

ACT 121

H.B. NO. 1094

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Commercial driver’s license downgrade” means:

- (1) Authorization to change a driver’s self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to interstate, but operating exclusively in transportation or operation excepted from the Federal Motor Carrier Safety Regulations as provided in Title 49 Code of Federal Regulations Sections 390.3(f), 391.2, 391.62, and 398.2(b);
- (2) Authorization to change a driver’s self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to intrastate only if the driver qualifies under the State’s physical qualification requirements for intrastate only;

- (3) Authorization to change a driver's self-certification pursuant to Title 49 Code of Federal Regulations Section 383.71, to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver qualification requirements; or
- (4) Removing the commercial driver's license privilege from the driver's license.

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

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

"(a) No person shall be issued a commercial driver's license unless that person meets the qualification standards of Title 49 Code of Federal Regulations, Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle [which] that complies with minimum federal standards established by federal regulation enumerated in Title 49 Code of Federal Regulations, Part 383, Subparts G and H, is domiciled in this State as defined in Title 49 Code of Federal Regulations, Part 383.5, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act [(CMVSA)] of 1986 [(Title XII], Public Law 99-570)], Title XII, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. As of January 30, 2012, the examiner of drivers shall verify that the medical certification status of a driver who self-certified according to Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii)(A), non-excepted interstate, is certified. If a driver submits a current medical examiner's certificate, the examiner of drivers shall date-stamp the certificate and post all required information to the commercial driver's license information system pursuant to Title 49 Code of Federal Regulations Section 383.73(a)(5) and in accordance with Title 49 Code of Federal Regulations Section 383.73(j). A person who is not physically qualified to drive under Title 49 Code of Federal Regulations Section 391.41(b)(1), (2), or (3) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in Title 49 Code of Federal Regulations; Part] Section 391.49, except that the intrastate waiver requests shall be submitted to the director; provided that the director shall adopt rules under chapter 91 to establish a screening process, including approval by a licensed physician, for granting an intrastate waiver to persons who are not physically qualified under Title 49 Code of Federal Regulations Section 391.41(b)(3)."

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

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

- (1) "H" – Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) "K" – Restricts the driver to vehicles not equipped with air brakes;
- (3) "T" – Authorizes driving double and triple trailers;
- (4) "P" – Authorizes driving vehicles carrying passengers;
- (5) "N" – Authorizes driving tank vehicles;

- (6) "X" – Represents a combination of hazardous materials and tank vehicle endorsements;
- (7) "S" – Authorizes driving school buses; ~~[and]~~
- (8) "V" – ~~[Restricts the driver from operating in interstate commerce as defined in Title 49 Code of Federal Regulations Section 390.5.]~~ Indicates there is information about a medical variance on the commercial driver's license information system driver record; and
- (9) "W" – Restricts the driver from operating in interstate commerce as defined in Title 49 Code of Federal Regulations Section 390.5."

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

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

- (1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug ~~[which]~~ that impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (6) Unlawful transportation, possession, or use of a controlled substance while ~~[on-duty time;]~~ on duty;
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license ~~[had been]~~ is revoked, suspended, or canceled, or the driver ~~[was]~~ is otherwise disqualified from operating a commercial motor vehicle; or
- (8) Causing a fatality through the operation of a commercial motor vehicle, including ~~[but not limited to]~~ through the commission of the crimes of manslaughter and negligent homicide in any degree.

(b) The examiner of drivers shall disqualify any person for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded under Title 49 Code of Federal Regulations, Part 172, Subpart F, is being transported.

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

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

(e) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than sixty days if the person is convicted of two serious traffic violations, or one hundred twenty days if the person is convicted of three serious traffic violations~~[,];~~ provided that the violations

are committed in a commercial motor vehicle [~~arising~~] and arise from separate incidents occurring within a three-year period. The one hundred twenty-day disqualification period required for a third conviction within three years of a [~~“~~serious traffic violation~~”~~], as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. [~~These~~] The disqualification periods specified in this subsection shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver’s license.

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

(g) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one hundred eighty days and not more than one year for a first violation, [~~or~~] for at least two years and not more than five years for a second violation, [~~or~~] and at least three years and not more than five years for a third or subsequent violation of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting non-hazardous materials arising from separate incidents occurring within a ten-year period.

