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# A BILL FOR AN ACT

RELATING TO EMERGENCY RULES.

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

1           SECTION 1. The legislature finds that the coronavirus  
2 disease 2019 (COVID-19) pandemic has created great challenges to  
3 global health, economy, and way of life. The governor and  
4 county mayors have had to exercise their emergency powers under  
5 chapter 127A, Hawaii Revised Statutes, to impose rules aimed to  
6 control the spread of COVID-19. The enforcement of these rules  
7 is critical to efforts to limit the spread of COVID-19, protect  
8 the health and safety of the community, manage medical  
9 resources, and restart the economy. To allow for more  
10 meaningful and effective enforcement of emergency orders, the  
11 governor and mayors need flexibility to promulgate a range of  
12 lesser penalties for emergency rules.

13           Accordingly, the purposes of this measure are to:

14           (1) Allow for lesser emergency period penalties to be  
15           adopted and promulgated by the governor or a mayor;



- 1 (2) Amend the State's existing traffic infraction laws to
- 2 incorporate emergency period infractions so that they
- 3 are adjudicated in the same manner;
- 4 (3) Allow electronic copies of notices of infractions,
- 5 infraction adjudication hearings, and notices of
- 6 infraction judgments to be sent via email; and
- 7 (4) Grant the District Court concurrent jurisdiction over
- 8 emergency period rule infractions committed by minors.

9 SECTION 2. Section 127A-29, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11 " [ ] §127A-29 [ ] ~~Misdemeanors.~~ Emergency period  
 12 infractions, violations, petty misdemeanors, and misdemeanors.

13 (a) Any person violating any rule of the governor or mayor  
 14 prescribed and promulgated pursuant to this chapter and having  
 15 the force and effect of law [ ] shall, if it shall be so stated  
 16 and designated in the rule, be guilty of a violation, petty  
 17 misdemeanor, or misdemeanor. [ ] ~~Upon~~ The governor or mayor may  
 18 state and designate the penalty applicable to the offense;  
 19 provided that if a penalty is not stated and designated, the  
 20 person shall be sentenced in accordance with chapter 706;  
 21 provided further that if both the offense and penalty are not



1 stated and designated in the rule, the person shall be guilty of  
2 a misdemeanor and upon conviction, the person shall be fined not  
3 more than [~~\$5,000, or~~] \$2,000, imprisoned not more than one  
4 year, or both.

5 In lieu of a violation, petty misdemeanor, or misdemeanor,  
6 the governor or mayor may state and designate the noncompliance  
7 of a rule as an emergency period infraction, as defined in  
8 section 291D-2. Any emergency period infraction so stated and  
9 designated in the emergency proclamation or order shall be  
10 adjudicated pursuant to chapter 291D. A person not in  
11 compliance with an emergency period rule shall be fined \$200 for  
12 each occurrence; provided that the governor or mayor may state  
13 and designate in the rule a fine of a different amount.

14 (b) [Any] Notwithstanding subsection (a), any person who  
15 intentionally, knowingly, or recklessly destroys, damages, or  
16 loses any shelter, protective device, or warning or signal  
17 device, shall if the same was installed or constructed by the  
18 United States, the State, or a county, or is the property of the  
19 United States, the State, or a county, be fined the cost of  
20 replacement, or imprisoned not more than one year, or both. The  
21 governor or mayor, may, by rule, make further provisions for the



1 protection from misuse of shelters, protective devices, or  
2 warning and signal devices."

3 SECTION 3. Chapter 291D, Hawaii Revised Statutes, is  
4 amended by amending the title to read as follows:

5 " [{}CHAPTER 291D[{}]

6 ADJUDICATION OF [TRAFFIC] INFRACTIONS"

7 SECTION 4. Section 291D-1, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 " [{}§291D-1[{}] Purpose. (a) Act 222, Session Laws of  
10 Hawaii 1978, began the process of decriminalizing certain  
11 traffic offenses, not of a serious nature, to the status of  
12 violations. In response to a request by the legislature, the  
13 judiciary prepared a report in 1987 that recommended, among  
14 other things, further decriminalization of traffic offenses,  
15 elimination of most traffic arraignments, disposition of  
16 uncontested violations by mail, and informal hearings where the  
17 violation or the proposed penalty is questioned. The  
18 legislature finds that further decriminalization of certain  
19 traffic offenses and streamlining of the handling of those  
20 traffic cases will achieve a more expeditious system for the



