

## ACT 67

H.B. NO. 1093

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 amending the definition of “driving a commercial motor vehicle while under the influence of an intoxicant” to read as follows:

““Driving a commercial motor vehicle while under the influence of an intoxicant” means committing any one or more of the following acts in a commercial motor vehicle:

- (1) Driving a commercial motor vehicle while the person’s alcohol concentration is 0.04 [~~per cent or more by weight;~~] or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;
- (2) Driving under the influence of an intoxicant pursuant to section 291E-61; or
- (3) Refusing to undergo such testing as required by any state or jurisdiction in the enforcement of Section 383.51(b) or 392.5(a)(2) of Title 49[;] Code of Federal Regulations.”

SECTION 2. Section 286-240, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 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;~~] or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;
- (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;
- (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of prior violations committed while operating a commercial motor vehicle, the driver’s commercial driver’s license had been revoked, suspended, or canceled, or the driver was otherwise disqualified from operating a commercial motor vehicle; or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]~~ the crimes of manslaughter and negligent homicide in any degree.”

SECTION 3. Section 286-242, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) A person who drives a commercial motor vehicle ~~[while having an alcohol concentration of 0.01 per cent or more by weight]~~ with an alcohol concentration of 0.01 or more grams of alcohol per two hundred ten liters of breath or with 0.01 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or who refuses to take a test as provided by section 286-243 shall be issued a twenty-four-hour out-of-service order. The driver shall also be placed out-of-service for twenty-four hours if the results of a blood test are not immediately available.

(c) It is unlawful for any person ~~[who has 0.04 per cent or more, by weight, of alcohol in the person's blood]~~ with an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or with 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood to drive a “commercial motor vehicle”, as defined in section 286-2. Any person who violates this provision shall be subject to the penalties as provided in section 286-249.”

SECTION 4. Section 286-243, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) If the driver refuses testing, or submits to a test ~~[which discloses in the driver's body an alcohol concentration of 0.04 per cent or more by weight,]~~ that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood, the law enforcement officer shall submit an affidavit to a district judge of the circuit in which the driver was stopped or detained stating that the test was authorized pursuant to subsection (a) and that the driver refused to submit to testing, or submitted to a test ~~[which disclosed in the driver's body an alcohol concentration of 0.04 per cent or more by weight,]~~ that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(e) A hearing to determine the truth and correctness of an affidavit of a law enforcement officer submitted under subsection (d) shall be scheduled to commence before a district judge within twenty days after the affidavit is filed or as soon thereafter as is practicable.

The State shall be represented at the hearing by the prosecuting attorney of the county in which the alleged violation occurred. The district judge shall hear and determine:

- (1) Whether the law enforcement officer who stopped or detained the driver had probable cause to believe that the driver had been either driving or in actual physical control of a commercial motor vehicle, while having any alcohol in the driver's body;
- (2) Whether the driver was lawfully stopped or detained;
- (3) Whether the law enforcement officer informed the driver of the sanctions of section 286-240;
- (4) Whether the driver submitted to a test or tests of the driver's breath or blood or refused to be tested; and
- (5) If the driver submitted to a test or tests, whether the driver's alcohol concentration was 0.04 ~~[per cent or more by weight,]~~ or more grams

of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

The amount of alcohol found in the driver's blood within three hours after the time of the alleged violation as shown by chemical analysis or other analytical techniques of the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction of relevant evidence of a person's blood alcohol content obtained more than three hours after an alleged violation[<sup>5</sup>]; provided that the evidence is offered in compliance with the Hawaii rules of evidence. If the judge finds the statements contained in the affidavit are true, the judge shall disqualify the driver from driving a commercial motor vehicle as provided by section 286-240."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 7. This Act shall take effect upon its approval.

(Approved May 26, 2011.)