

**ACT 263**

S.B. NO. 709

A Bill for an Act Relating to Traffic Enforcement.

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

SECTION 1. The legislature finds that there is a need to reduce traffic congestion on Hawaii's roads through the stricter enforcement of traffic control laws.

In 1998, a three-year demonstration project was established that used new photo technologies to catch drivers who run red lights or exceed the posted speed limit on Hawaii's roads. In particular, Act 234, Session Laws of Hawaii 1998, established the photo red light imaging and photo speed imaging detector demonstration project, which allows for the testing of these technologies by private

contractors and, among other things, for the mailing of citations to violators rather than requiring the citation to be physically given to the violator.

The purpose of this Act is to amend Act 234 to allow for the use of other photo technologies, such as hand-held or mounted video cameras, conventional cameras, and digital cameras, other than photo speed imaging detectors and photo red light imaging devices, to produce photographic identification of vehicles that illegally cross longitudinal traffic lane markings. In addition, this Act amends the demonstration project to close a loop hole with respect to registered owners of vehicles who are not the operators of the vehicle at the time of the alleged violation. Finally, this Act amends the traffic code to allow for the mailing of traffic citations to violators on access control roads to provide for greater enforcement of the traffic laws, reduce the potential for accidents, and speed up traffic flow.

## PART I

SECTION 2. Section 286-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any private contractor that has entered into a contract with a county to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [[]section 5 et seq. of[]] Act 234, Session Laws of Hawaii 1998, may obtain from the county finance director the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed.”

SECTION 3. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

- (1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
- (2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports;
- (3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles; or
- (4) Any request from a private contractor that has entered into a contract with a county as may be necessary to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [[]section 5 et seq. of[]] Act 234, Session Laws of Hawaii 1998. The private contractor may obtain from the director of transportation the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed.”

SECTION 4. Section 291C-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Longitudinal traffic lane markings shall have the following applications:

- (1) A broken white line is used to indicate the edge of the traffic lane where travel is permitted in the same direction on both sides of the line and may be crossed by vehicular traffic when the crossing can be made with safety.
- (2) A broken yellow line is used to indicate the left edge of a traffic lane where traffic on the other side of the line moves in the opposite direction and may be crossed by vehicular traffic only when overtaking or passing a vehicle proceeding in the same direction or when executing a left turn and then only if the movement can be made with safety and does not interfere with traffic moving in the opposite direction.
- (3) A solid white line is used to indicate the edge of the traffic lane where travel in the same direction is permitted on both sides of the line but where movement from lane to lane is considered to be hazardous. A solid white line may be crossed only in unusual circumstances and then only with great care. A double width solid white line is used to emphasize a greater degree of hazard.
- (4) A solid white line is also used to indicate the right edge of the pavement.
- (5) A double solid white line is used to indicate the edges of traffic lanes where travel in the same direction is permitted on both sides of the double line but where movement from lane to lane is considered to be dangerous. The crossing of a double solid white line by vehicular traffic is prohibited.
- (6) A solid yellow line is used to indicate the left edge of a traffic lane where overtaking and passing on the left is prohibited. The crossing of a solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.
- (7) A solid yellow line is also used to indicate the left edge of each roadway of a divided street or highway.
- (8) A double solid yellow line is used to indicate the separation between lanes of traffic moving in opposite directions. The crossing of a double solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.
- (9) A double line consisting of a broken yellow line and a solid yellow line is used to indicate a separation between lanes of traffic moving in opposite directions and vehicular traffic adjacent to the broken line is permitted to overtake or pass if the movement can be made with safety and does not interfere with traffic moving in the opposite direction. The crossing of this double line by vehicular traffic adjacent to the solid line is prohibited except when the crossing is part of a left turn movement.
- (10) A double broken yellow line is used to indicate the edge of a reversible traffic lane where the direction of the vehicular traffic may be changed from time to time.
- (11) A dotted line is used to indicate the extension of a line through an intersection or interchange. It shall be the same color as the line it extends. [The] Unless authorized by a traffic-control device or a traffic or police officer under section 291C-31, the crossing of a dotted line by vehicular traffic is subject to the same prohibitions and exceptions as are applicable to the line it extends.
- (12) A solid white line when supplemented by official signs or pavement markings, is used to indicate the separation of bicycle lanes from lanes

of vehicular traffic flowing in the same direction. Except as allowed under section 291C-123, vehicles other than bicycles shall be prohibited from operating in a bicycle lane.”