1 judicial processing of traffic infractions. The system of  
2 processing traffic infractions established by this chapter will:

3 (1) Eliminate the long and tedious arraignment proceeding  
4 for a majority of traffic matters;

5 (2) Facilitate and encourage the resolution of many  
6 traffic infractions through the payment of a monetary  
7 assessment;

8 (3) Speed the disposition of contested cases through a  
9 hearing, similar to small claims proceedings, in which  
10 the rules of evidence will not apply and the court  
11 will consider as evidence the notice of traffic  
12 infraction, applicable police reports, or other  
13 written statements by the police officer who issued  
14 the notice, any other relevant written material, and  
15 any evidence or statements by the person contesting  
16 the notice of traffic infraction;

17 (4) Dispense in most cases with the need for witnesses,  
18 including law enforcement officers, to be present and  
19 for the participation of the prosecuting attorney;



1 (5) Allow judicial, prosecutorial, and law enforcement  
2 resources to be used more efficiently and effectively;  
3 and

4 (6) Save the taxpayers money and reduce their frustration  
5 with the judicial system by simplifying the traffic  
6 court process.

7 The legislature further finds that this chapter will not require  
8 expansion of the current traffic division of the district  
9 courts, but will achieve greater efficiency through more  
10 effective use of existing resources of the district courts.

11 (b) The legislature finds that the pandemic related to the  
12 coronavirus disease 2019 (COVID-19) necessitated the imposition  
13 of emergency period rules in an attempt to control the spread of  
14 COVID-19 in the State. The thousands of violations of the  
15 emergency period rules caused an examination of the ability to  
16 impose infractions for lesser offenses as an alternative to  
17 using the penal code and to allow for more efficient use of the  
18 judicial system. The system of processing traffic infractions  
19 under this chapter was enacted in 1993 and has provided a useful  
20 mechanism for handling offenses deemed as infractions and is  
21 well-suited to certain types of violations of emergency period



1 rules that are designated infractions by the governor or mayor  
2 under the state's emergency management laws."

3 SECTION 5. Section 291D-2, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding one new definition to be appropriately  
6 inserted and to read:

7 "Emergency period infraction" means all occurrences of  
8 non-compliance with rules proclaimed or ordered by the governor  
9 or a mayor pursuant to chapter 127A, which are stated and  
10 designated in the emergency proclamation or order as being an  
11 emergency period infraction."

12 2. By amending the definitions of "concurrent trial",  
13 "hearing", and "related criminal offense" to read:

14 "'Concurrent trial" means a trial proceeding held in the  
15 district or family court in which the defendant is tried  
16 simultaneously in a civil case for any charged traffic  
17 infraction or emergency period infraction and in a criminal case  
18 for any related criminal offense, with trials to be held in one  
19 court on the same date and at the same time.

20 "Hearing" means a proceeding conducted by the district  
21 court pursuant to section 291D-8 at which the person to whom a



1 notice of traffic infraction was issued either admits to the  
2 traffic infraction, contests the notice of traffic infraction[7]  
3 or emergency period infraction, or admits to the traffic  
4 infraction but offers an explanation to mitigate the monetary  
5 assessment imposed.

6 "Related criminal offense" means any criminal violation or  
7 crime, committed in the same course of conduct as a traffic  
8 infraction[7] or emergency period infraction, for which the  
9 defendant is arrested or charged."

10 SECTION 6. Section 291D-5, Hawaii Revised Statutes, is  
11 amended by amending its title and subsections (a) through (d) to  
12 read as follows:

13 **"§291D-5 Notice of [~~traffic~~] infraction; form;**  
14 **determination final unless contested.** (a) The notice of  
15 traffic infraction for moving violations, and the notice of  
16 emergency period infraction, shall include the summons for the  
17 purposes of this chapter. Whenever a notice of traffic  
18 infraction or notice of emergency period infraction is issued  
19 [~~to the driver of a motor vehicle, the driver's~~], the person's  
20 signature, driver's license number[7] or state identification  
21 number, email address, and current address shall be noted on the



1 notice. If the [~~driver~~] person refuses to sign the notice of  
2 traffic infraction[~~7~~] or notice of emergency period infraction,  
3 the officer shall record this refusal on the notice and issue  
4 the notice to the [~~driver~~] person. [~~Individuals~~] Anyone to  
5 whom a notice of traffic infraction or notice of emergency  
6 period infraction is issued under this chapter need not be  
7 arraigned before the court, unless required by rule of the  
8 supreme court.

