulations established by the United States Department of Transportation and published in title 49 of the Code of Federal Regulations, parts 107, 171 to 173, inclusive, and parts 177 and 178. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material, including hazardous substances and hazardous wastes, which meets the federal and state criteria of a hazardous material must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part.

**§286- Scope.** (a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material, hazardous waste, hazardous substance, or etiologic agent by motor carrier in commerce.

(b) For purpose of clarity and conformance with the rules established for describing hazardous materials on shipping papers and simplicity in hazardous materials incident reporting, hazardous substances and extremely hazardous substances as previously defined, shall be reported as hazardous materials.

(c) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination.

(d) No person shall transport any hazardous material, hazardous waste, hazardous substance, or etiologic agents outside the confines of the person's facility or other location of storage or use, or offer or deliver any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents for transport, without compliance with the applicable requirements of the hazardous materials rules adopted by the department, including those relating to packaging of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents, marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading and unloading packages, placarding of the transporting vehicle, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

(e) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material, hazardous waste, hazardous substance, or etiologic agent upon a public highway, street, or the surrounding or connecting property, to include but not be limited to, storm drains, gutters, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

(f) Owners or operators of a facility from which there is a transportation-related release are subject to the hazardous materials transportation incident reporting requirements of this part.

(g) A copy of any written report required under this part shall be submitted to the director of transportation within fifteen days of the reported incident.

**§286- Inspections.** (a) Any shipment or transport of hazardous materials, hazardous wastes, or hazardous substances, by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials, hazardous wastes, and hazardous substances in commerce and by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials, hazardous wastes, hazardous substances, or etiologic agents in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental

to the transshipment of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier vehicles.

**§286- Hazardous materials transportation incident reporting.** (a) Any employee of the motor carrier, the driver, handlers and loaders, and any employees of state and county governments shall report incidents involving hazardous materials, hazardous wastes, and etiologic agents as follows:

- (1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, hazardous waste, or hazardous substance, shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation of certain hazardous materials incidents.
- (2) Whenever an etiologic agent shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the Center for Disease Control in Atlanta, Georgia, and make a report of the situation.

(b) Whenever possible, the incident report should include the name and telephone number of the person calling in the report, the name of the carrier, type of vehicle involved, injuries or fatalities connected with the incident, if any, the location and time of the incident, the duration of a chemical release into the environment, if known, a description of hazards involved to include the chemical name or identity of any substance released, hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles, and emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property.

**§286- Routes.** The intrastate shipment of explosives of any quantity that would require placarding of the transporting motor vehicle by the rules adopted pursuant to this part, shall not take place without first giving the police department and the fire department of the county in which the explosives are to be transported a forty-eight hour minimum advance notice. This advance notice shall be in writing and indicate the quantity and type of explosive material being shipped, the date and time of the shipment, and the route over which the explosive shipment will travel. This provision does not apply to the military during the period of a civil defense emergency proclaimed by the President or the governor.

**§286- Penalty.** (a) Any person who violates this part or any rule adopted pursuant to this part shall be subject to a civil penalty of not more than \$10,000 for each violation. Each day the violation continues shall constitute a separate offense. An action to impose or collect the penalty provided in this section shall be considered a civil action.

(b) Any person who wilfully violates this part shall be subject to a criminal penalty of not more than \$25,000 for each violation, imprisonment for a term not to exceed five years, or both."

SECTION 3. Part X of chapter 286, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 7, 1989.)