



Parking for Persons with Disabilities Program An Overview of the Legislative History and Administrative Rules

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ESTABLISHMENT OF A STATE LAW UNDER THE HAWAII DEPARTMENT OF TRANSPORTATION (1984 to 1999)

Act 46 (1984 Legislature)

In 1984, the Legislature established a State law, Act 46 (1984), to provide a uniform, statewide program for the issuance of parking permits (placards) for persons with mobility impairments. The law took effect on January 1, 1985. The Act established uniform parking privileges for persons with mobility limitations throughout the State¹. The Act further established uniform eligibility criteria for those parking privileges. The Legislature recognized that parking for disabled persons was uncoordinated, as substantiated by a study conducted by the Commission on the Handicapped, and that multiple and often conflicting eligibility requirements and permits existed among the State and its political subdivisions. It is noted that Act 46 (1984) preceded federal law, Public Law 100-641, the Uniform System for Handicapped Parking (discussed later). Absent any federal guidance at the time, Act 46 (1984) was limited in scope, and assigned the administrative oversight and coordination of the statewide parking program to the Hawaii Department of Transportation (HDOT). Unlike the other 49 states in the union, Hawaii does not have a department of motor vehicles (DMV) at the state level, and while it has the HDOT, the functions of issuing driver's licenses and license plates, addressing motor vehicle registration items, and similar functions, are delegated to the counties to perform on behalf of the State. For the majority of these functions, a set of rules governed the arrangement between the HDOT and the counties. Thus, the function of issuing parking placards to persons with disabilities also fell to the counties under the broad oversight of the HDOT. Specific details of the parking program were left to each county's discretion through their respective ordinances, which established placard fees and applicable rules.

Act 42 (1984) added Part III to Chapter 291 of the Hawaii Revised Statutes (HRS), which was appropriately designated as "Parking for Disabled Persons." HRS 291, Part III, provided a uniform definition of eligibility for a permit (at that time a permit was only a placard). Act 42 (1984) further authorized the counties to issue and set fees for the placard, continuing the practice that existed prior to the passage of the Act. The HDOT was charged with the central coordination of the parking program, including procurement of the placards and selling them to the counties at cost as well as the adoption of administrative rules.

The "privileges" of having a placard were outlined very briefly, simply indicating that a person with a placard could park in any space designated/reserved for a person with a placard in accordance with the law.

HRS 291, Part III, was codified as follows:

¹ Section 1, Act 46 (1984)

§291-51 Definitions. As used in this part, the following terms have the following meanings:

“Certificate of disability” means a medical statement issued by a licensed practicing physician, either in private practice or with a governmental agency, which verifies that a person is a disabled person.

“Disabled person” means any person:

- (1) Who has lost the use of one or both lower extremities;
- (2) Who is so severely disabled as to require the use of a mechanical device, including a wheelchair, a walker, crutches, or a brace to aid mobility;
- (3) Who is restricted by a lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the person’s arterial oxygen tension (PO₂) is less than 60 mm/hg on room air at rest;
- (4) Who has a cardiac condition to the extent that the person’s functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
- (5) Who has a diagnosed disease or disorder, including a severe arthritic, neurological, or orthopedic impairment, which creates a severe mobility limitation.

§291-52 Issuance of placard. Each county may issue one distinguishing placard to each disabled person who so requests and presents a certificate of disability. The placard shall be designed, fabricated, and sold at cost to the counties by the department of transportation. The county may charge a fee to cover its costs.

§291-53 Nontransferability; penalty. The placard shall not be used by anyone other than the disabled person to whom it is issued unless it is being used in connection with the transportation of a disabled person. An unauthorized person using the placard shall be guilty of a parking violation and subject to the penalties provided by law. A placard may be revoked for any unauthorized use.

§291-54 Display of placard. The placard shall be prominently displayed in the disabled person’s vehicle so as to be visible through the front windshield.

§291-55 Parking privileges. Any vehicle displaying the placard issued under this part shall be permitted to park in any metered or unmetered parking space designated for the use of disabled persons in accordance with law.

§291-56 Rules. The department of transportation may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance and renewal of placards, the replacement of lost or stolen placards, and the design of the placard.²

² Section 2, Act 46 (1984)

Act 213 (1986 Legislature)

Act 213 (1986) made a minor, technical change to the definition of a “disabled person.” It replaced “ PO_2 ” with “ P_aO_2 ” in reference to the arterial oxygen tension of a person with lung disease.

Act 161 (1990 Legislature)

Act 161 (1990) created a substantially new privilege for those with permits. Heretofore, the privilege of having a placard was the ability to park in any metered or unmetered parking space designated for the use of disabled persons. Act 161 (1990) amended HRS §291-55 by extending the parking privilege to allow a person to park in metered spaces for a designated period of time, free of charge.