9 (b) The [~~form~~] forms for the notice of traffic infraction  
10 and notice of emergency period infraction shall be prescribed by  
11 rules of the district court which shall be uniform throughout  
12 the State; provided that each judicial circuit may include  
13 differing statutory, rule, or ordinance provisions on its  
14 respective notice of traffic infraction[~~7~~] or notice of  
15 emergency period infraction.

16 (c) A notice of traffic infraction or notice of emergency  
17 period infraction that is generated by the use of electronic  
18 equipment or that bears the electronically stored image of any  
19 person's signature, or both, shall be valid under this chapter.

20 (d) The notice of traffic infraction or notice of  
21 emergency period infraction shall include the following:



- 1 (1) A statement of the specific [~~traffic~~] infraction for  
2 which the notice was issued;
- 3 (2) Except in the case of parking-related traffic  
4 infractions, a brief statement of the facts;
- 5 (3) A statement of the total amount to be paid for each  
6 [~~traffic~~] infraction, which amount shall include any  
7 fee, surcharge, or cost required by statute,  
8 ordinance, or rule, and any monetary assessment,  
9 established for the particular [~~traffic~~] infraction  
10 pursuant to section 291D-9, to be paid by the [~~driver~~  
11 ~~or registered owner of the vehicle,~~] person to whom  
12 the notice was issued, which shall be uniform  
13 throughout the State;
- 14 (4) A statement of the options provided in section  
15 291D-6(b) for answering the notice and the procedures  
16 necessary to exercise the options;
- 17 (5) A statement that the person to whom the notice is  
18 issued must answer, choosing one of the options  
19 specified in section 291D-6(b), within twenty-one days  
20 of issuance of the notice;



- 1           (6) A statement that failure to answer the notice [~~of~~  
2           ~~traffic infraction~~] within twenty-one days of issuance  
3           shall result in the entry of judgment by default for  
4           the State and may result in the assessment of a late  
5           penalty;
- 6           (7) A statement that, at a hearing requested to contest  
7           the notice [~~of traffic infraction conducted~~], pursuant  
8           to section 291D-8, no officer shall be present unless  
9           the [~~driver~~] person to whom the notice was issued  
10          timely requests the court to have the officer present,  
11          and that the standard of proof to be applied by the  
12          court is whether a preponderance of the evidence  
13          proves that the specified [~~traffic~~] infraction was  
14          committed;
- 15          (8) A statement that, at a hearing requested for the  
16          purpose of explaining mitigating circumstances  
17          surrounding the commission of the infraction or in  
18          consideration of a written request for mitigation, the  
19          person shall be considered to have committed the  
20          [~~traffic~~] infraction;



1 (9) A space in which the signature of the person to whom  
2 the notice was issued may be affixed; and

3 (10) The date, time, and place at which the person to whom  
4 the notice was issued must appear in court, if the  
5 person is required by the notice to appear in person  
6 at the hearing."

7 SECTION 7. Section 291D-7, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsections (a) through (c) to read:

10 "(a) When an admitting answer is received, the court shall  
11 enter judgment in favor of the State in the total amount  
12 specified in the notice of traffic infraction[-] or notice of  
13 emergency period infraction.

14 (b) When a denying answer is received, the court shall  
15 proceed as follows:

16 (1) In the case of a traffic infraction or emergency  
17 period infraction where the person requests a hearing  
18 at which the person will appear in person to contest  
19 the infraction, the court shall notify the person in  
20 writing of the date, time, and place of hearing to  
21 contest the notice of traffic infraction[-] or notice