SECTION 5. Section 291C-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

- (1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;
- (2) Regulating traffic by means of police officers or official traffic-control devices;
- (3) Regulating or prohibiting processions or assemblages on the highways;
- (4) Designating particular highways or roadways for use by traffic moving in one direction;
- (5) Establishing speed limits for vehicles in public parks;
- (6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;
- (7) Restricting the use of highways;
- (8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;
- (9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;
- (10) Altering or establishing speed limits;
- (11) Requiring written accident reports;
- (12) Designating no-passing zones;
- (13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;
- (14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;
- (15) Establishing minimum speed limits;
- (16) Designating hazardous railroad grade crossing;
- (17) Designating and regulating traffic on play streets;
- (18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;
- (19) Restricting pedestrian crossing at unmarked crosswalks;
- (20) Regulating persons propelling push carts;
- (21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;
- (22) Adopting and enforcing such temporary or experimental regulations as may be necessary to cover emergencies or special conditions;
- (23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;
- (24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;
- (25) Entering into an agreement with any private contractor to implement the [photo red light imaging and photo speed imaging detector] traffic enforcement demonstration project pursuant to [ ]section 5 et seq. of [ ] Act 234, Session Laws of Hawaii 1998; or
- (26) Adopting such other traffic regulations as are specifically authorized by this chapter.”

SECTION 6. Section 291C-165, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In every case when a citation is issued, the original of the citation shall be given to the violator[, or in]; provided that:

- (1) In the case of an unattended vehicle, the original of the citation shall be affixed to the vehicle as provided for in section 291C-167[, or in ]; or
- (2) In the case of [a]:
  - (A) A vehicle utilizing the high occupancy vehicle lane illegally[.]; or
  - (B) A traffic or other violation on a controlled access facility that is recorded through the use of a hand-held or mounted video camera, conventional camera, or digital camera that produces photographic identification of a vehicle,

the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division as provided in section 291C-223. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday; provided that the administrative judge of the district courts may allow a carbon copy of the citation to be given to the violator or affixed to the vehicle and provide for the disposition of the original and any other copies of the citation.”

## PART II

SECTION 7. Act 234, Session Laws of Hawaii 1998, is amended as follows:

- 1. By adding a new section 1A to read:

“SECTION 1A. The legislature finds that there is a need to reduce traffic congestion during rush hour, particularly on controlled access facilities such as the H-1 freeway on Oahu.

In some instances, vehicles that illegally cross certain longitudinal traffic lane markings create hazardous driving situations that slow down traffic, thereby adding to rush hour congestion. Current law, however, requires police officers in these instances to pull over violators and hand them a ticket. Requiring police officers to pull vehicles over is both counterproductive — it simply increases traffic congestion as motorists rubberneck to see why someone was being pulled over — as well as extremely dangerous on the freeway. The legislature therefore finds that in situations involving illegal crossing of longitudinal traffic lane markings, conventional enforcement methods are dangerous and delay law-abiding drivers. However, in these situations existing law does not allow for citations to be mailed to violators.