§291-55 Parking privileges. Any vehicle displaying the placard issued under this part shall be permitted to park, without payment of metered parking fees, in any metered or unmetered parking space designated for the use of disabled persons in accordance with law. Any vehicle displaying a disabled driver placard issued under this part shall be permitted to park, without payment of metered parking fees in any metered or unmetered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.³

The law made a major public policy statement. The rationale for the change was the compelling testimony of selected individuals that parking meters were inaccessible to many mobility impaired persons with manual dexterity disabilities because they could not physically operate the meters.

³ Section 1, Act 161 (1990)

Public Law 100-641 (1988)

Recognizing the need for consistency, and in part responding to concerns that laws were inconsistent among states and complaints that some states did not honor parking placards for persons with disabilities issued by other states, Congress enacted Public Law 100-641, the Uniform System for Handicapped Parking, on November 9, 1988.

It is noted that parking privileges for individuals with disabilities are separate and distinct from the physical design requirements for accessible parking spaces that are governed by other laws and building codes, the most significant being the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Fair Housing Act Accessibility Guidelines. These design standards do not require governments or other entities to reserve accessible parking spaces, issue placards or special license plates, or mandate such provisions. Such requirements are left to the states.

The handicapped parking system laws are collectively known as the Uniform System for Handicapped Parking. The Uniform System does the following: (1) adopts the International Symbol of Access as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk; (2) provides for the issuance of license plates displaying the International Symbol of Access for vehicles that will be used to transport individuals with handicaps which limit or impair the ability to walk, under criteria determined by the state; (3) provides for the issuance of removable windshield placards and temporary removable windshield placards to eligible individuals, under criteria determined by the state; (4) provides that fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the state; and (5) for purposes of easy access parking, recognizes special license plates and placards displaying the International Symbol of Access that have been issued by other states and countries.

U.S. Department of Transportation Regulations (1991)

Public Law 100-641 directed the U.S. Department of Transportation (USDOT) to create a uniform system of parking privileges for people with disabilities. On March 11, 1991, the USDOT promulgated regulations called the "Uniform System for Parking for Persons with Disabilities," codified at 23 C.F.R. Part 1235.

The Uniform System regulations provide guidelines for the states to establish a uniform system. The Uniform System regulations provide model definitions and rules regarding eligibility, application procedures, and issuance of special license plates and placards. The regulations also contain information to aid states in developing reciprocal systems of parking privileges, including sample placard designs and a model rule regarding reciprocity.

The Uniform System regulations do not contain model rules for enforcement, specifying lengths of time after which special plates or placards must be renewed, or

addressing whether eligible individuals must be primary users of vehicles with special license plates. Instead, the regulations contain basic definitions and samples that encourage states to utilize as part of their own, more detailed, parking privilege systems.

One key provision in the Uniform System is the model definition of eligible individuals. Unlike the ADA, which protects every individual with a “disability,” the Uniform System extends parking privileges only to “persons with disabilities which impair or limit the ability to walk.” This definition includes people who (1) “cannot walk 200 feet without stopping to rest”; (2) cannot walk without the aid of another person or certain assistive devices; (3) have respiratory volumes of less than a certain amount due to lung disease; (4) “use portable oxygen”; (5) have cardiac conditions of a specified severity; or (6) are severely limited in their ability to walk by an arthritic, neurological, or orthopedic condition.⁴

If an individual qualifies as a person with a disability which impairs or limits his or her ability to walk, then under the Uniform System’s model rules, he or she may submit an application for special license plates or a windshield placard, which entitles the individual to park in specially reserved parking spaces. A certification must accompany an initial application. Under the Uniform System guidelines, a state may not charge a higher fee for special license plates than it charges for regular license plates.

Special license plates and windshield placards are set forth as the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk under the Uniform System. The system delineates two types of windshield placards; removable windshield placards and temporary removable windshield placards. Removable windshield placards are appropriate for individuals who qualify as persons with disabilities which impair or limit the ability to walk permanently. Temporary removable windshield placards are appropriate for individuals who will have such an impairment or limitation for less than six months.

The Uniform System provides samples of each type of windshield placard. The sample placards display the “International Symbol of Access,” which was adopted by the disability rights organization, Rehabilitation International, in 1969. The symbol is a commonly recognized image of a wheelchair and is best known as a white wheelchair on a blue background. The placard samples also include spaces in which to display the names of issuing authorities and expiration dates for the placards.

In addition to sample placards, which aid efforts for reciprocity among states indirectly by providing a commonly recognized symbol, the Uniform System includes a model rule that directly addresses reciprocity. It calls for states to recognize placards and special license plates issued by other states.

⁴ 23 C.F.R. 1235.2. As this definition is only guidance, it has been modified in State law as noted in this document.

It should be noted that Congress has never required states to comply with the Uniform System or authorized penalties for noncompliance. Rather, the enacted law and resulting federal guidelines are merely exhortational. The legislation required the USDOT to encourage adoption of the Uniform System by all the states, but it did not require states to adopt the federal guidelines. Thus, although the federal government has a strong advisory role, states have the ultimate responsibility for the development of parking privileges.