1           of emergency period infraction. The notice of hearing  
2 shall be mailed to the address stated in the denying  
3 answer, or if none is given, to the address stated on  
4 the notice of traffic infraction[-] or emergency  
5 period infraction. An electronic copy of the notice  
6 of hearing shall also be sent to the email address  
7 stated on the notice of infraction. The notification  
8 also shall advise the person that, if the person fails  
9 to appear at the hearing, the court shall enter  
10 judgment by default in favor of the State, as of the  
11 date of the scheduled hearing, that the total amount  
12 specified in the default judgment must be paid within  
13 thirty days of entry of default judgment; and

- 14       (2) When a denying answer is accompanied by a written  
15 statement of the grounds on which the person contests  
16 the notice of traffic infraction, the court shall  
17 proceed as provided in section 291D-8(a) and shall  
18 notify the person of its decision, including the total  
19 amount assessed, if any, by mailing the notice of  
20 entry of judgment within forty-five days of the  
21 postmarked date of the answer to the address provided



1 by the person in the denying answer, or if none is  
2 given, to the address given when the notice of traffic  
3 infraction was issued or, in the case of parking  
4 violations, to the address at which the vehicle is  
5 registered. An electronic copy of the notice of entry  
6 of judgment shall also be sent to the email address  
7 stated on the notice of infraction. The notice of  
8 entry of judgment also shall advise the person, if it  
9 is determined that the infraction was committed and  
10 judgment is entered in favor of the State, that the  
11 person has the right, within thirty days of entry of  
12 judgment, to request a trial and shall specify the  
13 procedures for doing so. The notice of entry of  
14 judgment shall also notify the person, if an amount is  
15 assessed by the court for monetary assessments, fees,  
16 surcharges, or costs, that if the person does not  
17 request a trial within the time specified in this  
18 paragraph, the total amount assessed shall be paid  
19 within thirty days of entry of judgment.



1 (c) When an answer admitting commission of the infraction  
2 but seeking to explain mitigating circumstances is received, the  
3 court shall proceed as follows:

4 (1) In the case of a traffic infraction or emergency  
5 period infraction where the person requests a hearing  
6 at which the person will appear in person to explain  
7 mitigating circumstances, the court shall notify the  
8 person in writing of the date, time, and place of  
9 hearing to explain mitigating circumstances. The  
10 notice of hearing shall be mailed to the address  
11 stated in the answer, or if none is given, to the  
12 address stated on the notice of traffic infraction[-]  
13 or emergency period infraction. An electronic copy of  
14 the notice of hearing shall also be sent to the email  
15 address stated on the notice of infraction. The  
16 notification also shall advise the person that, if the  
17 person fails to appear at the hearing, the court shall  
18 enter judgment by default in favor of the State, as of  
19 the date of the scheduled hearing, and that the total  
20 amount stated in the default judgment must be paid  
21 within thirty days of entry of default judgment; and



1           (2) If a written explanation is included with an answer  
2           admitting commission of the infraction, the court  
3           shall enter judgment for the State and, after  
4           reviewing the explanation, determine the total amount  
5           of the monetary assessments, fees, surcharges, or  
6           costs to be assessed, if any. The court shall then  
7           notify the person of the total amount to be paid for  
8           the infraction, if any. There shall be no appeal from  
9           the judgment. If the court assesses an amount for  
10          monetary assessments, fees, surcharges, or costs, the  
11          court shall also notify the person that the total  
12          amount shall be paid within thirty days of entry of  
13          judgment."

14          2. By amending subsection (e) to read:

15          "(e) Whenever judgment by default in favor of the State is  
16          entered, the court shall mail a notice of entry of default  
17          judgment to the address provided by the person when the notice  
18          of traffic infraction or notice of emergency period infraction  
19          was issued or, in the case of parking infractions, to the  
20          address stated in the answer, if any, or the address at which  
21          the vehicle is registered. An electronic copy of the notice of



1 entry of judgment shall also be sent to the email address stated  
2 on the notice of infraction. The notice of entry of default  
3 judgment shall advise the person that the total amount specified  
4 in the default judgment shall be paid within thirty days of  
5 entry of default judgment and shall explain the procedure for  
6 setting aside a default judgment. Judgment by default for the  
7 State entered pursuant to this chapter may be set aside pending  
8 final disposition of the traffic infraction or emergency period  
9 infraction upon written application of the person and posting of  
10 an appearance bond equal to the amount of the total amount  
11 specified in the default judgment and any other assessment  
12 imposed pursuant to section 291D-9. The application shall show  
13 good cause or excusable neglect for the person's failure to take  
14 action necessary to prevent entry of judgment by default.  
15 Thereafter, the court shall determine whether good cause or  
16 excusable neglect exists for the person's failure to take action  
17 necessary to prevent entry of judgment by default. If so, the  
18 application to set aside default judgment shall be granted, the  
19 default judgment shall be set aside, and the notice of traffic  
20 infraction or emergency period infraction shall be disposed of  
21 pursuant to this chapter. If not, the application to set aside



