H.B. NO. 3203

A BILL FOR AN ACT

RELATING TO COMMERCIAL DRIVERS.

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

SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) Except as provided in [~~(~~]paragraph[~~)~~] (2), for the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) Ninety-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in

lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes, provided that the restricted license is for a category (1), (2), or (3) license under section 286-102(b), and to participate in substance abuse treatment programs;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than $150 but not more than $1,000; and

(D) A surcharge of $25 to be deposited into the neurotrauma special fund;

(2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly

1 intoxicated driver not preceded within a five-year
2 period by a conviction for an offense under this
3 section or section 291E-4(a):
4 (A) A fourteen-hour minimum substance abuse
5 rehabilitation program, including education and
6 counseling, or other comparable program deemed
7 appropriate by the court;
8 (B) Prompt suspension of a license and privilege to
9 operate a vehicle for a period of six months with
10 an absolute prohibition from operating a vehicle
11 during the suspension period;
12 (C) Any one or more of the following:
13 (i) Seventy-two hours of community service
14 work;
15 (ii) Not less than forty-eight hours and not
16 more than five days of imprisonment; or
17 (iii) A fine of not less than $150 but not more
18 than $1,000; and
19 (D) A surcharge of $25 to be deposited into the
20 neurotrauma special fund;

1 (3) For an offense that occurs within five years of a
2 prior conviction for an offense under this section or
3 section 291E-4(a) by:
4 (A) Prompt suspension of license and privilege to
5 operate a vehicle for a period of one year with
6 an absolute prohibition from operating a vehicle
7 during the suspension period;
8 (B) Either one of the following:
9 (i) Not less than two hundred forty hours of
10 community service work; or
11 (ii) Not less than five days but not more than
12 fourteen days of imprisonment of which at
13 least forty-eight hours shall be served
14 consecutively;
15 (C) A fine of not less than $500 but not more than
16 $1,500;
17 (D) A surcharge of $25 to be deposited into the
18 neurotrauma special fund;
19 (4) For an offense that occurs within five years of two
20 prior convictions for offenses under this section or
21 section 291E-4(a):

1 (A) A fine of not less than $500 but not more than
2 $2,500;
3 (B) Revocation of license and privilege to operate a
4 vehicle for a period not less than one year but
5 not more than five years;
6 (C) Not less than ten days but not more than thirty
7 days imprisonment of which at least forty-eight
8 hours shall be served consecutively;
9 (D) A surcharge of $25 to be deposited into the
10 neurotrauma special fund; and
11 (E) Forfeiture under chapter 712A of the vehicle
12 owned and operated by the person committing the
13 offense; provided that the department of
14 transportation shall provide storage for vehicles
15 forfeited under this subsection; and
16 (5) Any person eighteen years of age or older who is
17 convicted under this section and who operated a
18 vehicle with a passenger, in or on the vehicle, who
19 was younger than fifteen years of age, shall be
20 sentenced to an additional mandatory fine of $500 and
21 an additional mandatory term of imprisonment of forty-
22 eight hours; provided that the total term of

1 imprisonment for a person convicted under this
2 paragraph shall not exceed the maximum term of
3 imprisonment provided in paragraph (1), (3), or (4)."
4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.
6 SECTION 3. This Act shall take effect upon its approval.
7
8 INTRODUCED BY: Calvin K.Y. Say
9 BY REQUEST
JAN 22 2008

H.B. NO. 3203

Report Title:
Commercial Drivers License; Highway; Safety

Description:
Conforms Hawaii to federal law by closing a loophole that allows individuals convicted of driving under the influence to operate a commercial vehicle on a restructured commercial driver's license.

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JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO COMMERCIAL DRIVERS.

PURPOSE: To conform court-issued license to drive law to the federal commercial driver licensing law for consistency with section 286-236, Hawaii Revised Statutes (HRS)

MEANS: Amend section 291E-61(b), Hawaii Revised Statutes

JUSTIFICATION: The intent of the proposed change is to meet the requirements of a federal regulation (49 CFR §384.210) and improve enforcement by specifying wording in this section. Currently, wording in section 286-236(d), HRS, to address this federal regulation has proven to be inadequate. In addition, for consistency, this change will apply to drivers with a category four driver's license who operate commercial vehicles.

The court-issued license to drive law allows the CDL driver a hardship license which is prohibited in the CDL program under 49 C.F.R. §384.210. This practice allows an unsafe commercial driver to continue to pose a risk to motorists and other roadway users by allowing the unsafe commercial driver continued operation on the highway. Legislation is needed to limit this restricted license to non-CDL holders and bring state practice into compliance with the CDL requirement for identifying and removing drivers whose violations warrant such action.

Failure to enact the changes required in the FMCSA regulation could result in the loss of approximately $4,700,000 (or 5 percent) of federal-aid highway funds (based on fiscal year 2006-2007 funding) for the first year of non-compliance and $9,500,000 (or 10 percent) per year thereafter Motor Carrier Safety Assistance Program (MCSAP) grant funds ($700,302 in fiscal year 2006-2007) could

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also be withheld for each year of noncompliance.

Impact on the public:
Any holder of commercial driver's license or category four driver's license will not be allowed to drive a commercial motor vehicle for work related purposes after being convicted of operating a vehicle under the influence of an intoxicant.

Impact on the department and other agencies:
The court will be affected by this legislation.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: TRN 597

OTHER AFFECTED AGENCIES: State Judiciary.

EFFECTIVE DATE: Upon approval.