Act 46 (1992 Legislature)

Pursuant to the passage of Public Law 100-641 (federal law), the Legislature made significant changes to HRS 291, Part III, to conform to the federal guidelines issued on March 11, 1991.

Act 46 (1992) conformed the eligibility criteria for a permit to the recommendations in the federal guidelines and clarified that a person must not only have a disability, but also be limited in the ability to walk. The law was amended to provide a new definition of "disabled person", as well as definitions for three types of permits: a removable windshield placard, a temporary removable windshield placard, and a special license plate (heretofore only a placard was referenced in the statute). The definitions in HRS §291-51 were amended to read as follows:

§291-51 Definitions. As used in this part, the following terms have the following meanings:

"Certificate of disability" means a medical statement issued by a licensed practicing physician which verifies that a person is disabled, limited, or impaired in the ability to walk.

"Disabled person" means a person:

- (1) Who cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, or orthopedic condition;
- (2) Who cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Who are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (4) Who uses portable oxygen; or
- (5) Who has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American heart association.

"International symbol of access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

"Removable windshield placard" means a two-sided, hanger-style placard which includes on each side:

- (1) The international symbol of access which is white on a blue shield;
- (2) An identification number;
- (3) A date of expiration; and
- (4) The seal of the State of Hawaii.

"Special license plate" means a license plate that displays the international symbol of access:

- (1) In a color that contrasts to the background; and
- (2) In the same size as the letters or numbers on the plate.

"Temporary removable windshield placard" means a two-sided, hanger-style placard, which includes on each side:

- (1) The international symbol of access and is white on a red shield;
- (2) An identification number;
- (3) A date of expiration;
- (4) The seal of the State of Hawaii; and

(5) The word “temporary.”⁵

Given the addition of special license plates and temporary placards to the types of permits, the following two sections were added to provide more detail on these permits.

§291-51.5 Special license plates. Upon application by a person with a disability, each county shall issue special license plates for the vehicle registered in the applicant’s name if the vehicle is primarily used to transport persons with disabilities which limit or impair their ability to walk. The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§291-51.6 Temporary removable parking placards. The county shall require that the application for a temporary removable windshield placard be accompanied by the certification of a licensed physician which designates that the applicant meets the definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.⁶

The existing sections of the statute were amended to clarify the issuance, use, display, and nontransferability of the permit.

§291-52 Issuance of removable windshield placard. Each county may issue one distinguishing placard to each person with a disability who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold at cost to the counties by the department of transportation. The county may charge a fee to cover its costs.

§291-53 Nontransferability; penalty. The removable windshield placard shall not be used by anyone other than the disabled person to whom it is issued unless it is being used in connection with the transportation of a person with a disability. An unauthorized person using the removable windshield placard shall be guilty of a parking violation and subject to the penalties provided by law. A removable windshield placard may be revoked for any unauthorized use.

§291-54 Display of removable windshield placard. The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§291-55 Parking privileges. Any vehicle displaying the special license plates, removable windshield placards, or temporary removable windshield placards displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees, in any metered parking space designated for the use of disabled persons in accordance with law. Any vehicle displaying special license plates, removable windshield placards, or temporary removable windshield placards displaying the

⁵ Section 4, Act 46 (1992)

⁶ Section 2, Act 46 (1992)

international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees in any metered or unmetered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.⁷

Finally, Act 46 (1992) added a new section to reflect the federal guidance on reciprocity, whose purpose was to ensure that all states honor placards issued by other jurisdictions to facilitate the easy travel of persons with disabilities between jurisdictions, primarily driving between states.

§291-51.7 Reciprocity. The State of Hawaii shall recognize removable windshield placards, temporary removable windshield placards, and special license plates which have been issued by authorities of other states and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities.⁸

⁷ Sections 4, 5, and 6, respectively, Act 46 (1992)

⁸ Section 2, Act 46 (1992)

Act 308 (1997 Legislature)

Act 308 (1997) significantly amended HRS 291, Part III primarily to establish consistency in the enforcement of monetary fines. The Legislature recognized that penalties for violations and requirements for signage and markings of parking spaces reserved for disabled persons were inconsistent among the various state and county agencies, and private property owners, and that this inconsistency caused confusion, both to users of the parking spaces and the general public. There was a need and a desire for consistency for both public and private parking spaces reserved for disabled persons. The purpose of Act 308 (1997) was to:

- (1) Establish uniform penalties for the unauthorized or improper use of: public and private parking spaces reserved for the use of disabled persons; removable windshield placards; temporary removable windshield placards; and special license plates; and
- (2) Provide uniform minimum requirements for signage and markings for such parking spaces.⁹

State law, HRS 291, Part III did not have a penalty for illegally parking in a reserved space without a permit. Thus, a new section was added, setting the penalty/fine between \$150 and \$300.