In other instances, the existing design of the H-1 freeway is inadequate to handle the large volume of traffic during rush hour. These situations can be corrected in some instances by the use of signs, traffic cones, and other traffic control devices to route vehicles in a manner that tends to reduce traffic congestion. For example, the state department of transportation has used traffic control devices to prohibit vehicles from crossing over certain lanes on the H-1 freeway at the Lunalilo Street on-ramp as an experiment to see how traffic flows on H-1 if cars are prohibited from merging into the H-1 traffic at that on-ramp. While the department found that the traffic control devices significantly improved the flow of traffic, which could speed up the morning and afternoon commute into downtown Honolulu, there are two potential problems with this approach.

The first problem is that existing law needs to be changed to allow for the police or traffic control devices to direct motorists not to cross the dotted lines on certain lanes during specified hours. Second, in trial runs, many drivers simply ignored cones or posted signs and crossed over into the prohibited lanes anyway. In order to effectively change these motorists' driving behavior, a further change in the law is necessary to allow for traffic enforcement through video surveillance that would allow for the mailing of traffic citations rather than requiring officers to pull motorists over in traffic to hand them a ticket.

The legislature finds that hand-held or mounted video cameras, conventional cameras, or digital cameras, can be used to produce photographic identification of vehicles that illegally cross longitudinal traffic lane markings. These photo systems could be operated by police officers or could be contracted out to a private contractor."

2. By amending section 5 by adding a new definition to be appropriately inserted and to read:

"“Photo technology system” means hand-held or mounted video cameras, conventional cameras, or digital cameras, other than photo speed imaging detectors or photo red light imaging devices, that are used to improve traffic enforcement and reduce traffic congestion by producing photographic identification of a vehicle which crosses longitudinal traffic lane markings in violation of section 291C-38(c).”

3. By amending section 6 to read:

**“SECTION 6. [Photo red light imaging and photo speed imaging detector] Traffic enforcement demonstration project.** (a) Subject to this Act, each county may establish a three-year demonstration project in selected areas of that county to provide for the implementation of photo red light imaging, [and] photo speed imaging detector, or photo technology systems to improve traffic enforcement as provided in this Act. The demonstration project shall be limited to state or county highways and shall document the effectiveness of these systems. The contractor shall provide a public information campaign to inform local drivers about the use of [the photo red light imaging and photo speed imaging detector] these systems before any citation or summons is actually issued.

(b) Notwithstanding any other law to the contrary, the demonstration project may include the use of photo technology systems in addition to photo red light imaging or photo speed imaging detector systems, including hand-held or mounted video cameras, conventional cameras, or digital cameras to improve traffic enforcement and reduce traffic congestion, particularly on controlled access facilities on Oahu. These photo technology systems:

- (1) May be operated by either private contractors or county police department personnel at the election of the police chief of each county;
- (2) Shall be used only to produce photographic identification of vehicles which are operated in violation of section 291C-38(c), Hawaii Revised Statutes, regarding longitudinal traffic lane markings.”

4. By adding a new section 8A to read:

**“SECTION 8A. Photo technology systems.** (a) Subject to this Act, each county may establish photo technology systems imposing monetary liability on the registered owner of a motor vehicle for failure to comply with section 291C-38(c), Hawaii Revised Statutes, regarding longitudinal traffic lane markings, in accordance with this Act. Each county may provide for the installation and operation of photo technology systems on no more than twenty-five state or county highways at any one time in any county; provided that these systems shall primarily be used on controlled access facilities on Oahu.

(b) Proof of a violation of section 291C-38(c), Hawaii Revised Statutes, shall be evidenced by information obtained from the photo technology systems authorized pursuant to this Act. A certificate, sworn to or affirmed by the contractor or the contractor's agent or employee, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by the system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images, including digitally produced images, evidencing a violation shall be available for inspection in any proceeding to adjudicate the liability for that violation.

(c) A contractor may issue a citation or summons pursuant to section 10 of this Act on the basis of a photo technology system if the following conditions are met:

- (1) The photo technology system is operated by a uniformed police officer or a contractor who is authorized to operate that system pursuant to this Act;
- (2) Signs indicating that a photo technology system is in use are posted on all major routes entering the area in question, as far as practicable, providing notice to a motorist that such a system may be used; and
- (3) The photo technology system is used for no more than four hours per day in any one location.