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

(i) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than sixty days if the person is convicted of a first violation, not less than one hundred twenty days if the person is convicted of a second violation during any three-year period, [~~or~~] and not less than one year if the person is convicted of a third or subsequent violation during any three-year period [~~for a violation~~] of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;
- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(j) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle [~~when~~] if the driver’s driving is determined to constitute an imminent hazard, as defined in section 286-231[,] and [~~the disqualifica-~~

tion is imposed] in accordance with the provisions of Title 49 Code of Federal Regulations Section 383.52.

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

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

"§286-241 Notification of disqualification, suspension, revocation, [or] cancellation, marking medical certification status as "not-certified", or downgrading of commercial driver's licenses or permits. (a) After disqualifying a person, or suspending, revoking, [or] canceling, or marking a medical certification status as not-certified for a commercial driver's license or permit, [the records of] the examiner of drivers shall [be updated] update all records to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(j) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers shall notify the licensing authority of the state [which] that issued the commercial driver's license within ten days. The notification shall include information regarding any disqualification and the violation or violations that resulted in the disqualification, revocation, suspension, or cancellation.

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

(c) Beginning January 30, 2012, within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the examiner of drivers shall update the commercial driver's license information system driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

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

- (1) Notify the commercial driver's license holder of the holder's not-certified medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance; and**
- (2) Initiate procedures for downgrading the license; provided that the commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming not-certified to operate a commercial motor vehicle.**

(e) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required by Title 49 Code of Federal Regulations

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

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

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

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

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

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

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

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

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

(2) All convictions, disqualifications, and other licensing actions for violations ~~[both]~~ in this State and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle^[5] and was required to have a commercial driver's license.

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

(d) The state judiciary and the examiner of drivers shall make available to the greatest extent possible information from any driver's record required ~~[by]~~ for enforcement of this section [to the greatest extent possible,] to the users designated in subsection (f)^[5] or their authorized agent, within ten days of:

(1) Receiving the conviction or disqualification information from another state; or

(2) Receiving the conviction information for a violation occurring in this State.

(e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer ~~[as]~~ if required under Title 49 Code of Federal Regulations Section 384.231(d).

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

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

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

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

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

(g) The traffic violations bureaus of the district courts, upon request, shall furnish users designated in subsection (f)^[5] with a certified driver record listing all convictions, disqualifications, and ~~[all]~~ licensing actions in this State and notification of any action received from other states that are recorded and maintained by the examiner of drivers. The traffic violations bureaus shall collect a fee for ~~[those]~~ requests by users designated in subsection (f)(3) and (4), not to exceed \$9, of which \$5 shall be deposited into the general fund, \$2 shall be deposited into the judiciary computer system special fund, and \$2 shall be deposited into the highway fund.

- (h) Beginning January 30, 2012, the examiner of drivers shall:
- (1) Post on the commercial driver's license information system and maintain as part of the driver's record the driver's self-certification of type of driving under Title 49 Code of Federal Regulations Section 383.71(a)(1)(ii);
 - (2) Retain for at least three years after the date of issuance the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification;
 - (3) Post within ten calendar days the information from the medical examiner's certificate to the commercial driver's license information system driver record, including:
 - (A) The medical examiner's name;
 - (B) The medical examiner's telephone number;
 - (C) The date of issuance of the medical examiner's certificate;
 - (D) The medical examiner's license number and the state that issued it;
 - (E) The medical examiner's number issued by the national registry of medical examiners as required under Title 49 United States Code Section 31149(d);
 - (F) The driver's medical certification status as certified or not-certified;
 - (G) The expiration date of the medical examiner's certificate;
 - (H) The existence of any medical variance on the medical certificate, such as an exemption or skill performance evaluation;
 - (I) Any restrictions including corrective lenses, hearing aids, or a requirement to have possession of an exemption letter or skill performance evaluation certificate while on duty; and
 - (J) The date the medical examiner's certificate information was posted to the commercial driver's license information system driver record; and
 - (4) Record the commercial driver's license downgrade within sixty days of the driver's medical certification status becoming not-certified to operate a commercial driver's license."

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

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

(Approved June 14, 2011.)