§291-57 Disabled parking; penalties. (a) A person using a parking space reserved for disabled persons without properly displaying a removable windshield placard, temporary removable windshield placard, or special license plate, in accordance with this part or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$150 nor more than \$300.

(b) Any disabled person who refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$150 nor more than \$300.¹⁰

In addition, the statutory sections covering parking under the jurisdictions of the Department of Accounting and General Services (HRS §107-11), the HDOT at the airports (HRS §261-17.6), and the University of Hawaii (HRS §308-3), were amended by adding a separate penalty for persons who violate any provision of HRS 291, Part III, which included the fine of \$150-\$300.

§107-11 Parking; control by comptroller. (c) Any person who violates any of the rules adopted by the comptroller shall be fined not more than \$50 for each violation; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

261-17.6 Parking control at airports. (a) The director may enforce airport rules pertaining to vehicle parking at airports by imposing fines not to exceed \$50 per violation or

⁹ Section 1, Act 308 (1997)

¹⁰ Section 2, Act 308 (1997)

by removing the vehicle of the offender from the area within the airport's jurisdiction, or both; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

§308-3 Fines and other penalties. The board of regents may enforce its rules and regulations by imposing fines not to exceed \$25 per violation or by removing the vehicle of the offender from the area within the university's jurisdiction, or both; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291. The owner of any vehicle so towed away shall be responsible for and pay all costs incurred in the towing and storage. Any car so towed away and unclaimed thirty days thereafter shall be sold at public auction by the university. The university shall pay all costs of towing and storage and other costs connected with the sale out of the university parking revolving fund. The fund shall be reimbursed for the costs from the proceeds of the sale and the remaining balance, if any, shall be paid to the owner of the vehicle; provided that if the proceeds of the sale are not claimed by the owner of the vehicle within sixty days after notice, the proceeds shall be deposited in the university parking revolving fund.¹¹

Act 308 (1997) clarified that the monetary fines for illegally using a permit issued to another person would also receive a fine of \$150-\$300, consistent with the new penalty created under HRS §291-57. The prior law stated that fines were subject to the penalties provided by law, which was considered vague.

§291-53 Nontransferability; penalty. The removable windshield placard, temporary removable windshield placard, or special license plate shall not be used by anyone other than the disabled person to whom it is issued unless it is being used in connection with the transport of the disabled person. An unauthorized person using the removable windshield placard, temporary removable windshield placard, or special license plate to obtain the special parking privileges authorized under this part or otherwise afforded by the state or counties, shall be guilty of a traffic infraction under chapter 291D and fined not less than \$150 nor more than \$300. A removable windshield placard, temporary removable windshield placard, or special license plate may be revoked for any unauthorized use.¹²

In order to enhance parking enforcement, it was necessary to include definitions of a "parking space reserved for disabled persons" and "sign designating the parking space as reserved for disabled persons."

§291-51 Definitions.

"Parking space reserved for disabled persons" means a public or private parking space designated for the use of a disabled person that (1) is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines; (2) is marked with a sign designating the parking space as reserved for disabled persons; or (3) is otherwise clearly designated for the use of disabled persons.

"Sign designating the parking space as reserved for disabled persons" means a sign which contains:

(1) The words, "Reserved Parking";

¹¹ Sections 3, 4, and 13 respectively, Act 308 (1997)

¹² Section 10, Act 308 (1997)

- (2) The international symbol of access;
- (3) Words indicating that the space is reserved for parking by disabled persons who have valid placards or special license plates; and
- (4) The maximum fine for parking illegally in the space.¹³

The necessity for adding these definitions stemmed from the recognition that citations were being dismissed when violators asserted that signage did not adequately inform them of the reserved status of the parking space or the fine.

Act 308 (1997) also clarified that the State, counties and private property owners were required to honor permits of other jurisdictions. It also clarified that eligibility was to “people” who possessed a permit, rather than vehicles.

§291-51.7 Reciprocity. The State, counties, and private property owners shall recognize removable windshield placards, temporary removable windshield placards, and special license plates which have been issued by authorities of other states and countries, for the purpose of identifying persons permitted to:

- (1) Utilize parking spaces reserved for disabled persons; or
- (2) Exercise other parking privileges afforded by the State, counties, or private property owners for the benefit of disabled persons.¹⁴

Act 308 (1997) also strengthened the requirement for the HDOT to issue rules, adding responsibilities to promulgate rules for revocation and suspension of the permits and the design of the special license plates and parking signage.

§291-56 Rules. The department of transportation may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance, renewal, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost or stolen placards, the design of the placard and special license plates, signage and marking of parking spaces, and penalties.¹⁵

Several portions of the statute were amended to clarify language, provide more consistent grammatical structure and to use politically correct language.

§291-51 Definitions.

“Disabled person” means a person with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

- (1) Cannot walk two hundred feet without stopping to rest due to a diagnosed arthritic, neurological, or orthopedic condition;
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Is restricted by lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (4) Uses portable oxygen; or

¹³ Section 5, Act 308 (1997)

¹⁴ Section 8, Act 308 (1997)

¹⁵ Section 12, Act 308 (1997)

- (5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.