The conditions specified in this subsection shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record."

5. By amending subsection (a) of section 9 to read:

“(a) Each county shall designate locations on state or county highways in that county that are appropriate for the installation of:

- (1) Photo red light imaging or photo technology systems, with the assistance of the director; and
- (2) Photo speed imaging detector systems, without the assistance of the director.”

6. By amending subsection (a) of section 10 to read:

“(a) Notwithstanding any law to the contrary, whenever any motor vehicle is determined by means of:

- (1) The photo red light imaging system to have disregarded a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes; [or]
- (2) The photo speed imaging detector system to be in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes[.]; or
- (3) The photo technology system to have crossed longitudinal traffic lane markings in violation of section 291C-38(c), Hawaii Revised Statutes,

the contractor shall cause a summons or citation as described in this section to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday.”

7. By amending section 11 to read:

“SECTION 11. **Registered owner's responsibility for a summons or citation.** In any proceeding for a violation of this Act, the information contained in the summons or citation mailed in accordance with section 291C-165(b), Hawaii Revised Statutes, or section 10 of this Act shall be deemed evidence that the

registered vehicle violated section 291C-32(a)(3), 291C-38(c), or 291C-102, Hawaii Revised Statutes.”

8. By amending section 12 to read:

“SECTION 12. **Prima facie evidence.** (a) Whenever [the] a citation for violation of chapter 291C, Hawaii Revised Statutes, is issued pursuant to section 291C-165, Hawaii Revised Statutes, or whenever a photo red light imaging system, photo technology system, or [the] photo speed imaging detector system determines a motor vehicle to be in violation of section 291C-102, 291C-38(c), or 291C-32(a)(3), Hawaii Revised Statutes, as applicable, evidence that the motor vehicle described in the citations or summons issued pursuant to this Act was operated in violation of those sections of the Hawaii Revised Statutes, together with proof that the person to whom the summons or citation was sent was the registered owner of the motor vehicle at the time of the violation, shall constitute prima facie evidence that the registered owner of the motor vehicle was the person who committed the violation.

(b) The registered owner of the vehicle may rebut the prima facie evidence in subsection (a) by:

- (1) Submitting a written statement as provided in section 291D-6(b)(2), Hawaii Revised Statutes; provided that, if the registered owner alleges that another person was operating the vehicle at the time of the alleged violation, then the registered owner shall submit a declaration under penalty of perjury signed by both the registered owner and the vehicle operator. The declaration shall state the name, current address, and driver’s license number of the vehicle operator at the time of the alleged violation along with the date, time, place, and nature of the alleged violation. Within forty-eight hours of receiving this information contained in the declaration, the contractor or the appropriate county police department shall cause a summons or citation to be mailed to the operator as provided in section 291C-165, Hawaii Revised Statutes, or section 10 of this Act;
- (2) Testifying in open court under oath that the [person] registered owner was not the operator of the vehicle at the time of the alleged violation[; or], in which case the registered owner shall submit to the court a declaration under penalty of perjury signed by both the registered owner and the vehicle operator. The declaration shall state the name, current address, and driver’s license number of the vehicle operator at the time of the alleged violation along with the date, time, place, and nature of the alleged violation. Within forty-eight hours of receiving this information, the contractor or the appropriate county police department shall cause a summons or citation to be mailed to the operator as provided in section 291C-165, Hawaii Revised Statutes, or section 10 of this Act;
- (3) Presenting, prior to the return date established on the citation or summons issued pursuant to this Act, a letter of verification of loss from the police department to the court adjudicating the alleged violation[.]; or
- (4) Submitting an affidavit, prior to the return date established on the citations or summons issued pursuant to this Act, that the vehicle in question was a rental or U-drive vehicle subject to section 14 of this Act.”

