
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, the 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 adopt a range of lesser
12 penalties for emergency rules.

13 Accordingly, the purpose of this Act is to:

14 (1) Allow for lesser emergency period penalties to be
15 adopted 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 electronic mail;
7 and

8 (4) Grant the district court concurrent jurisdiction over
9 emergency period rule infractions committed by minors.

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

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

14 (a) Any person violating any rule of the governor or mayor
15 prescribed and [~~promulgated~~] adopted pursuant to this chapter
16 and having the force and effect of law[~~7~~] shall, if it shall be
17 so stated and designated in the rule, be guilty of a violation,
18 petty misdemeanor, or misdemeanor. [~~Upon~~] The governor or mayor
19 may state and designate the penalty applicable to the offense;
20 provided that if a penalty is not stated and designated, the
21 person shall be sentenced in accordance with chapter 706;



1 provided further that if the offense and penalty are not stated
2 and designated in the rule, the person shall be guilty of a
3 misdemeanor and upon conviction, the person shall be fined [~~not~~]
4 no more than [~~\$5,000, or~~] \$2,000, imprisoned [~~not~~] no more than
5 one year, or both.

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

15 (b) [~~Any~~] Notwithstanding subsection (a), any person who
16 intentionally, knowingly, or recklessly destroys, damages, or
17 loses any shelter, protective device, or warning or signal
18 device, shall if the same was installed or constructed by the
19 United States, the State, or a county, or is the property of the
20 United States, the State, or a county, be fined the cost of
21 replacement, or imprisoned [~~not~~] no more than one year, or both.



1 The governor or mayor, may, by rule, make further provisions for
2 the protection from misuse of shelters, protective devices, or
3 warning and signal devices."

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

6 "[+]CHAPTER 291D[+]

7 ADJUDICATION OF [TRAFFIC] INFRACTIONS"

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

10 "[+]§291D-1[+] Purpose. (a) Act 222, Session Laws of
11 Hawaii 1978, began the process of decriminalizing certain
12 traffic offenses, not of a serious nature, to the status of
13 violations. In response to a request by the legislature, the
14 judiciary prepared a report in 1987 that recommended, among
15 other things, further decriminalization of traffic offenses,
16 elimination of most traffic arraignments, disposition of
17 uncontested violations by mail, and informal hearings where the
18 violation or the proposed penalty is questioned. The
19 legislature finds that further decriminalization of certain
20 traffic offenses and streamlining of the handling of those
21 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 necessitated the imposition of
13 emergency period rules in an attempt to control the spread of
14 the disease 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" and
13 "hearing" 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 or emergency period infraction was
2 issued either admits to the [~~traffie~~] infraction, contests the
3 notice of traffic infraction[~~7~~] or emergency period infraction,
4 or admits to the traffic infraction or emergency period
5 infraction but offers an explanation to mitigate the monetary
6 assessment imposed."

7 3. By amending the definition of "related criminal
8 offense" to read:

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

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

16 "**§291D-5 Notice of [~~traffie~~] infraction; form;**
17 **determination final unless contested.** (a) The notice of
18 traffic infraction for moving violations, and the notice of
19 emergency period infraction, shall include the summons for the
20 purposes of this chapter. Whenever a notice of traffic
21 infraction or notice of emergency period infraction is issued



1 ~~[to the driver of a motor vehicle, the driver's]~~, the person's
2 signature, driver's license number[7] or state identification
3 number, electronic mail address, and current address shall be
4 noted on the notice. If the ~~[driver]~~ person refuses to sign the
5 notice of traffic infraction[7] or notice of emergency period
6 infraction, the officer shall record this refusal on the notice
7 and issue the notice to the ~~[driver. Individuals]~~ person.
8 Anyone to whom a notice of traffic infraction or notice of
9 emergency period infraction is issued under this chapter need
10 not be arraigned before the court, unless required by rule of
11 the supreme court.

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

19 (c) A notice of traffic infraction or notice of emergency
20 period infraction that is generated by the use of electronic



1 equipment or that bears the electronically stored image of any
2 person's signature, or both, shall be valid under this chapter.

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

5 (1) A statement of the specific [~~traffic~~] infraction for
6 which the notice was issued;

7 (2) Except in the case of parking-related traffic
8 infractions, a brief statement of the facts;

9 (3) A statement of the total amount to be paid for each
10 [~~traffic~~] infraction, which amount shall include any
11 fee, surcharge, or cost required by statute,
12 ordinance, or rule, and any monetary assessment,
13 established for the particular [~~traffic~~] infraction
14 pursuant to section 291D-9, to be paid by the [~~driver~~
15 ~~or registered owner of the vehicle,~~] person to whom
16 the notice was issued, which shall be uniform
17 throughout the State;

18 (4) A statement of the options provided in
19 section 291D-6(b) for answering the notice and the
20 procedures necessary to exercise the options;



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



1 consideration of a written request for mitigation, the
2 person shall be considered to have committed the
3 [~~traffie~~] infraction;

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

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

10 SECTION 7. Section 291D-7, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§291D-7 Court action after answer or failure to answer.**

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

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

19 (1) In the case of a traffic infraction or emergency
20 period infraction where the person requests a hearing
21 at which the person will appear in person to contest