§291-51.5 Special license plates. Upon application by a disabled person, each county shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport that person. The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§291-51.6 Temporary removable parking placards. The county shall require that the application for a temporary removable windshield placard be accompanied by a certificate of disability which verifies that the applicant meets the definition of a disabled person. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

§291-52 Issuance of removable windshield placard. Each county may issue one distinguishing placard to each disabled person who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold at cost to the counties by the department of transportation. The county may charge a fee to cover its costs.

§291-54 Display of removable and temporary removable windshield placards. The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for disabled persons. When there is no rearview mirror, the placard shall be displayed on the dashboard.¹⁶

¹⁶ Sections 5, 6, 7, 9, and 11 respectively, Act 308 (1997)

PROGRAM TRANSFER TO THE DISABILITY AND COMMUNICATION ACCESS BOARD (2000 to present)

Act 282 (1999 Legislature)

Act 282 (1999) reflected a major organizational shift in the administration of accessibility programs in the State. When the Commission on Persons with Disabilities, the Hawaii State Coordinating Council on Deafness, and the Architectural Access Committee were established by statute in 1978, 1987, and 1989, respectively, the State of Hawaii and the nation as a whole were in the midst of establishing laws to provide civil rights protections for persons with disabilities. This was accomplished with the enactment of the Americans with Disabilities Act in 1990. With respect to individuals with disabilities, the climate of our nation had shifted from a need to create laws to one of compliance with the laws. The Legislature thereby saw the need for new and more efficient organizational structures and reorganized the above organizations to create the Disability and Communication Access Board (DCAB) via Act 282 (1999), effective July 1, 2000. Act 282 (1999) consolidated and streamlined the existing functions of the prior three entities. In addition, it added one major new function to the Board: the administration of the parking program for persons with disabilities, formerly managed by the HDOT.

§348F-3 Duties and functions of the board. The board shall perform the following duties and functions:

- (4) Administer the statewide program for parking for disabled persons, in accordance with part III of chapter 291.¹⁷

Sections of HRS 291, Part III that referenced the HDOT as the administering agency for the parking program were amended to reference DCAB and to state that the placards would be sold to the counties at a rate established by the Board rather than at cost.

§291-52 Issuance of removable windshield placard. Each county may issue one distinguishing placard to each disabled person who so requests and presents a certificate of disability. The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board. The county may charge a fee to cover its costs.

§29-56 Rules. The disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance, renewal, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost or stolen placards, and the design of the placard and special license plates, signage and marking of parking spaces, and penalties.¹⁸

¹⁷ Section 2, Act 282 (1999)

¹⁸ Sections 6 and 7 respectively, Act 282 (1999)

All records, files, and material related to the program were transferred under Act 282 (1999) from the HDOT to DCAB. No staff or monies were transferred, although the Act authorized such transfer.¹⁹

DCAB was created with an effective date of January 1, 2000, however, sections 6 and 7 that transferred the parking program were delayed until July 1, 2000 to allow time for the Hawaii Administrative Rules (HAR) governing the program to be amended through public hearing by the Board.

¹⁹ No monies were transferred because there was no separate appropriation for the program in the HDOT's budget. Where the HDOT formerly administered the parking program, specifically the distribution of removable and temporary removable windshield placards, through a cooperative effort with the counties, the Department maintained an inventory of necessary supplies and sold them to the counties as needed. In turn, the counties would assess end-users of placards a particular fee with the revenue available for the counties' own use. When DCAB absorbed this function, it also modified the program by installing a database system to better track end-users. The State paid for initial start-up costs of computer hardware and software for the different counties. The State additionally absorbed all material costs, such as informational brochures, applications, decals, and placards. In time, DCAB came to absorb some customer service functions, such as clarification of procedures, communication with physicians, and validation of information, which was previously handled by the counties.

Hawaii Administrative Rules, Title 11, Chapter 219 (2000)

Upon assuming the role of administering the parking program through Act 282 (1999), formerly the responsibility of the HDOT, DCAB was required to issue administrative rules. Thus, the first set of administrative rules promulgated under DCAB authority was finalized on December 15, 2000 and took effect on January 1, 2001 when the program was officially transferred from the HDOT to DCAB. The new rules were codified as HAR, Title 11, Chapter 219, "Parking for Persons with Disabilities." At the same time, HAR, Title 19, Chapter 150, the rules issued under the HDOT's authority, were repealed.

The major provisions of HAR, Title 11, Chapter 219 were to:

- Revise the rules to conform to the statutory changes to HRS 291, Part III, made by Act 308 (1997), Session Laws of Hawaii;
- Clarify the scope and language of the rules and to provide guidelines for signage requirements;
- Amend the rules to reflect the transfer and administration from the HDOT to the DCAB/Department of Health, pursuant to Act 282 (1999), Session Laws of Hawaii; and
- Make housekeeping amendments to the rules.