1 default judgment shall be denied, the appearance bond shall be  
2 forfeited and applied to satisfy amounts due under the default  
3 judgment, and the notice of traffic infraction or emergency  
4 period infraction shall be finally disposed. In either case,  
5 the court shall determine the existence of good cause or  
6 excusable neglect and notify the person of its decision on the  
7 application in writing."

8 SECTION 8. Section 291D-12, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§291D-12 Powers of the district court judge sitting in  
11 the traffic and emergency period division. (a) A district  
12 court judge sitting in the traffic and emergency period division  
13 and hearing cases pursuant to this chapter shall have all the  
14 powers of a district court judge under chapter 604, including  
15 the following powers:

- 16 (1) To conduct traffic infraction hearings and to impose  
17 monetary assessments;
- 18 (2) To permit deferral of monetary assessment or impose  
19 community service in lieu thereof;



- 1 (3) To dismiss a notice of traffic infraction[7] or notice  
2 of emergency period infraction, with or without  
3 prejudice, or to set aside a judgment for the State;
- 4 (4) To order temporary driver's license suspension or  
5 driver's license reinstatement;
- 6 (5) To approve the issuance or renewal of a driver's  
7 license or instruction permit pursuant to section  
8 286-109(c);
- 9 (6) To issue penal summonses and bench warrants and  
10 initiate contempt of court proceedings in proceedings  
11 conducted pursuant to section 291D-13;
- 12 (7) To issue penal summonses and bench warrants and  
13 initiate failure to appear proceedings in proceedings  
14 conducted pursuant to section 291D-5(d)(10); and
- 15 (8) To exercise other powers the court finds necessary and  
16 appropriate to carry out the purposes of this chapter.
- 17 (b) A district court judge sitting in the traffic and  
18 emergency period division and hearing cases pursuant to this  
19 chapter shall not order the director of finance to withhold  
20 issuing or renewing the driver's license, or registering,  
21 renewing the registration of, or issuing the title to a motor



1 vehicle, of any person who has not paid a monetary assessment,  
2 has not performed community service in lieu thereof, or has not  
3 otherwise satisfied a judgment for the State entered pursuant to  
4 this chapter."

5 SECTION 9. Section 571-41, Hawaii Revised Statutes, is  
6 amended by amending subsection (f) to read as follows:

7 "(f) The judge, or the senior judge if there is more than  
8 one, may by order confer concurrent jurisdiction on a district  
9 court created under chapter 604 to hear and dispose of cases of  
10 violation of traffic laws [~~or~~], ordinances, or emergency period  
11 rules by children, provision to the contrary in section 571-11  
12 or elsewhere notwithstanding. The exercise of jurisdiction over  
13 children by district courts shall, nevertheless, be considered  
14 noncriminal in procedure and result in the same manner as though  
15 the matter had been adjudicated and disposed of by a family  
16 court."

17 SECTION 10. Sections 291D-3, 291D-4, 291D-6, 291D-8,  
18 291D-9, 291D-13, and 291D-14, Hawaii Revised Statutes, are  
19 amended by substituting the phrase "traffic infraction or  
20 emergency period infraction" wherever the phrase "traffic  
21 infraction" appears, as the context requires.



1 SECTION 11. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect upon its approval.



**Report Title:**

Emergency Period Infractions; Violations; Petty Misdemeanors;  
Misdemeanors

**Description:**

Allows for lesser emergency period penalties to be adopted and promulgated by the governor or a mayor. Allows for the emergency period infractions to be processed under the traffic adjudication process in chapter 291D, Hawaii Revised Statutes. Allows electronic copies of notices of infractions, infraction adjudication hearings, and notices of infraction judgments to be sent via email. Grants the District Court concurrent jurisdiction over emergency period rule infractions committed by minors. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