1 the infraction, the court shall notify the person in
2 writing of the date, time, and place of hearing to
3 contest the notice of traffic infraction[-] or notice
4 of emergency period infraction. The notice of hearing
5 shall be mailed to the address stated in the denying
6 answer, or if none is given, to the address stated on
7 the notice of traffic infraction[-] or emergency
8 period infraction. An electronic copy of the notice
9 of hearing may be sent to the electronic mail address
10 stated on the notice of infraction. The notification
11 also shall advise the person that, if the person fails
12 to appear at the hearing, the court shall enter
13 judgment by default in favor of the State, as of the
14 date of the scheduled hearing, that the total amount
15 specified in the default judgment must be paid within
16 thirty days of entry of default judgment; and
17 (2) When a denying answer is accompanied by a written
18 statement of the grounds on which the person contests
19 the notice of traffic infraction[7] or emergency
20 period infraction, the court shall proceed as provided
21 in section 291D-8(a) and shall notify the person of



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



1 specified in this paragraph, the total amount assessed
2 shall be paid within thirty days of entry of judgment.

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

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



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

16 (d) If the person fails to answer within twenty-one days
17 of issuance of the notice of traffic infraction[~~r~~] or emergency
18 period infraction, the court shall take action as provided in
19 subsection (e).

20 (e) Whenever judgment by default in favor of the State is
21 entered, the court shall mail a notice of entry of default



1 judgment to the address provided by the person when the notice
2 of traffic infraction or notice of emergency period infraction
3 was issued or, in the case of parking infractions, to the
4 address stated in the answer, if any, or the address at which
5 the vehicle is registered. An electronic copy of the notice of
6 entry of default judgment may be sent to the electronic mail
7 address stated on the notice of infraction. The notice of entry
8 of default judgment shall advise the person that the total
9 amount specified in the default judgment shall be paid within
10 thirty days of entry of default judgment and shall explain the
11 procedure for setting aside a default judgment. Judgment by
12 default for the State entered pursuant to this chapter may be
13 set aside pending final disposition of the traffic infraction or
14 emergency period infraction upon written application of the
15 person and posting of an appearance bond equal to the amount of
16 the total amount specified in the default judgment and any other
17 assessment imposed pursuant to section 291D-9. The application
18 shall show good cause or excusable neglect for the person's
19 failure to take action necessary to prevent entry of judgment by
20 default. Thereafter, the court shall determine whether good
21 cause or excusable neglect exists for the person's failure to



1 take action necessary to prevent entry of judgment by default.
 2 If so, the application to set aside default judgment shall be
 3 granted, the default judgment shall be set aside, and the notice
 4 of traffic infraction or emergency period infraction shall be
 5 disposed of pursuant to this chapter. If not, the application
 6 to set aside default judgment shall be denied, the appearance
 7 bond shall be forfeited and applied to satisfy amounts due under
 8 the default judgment, and the notice of traffic infraction or
 9 emergency period infraction shall be finally disposed. In
 10 either case, the court shall determine the existence of good
 11 cause or excusable neglect and notify the person of its decision
 12 on the application in writing."

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

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



- 1 (1) To conduct traffic infraction and emergency infraction
2 hearings and to impose monetary assessments;
- 3 (2) To permit deferral of monetary assessment or impose
4 community service in lieu thereof;
- 5 (3) To dismiss a notice of traffic infraction[7] or notice
6 of emergency period infraction, with or without
7 prejudice, or to set aside a judgment for the State;
- 8 (4) To order temporary driver's license suspension or
9 driver's license reinstatement;
- 10 (5) To approve the issuance or renewal of a driver's
11 license or instruction permit pursuant to
12 section 286-109(c);
- 13 (6) To issue penal summonses and bench warrants and
14 initiate contempt of court proceedings in proceedings
15 conducted pursuant to section 291D-13;
- 16 (7) To issue penal summonses and bench warrants and
17 initiate failure to appear proceedings in proceedings
18 conducted pursuant to section 291D-5(d)(10); and
- 19 (8) To exercise other powers the court finds necessary and
20 appropriate to carry out the purposes of this chapter.



1 (b) A district court judge sitting in the traffic and
2 emergency period division and hearing cases pursuant to this
3 chapter shall not order the director of finance to withhold
4 issuing or renewing the driver's license, or registering,
5 renewing the registration of, or issuing the title to a motor
6 vehicle, of any person who has not paid a monetary assessment,
7 has not performed community service in lieu thereof, or has not
8 otherwise satisfied a judgment for the State entered pursuant to
9 this chapter."

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

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



1 SECTION 10. Sections 291D-3, 291D-4, 291D-6, 291D-8,
2 291D-9, 291D-13, and 291D-14, Hawaii Revised Statutes, are
3 amended by substituting the phrase "traffic infraction or
4 emergency period infraction" wherever the phrase "traffic
5 infraction" appears, as the context requires.

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 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 by the governor or a mayor. Allows for the emergency period infractions to be processed under the traffic adjudication process. Allows electronic copies of notices of infractions, infraction adjudication hearings, and notices of infraction judgments to be sent via electronic mail. Grants the district court concurrent jurisdiction over emergency period rule infractions committed by minors. (HD1)

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