Dare v. State of California (1999) and Emerick v. City and County of Honolulu (1999)

In 1999, the practice of charging applicants any fee for a disability parking placard was overturned by a ruling of the U.S. Court of Appeals for the Ninth Circuit in Dare v. State of California.²⁰ This case involved a challenge under the ADA and its regulations against California's \$6 fee for a disability parking placard. The Court ruled that the California placard fee violated the ADA and its implementing regulations, which state that a public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids or program accessibility (or the issuance of a permit) that are required to provide that individual or group with the nondiscriminatory treatment required by the Act. The Court ruled that because the ADA requires the provision of designated and reserved accessible parking spaces, the placard is the only valid authorization to utilize such parking spaces. Requiring a person to pay a fee for such an authorization is a fee not imposed on people without disabilities for the equivalent service to park in nonaccessible parking spaces. Furthermore, the fee cannot be considered a partial payment of waived meter fees.

In Emerick v. City and County of Honolulu (1999),²¹ the U.S. District Court for Hawaii struck down the \$10 fee that the City and County of Honolulu (City) had been charging for a long term placard because the fee was an impermissible surcharge under the ADA. However, the lower court in Emerick indicated that the City could reinstate the fee if the fee were limited to the costs of processing the permits, i.e., an administrative fee. At the time, the City was enjoined from collecting fees until the cost of the permits was determined. The U.S. Court of Appeals for the Ninth Circuit in Dare essentially reversed the lower court's ruling that the City could recover the actual cost.

²⁰ Dare v. State of California, 191 F.3d 1167 (9th Cir. 1999)

²¹ Emerick v. City and County of Honolulu, 205 F.3d 1351 (9th Cir. 1999)

Act 297 (2001 Legislature)

Act 297 (2001) marked the first time that HRS 291, Part III was significantly amended since DCAB assumed the role of administering the program on July 1, 2000.

Several new definitions were added to HRS 291, Part III.

§291-51 Definitions.

“Issuing agency” means an agency authorized by a county to issue removable windshield placards, temporary removable windshield placards, special license plates, and identification cards pursuant to this part.

“Private entity” means a private owner or lessee of a parking facility or site where invitation to the general public is expressed or implied.

“Private parking” means a privately owned parking facility or site where invitation to the general public is expressed or implied.

“Public entity” means the State or any of its counties.

“Public parking” means a parking facility or site under state or county jurisdiction.²²

The Legislature also added a new penalty for entities that fail to comply with the requirement to provide parking for persons with disabilities. This fine was established as a civil penalty because there was no otherwise designated administrative remedy established in the statute.

§291-58 Requirement to provide parking for persons with disabilities: penalty.

Beginning July 1, 2002, any public or private entity that provides a parking space reserved for persons with disabilities shall comply with this part and any administrative rules adopted under this part. A private entity that fails to comply with this section shall be fined not less than \$250 nor more than \$500 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect any penalty provided for in this section shall be considered a civil action.²³

Sections 291-51.6 and 291-52 regarding the issuance of temporary removable parking placards and removable parking placards were reworded to more expressly outline the role and function of the counties to issue the placards, and the role of DCAB as the agency administering the program to design and fabricate the placard. In light of Dare v. State of California, the reference to charging a fee to recover the costs of the removable windshield placard was removed from the statute. (Note: Fees were still permissible for a temporary placard.)

§291-51.6 Temporary removable parking placards. Each county may issue one temporary removable windshield placard to each applicant who requests it and presents a certificate of disability that verifies the duration of the applicant’s disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. The temporary removable fee amount shall be established by the disability and communication access board. The temporary removable windshield placard shall expire at the end of the last month of the applicant’s disability.

²² Section 2, Act 297 (2001)

²³ Section 1, Act 297 (2001)

A second temporary removable windshield placard may be issued to each applicant with a disability who so requests and upon payment of a fee to the issuing agency. The second temporary removable windshield placard fee amount shall be established by the disability and communication access board. The second temporary removable windshield placard shall have the same date of expiration as the first temporary removable windshield placard issued to the applicant.

Upon expiration of a temporary removable windshield placard, a person with a disability may apply for a new temporary removable windshield placard upon return of the expired placard and presentation of a new certificate of disability. No applicant shall have more than two valid temporary removable windshield placards issued under this part at any time. The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52 Issuance of removable windshield placard. Each county may issue one removable windshield placard to each applicant who so requests and presents a certificate of disability that verifies that the applicant's disability is expected to last for at least four years. The removable windshield placard shall expire four years after the date of its issuance. A second removable windshield placard may be issued to each applicant who requests one. The second removable windshield placard shall have the same date of expiration as the first removable windshield placard issued to the applicant. A person with a disability may apply for a new removable windshield placard upon return of the expired placard and presentation of a new certificate of disability. No person with a disability shall have more than two removable windshield placards issued under this part at any time. The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.²⁴

Recognizing that there was no statutory authorization for the (1) issuance of an identification card or the (2) replacement of a placard or identification card that was lost, stolen, or mutilated, two new sections were added to the statute to clarify the issuance process.