9. By amending section 15 to read:

“SECTION 15. **Penalty.** The penalties for all consequences of a violation for speeding initiated by the use of a photo speed imaging detector system, [or] for disregarding a steady red signal initiated by the use of a photo red light imaging

system, or for illegally crossing longitudinal traffic lane markings initiated by the use of a photo technology system shall be as provided in section 291C-161, Hawaii Revised Statutes.”

10. By amending subsection (a) of section 16 to read:

“(a) The department shall develop a request for proposals to purchase, lease, rent, use, install, maintain, and operate photo red light imaging [and], photo speed imaging detector, or photo technology systems in any county as provided in this Act. The request for proposals and all aspects of the contract shall be subject to chapter 103D, Hawaii Revised Statutes.”

11. By amending subsections (a) and (b) of section 17 to read:

“(a) Each county, with prior approval from the department, may contract with one or more contractors to purchase, lease, rent, use, install, maintain, and operate photo red light imaging [and], photo speed imaging detector, or photo technology systems as provided in this Act.

(b) Notwithstanding any other law to the contrary, the contractor shall provide the following services and activities to implement the photo speed imaging detector [and], photo red light imaging, or photo technology systems:

- (1) Equipment installation;
- (2) Data processing, including custom software development and integration;
- (3) Staffing and training of law enforcement personnel and other persons as necessary to provide for effective traffic enforcement;
- (4) Film delivery, retrieval, and processing;
- (5) Image evaluation;
- (6) License plate identification and verification;
- (7) Review of individual motor vehicle registration records, pursuant to sections 286-45 and 286-172, Hawaii Revised Statutes, to obtain access only to the registered motor vehicle owner’s name and address; this data shall only be used as is necessary to carry out the provisions of the contract and the purposes of this Act and may not otherwise be publicly disclosed;
- (8) Citation generation, processing, and tracking;
- (9) Data transfer to agency and court;
- (10) Violation and statistical data collection, analysis, and reporting;
- (11) Twenty-four-hour support services, consulting, technical assistance, and Internet access;
- (12) Community awareness and public relations services; and
- (13) Any other services, activities, or equipment deemed necessary by the department and each county.”

12. By amending subsection (f) of section 17 to read:

“(f) The department of budget and finance shall create an account and set aside a portion of the revenues received from the fines obtained from citations initiated as a result of the [photo speed imaging detector and photo red light imaging] traffic enforcement demonstration project to offset the contractor’s costs of operating the photo speed imaging detector [and], photo red light imaging, and photo technology systems.”

13. By amending section 23 to read:

“SECTION 23. **Report.** Each county shall submit interim and final reports to the legislature as follows:

- (1) The interim report shall document the progress made in implementing the demonstration project and any contract entered into with a private contractor. The interim report shall be submitted to the legislature no

later than twenty days before the convening of the regular sessions of 1999 and 2000; and

- (2) The final report shall evaluate the effectiveness of the demonstration project, and shall include the following:
- (A) The total fine revenue generated by using the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
  - (B) The number of citations and summonses issued by the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
  - (C) The amount paid to the contractor providing the photo speed imaging detector [and], photo red light imaging, or photo technology systems;
  - (D) The effect of the demonstration project on traffic safety;
  - (E) The degree of public acceptance of the project;
  - (F) The process of administration of the project;
  - (G) An evaluation of the costs and benefits of the project;
  - (H) A review of the effectiveness of contracts entered into under this Act and the performance of the contractor;
  - (I) Recommendations for design or planning changes that might reduce traffic congestion on state or county highways; and
  - (J) Findings and recommendations as to whether to continue any contract entered into pursuant to this Act, make the project permanent, or adopt another alternative.

The final report shall include any proposed implementing legislation as may be necessary, and shall be submitted to the legislature no later than twenty days before the convening of the regular session of 2001.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved July 6, 1999.)