§291-52.6 Replacement of a lost, stolen, or mutilated placard or identification card. A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost or mutilated may be replaced upon the submittal of a written statement by a person with a disability that the placard or identification card was either lost or mutilated and a completed application or a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. If a placard is lost, the county may charge a replacement fee to be paid to the issuing agency. A removable windshield placard, temporary removable windshield placard, or identification card that is reported stolen may be replaced upon police verification that the placard was stolen and submittal of a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. If a police verification is not obtained in the case of a stolen placard or identification card, the county may charge a replacement fee to be paid to the issuing agency. The replacement fee amount shall be established by the disability and communication access board.

§291-52.5 Issuance of identification card. Each issuing agency shall issue one identification card when it issues a removable windshield placard, temporary removable windshield placard, or special license plates to each person with a disability. The

²⁴ Sections 4 and 6, Act 297 (2001)

identification card shall have the same date of expiration as the removable windshield placard, temporary removable windshield placard, or special license plates issued to the person. The identification card shall not be issued with a second removable windshield placard or second temporary removable windshield placard. The identification card shall indicate the applicable serial number of the removable windshield placard or temporary removable windshield placard or the special license plates number. The identification card shall also indicate the applicable serial number of the second removable windshield placard or second temporary removable windshield placard if issued.²⁵

The Legislature also recognized that the statute was insufficient because it did not provide penalties for instances of fraudulent verification or certification of an applicant by a physician or fraudulent manufacture or alteration of a placard by an individual. Therefore, the Legislature amended the statute by adding new provisions to make both fraudulent activities illegal and to make the violators guilty of a petty misdemeanor. The latter was a more prevalent situation where individuals were either forging placards on a computer or altering the expiration date on an existing placard.

§291-51.4 Fraudulent verification of an applicant as a person with a disability; penalty. A physician who fraudulently verifies that an applicant is a person with a disability to enable the person to represent to the issuing agency that the person is qualified to obtain a removable windshield placard, temporary removable windshield placard, or special license plates shall be guilty of a petty misdemeanor. Each fraudulent verification shall constitute a separate offense.

§291-52.7 Fraudulent manufacture or alteration of placards and identification cards. Any person who fraudulently manufactures or alters a removable windshield placard, temporary removable windshield placard, or identification card for personal use, sale, or issuance to another person to circumvent the issuance requirements of this part, and any person who uses a fraudulently manufactured or altered placard or identification card to circumvent the issuance requirements of this part, shall be guilty of a petty misdemeanor. The fraudulent manufacture or alteration of each placard and of each identification card for personal use, sale, or issuance or is otherwise used in violation of this section shall constitute a separate offense.²⁶

The entirety of HRS 291, Part III was amended to reflect “people first” language, substituting the term “person with a disability” for “disabled person.” At the same time, the definition was expanded to include renal and oncological conditions to the list of impairments that might impact a person’s ability to walk two hundred feet without stopping to rest.

“Person with a disability” means a person with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

- (1) Cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, orthopedic, renal, or oncological condition;
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Is restricted by lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second, when measured by spirometry,

²⁵ Section 1, Act 297 (2001)

²⁶ Section 1, Act 297 (2001)

is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

- (4) Uses portable oxygen; or
- (5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.²⁷

The sections of HRS 291, Part III below were amended to reflect similar people first language.

- §291-51 Definitions, "parking space reserved for persons with disabilities" and "sign designating the parking space as reserved for persons with disabilities."
- §291-51.5 Special license plates
- §291-51.7 Reciprocity
- §291-51.53 Nontransferability
- §291-54 Display of removable and temporary removable windshield placards
- §291-55 Parking privileges
- §291-57 Parking spaces reserved for persons with disabilities; penalties²⁸

Community frustration about the continued abuse of accessible parking spaces led to an increased range of fines that could be imposed for parking in a parking space reserved for persons with disabilities without displaying a valid permit or failing to present an identification card; from \$150-\$300 up to \$250-\$500.

§291-57 Parking spaces reserved for persons with disabilities; penalties. (a) A person using a parking space reserved for persons with disabilities without properly displaying a removable windshield placard, a temporary removable windshield placard, or special license plates, in accordance with this part or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500.

(b) Any person who uses a parking space reserved for persons with disabilities and refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500.²⁹

The statute was simultaneously amended to establish a penalty of \$250-\$500 when a permit is used by a person other than the authorized permittee and to provide for the confiscation of a permit used by an unauthorized person.

§291-53 Nontransferability; penalty. The removable windshield placard, temporary removable windshield placard, or special license plates shall not be used by anyone other than the person with a disability to whom it is issued unless it is being used in connection with the transport of the person with a disability. An unauthorized person using the removable windshield placard, temporary removable windshield placard, or special license plates to obtain the special parking privileges authorized under this part or otherwise afforded by the State or counties, shall be guilty of a traffic infraction under chapter 291D and fined not less than \$250 nor more than \$500. A removable windshield placard, temporary

²⁷ Section 2, Act 297 (2001)

²⁸ Sections 2, 3, 5, 7, 8, 9, and 11, Act 297 (2001)

²⁹ Section 11, Act 297 (2001)

removable windshield placard, or special license plates may be confiscated by a law enforcement officer or commissioned volunteer enforcement officer of the county law enforcement agency for any unauthorized use.³⁰

Given all of the changes in Act 297 (2001), the statute was amended to direct DCAB to include procedures for the replacement of placards and identification cards in the administrative rules.

§291-56 Rules. The disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for the issuance, renewal, confiscation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates, reciprocity, the replacement of lost, stolen, or mutilated placards and identification cards, the design of the placard and special license plates, signage and marking of parking spaces, and penalties.³¹

³⁰ Section 7, Act 297 (2001)

³¹ Section 10, Act 297 (2001)

Hawaii Administrative Rules, Title 11, Chapter 219 (2001)

The purpose of the 2001 amendments to HAR, Title 11, Chapter 219 was to conform the rules to the many changes to HRS 291, Part III made under Act 297 (2001). Below is a summary of the changes.

- Added or amended the definitions of issuing agency, private entity, private parking, public entity, public parking, parking space reserved for disabled persons. Added renal and oncological conditions to the definition of disabled person for the purpose of qualifying for a permit. Clarified terminology from permanent disability to disability expected to last for at least four years (HAR §11-219-4).
- Amended the procedures for processing an application to ensure that the certification is valid for up to 60 days prior to submitting the application, removed the requirement to apply on the island of residency; added military identification as an acceptable form of identification; and clarified the process for not applying in person (HAR §11-219-5).
- Amended the sections on the issuance of permits and identification cards, the replacement of permits (placards), the renewal of placards to state what is required on the placards and identification cards, the duration of placards, and expiration dates, and to provide for fees for temporary placards and replacement placards (HAR §§11-219-6, 11-219-6.1, and 11-219-7).
- Authorized the renewal by mail requirement within 60 days prior to the expiration of the placard and changing the renewal application process from in-person to by mail (HAR §11-219-7.1).
- Provided for the confiscation of the permit by law enforcement officers (HAR §11-219-11).
- Added penalties consistent with the statute for fraudulent physician verification, fraudulent manufacture or alteration of placards and identification cards, and raised the penalties consistent with the statute for unauthorized use of a placard, proper display of the permit, and failure to present an identification card (HAR §11-219-12).
- Clarified signage requirements and exhibits (HAR §11-219-14).

Act 16 (2002 Legislature)

Act 16 (2002) was an omnibus housekeeping measure that made multiple changes for the purpose of correcting errors in multiple statutes. Act 16 (2002) made minor, non-substantive corrections to punctuation in HRS §291-51.

Hawaii Administrative Rules, Title 11, Chapter 219 (2003)

DCAB amended HAR, Title 11, Chapter 219 on January 23, 2003, primarily to remove the requirement to prove Hawaii residence in order to obtain a parking permit. The specific changes in the rules were as follows:

- Removed the definition of “legal resident of the State of Hawaii” (HAR §11-219-4) and removed the requirement to provide proof of Hawaii residence in the processing of applications (HAR §11-219-5).

Changes were also made to broaden the definition of those persons able to verify a person’s disability status as follows:

- Amended the definition of “licensed practicing physician” by adding “doctor of naturopathy” as a physician duly licensed and authorized to practice in the State of Hawaii for the purpose of verifying an applicant’s medical eligibility to obtain a parking permit (HAR §11-219-4).

The amendments also clarified the requirements to comply with specific parking space design requirements under State law and to note that religious entities are not subject to the design requirements. The specific changes are as follows:

- Amended the definitions of “private entity,” “private parking,” and “religious entity” to exclude a private entity that is also a religious entity or one that is covered by the Fair Housing Act (HAR §11-219-4).
- Amended the definition of “sign designating the parking space as reserved for persons with disabilities” (HAR §11-219-4) and the requirements for signage and marking of parking spaces, including pictorial exhibits (HAR §11-219-14).

Act 30 (2003 Legislature)

Having assumed the responsibility of the parking program in 2000 from the HDOT, DCAB undertook a comprehensive review of the statute under its jurisdiction and proposed a significant number of changes in 2003.

Although Act 308 (1997) provided for monetary penalties for the illegal use of accessible parking spaces, the statute did not expressly authorize law enforcement or other individuals commissioned as volunteers to issue citations for violations on private property. Thus, a new section was added to the statute.

§291-59 Enforcement. Notwithstanding any law to the contrary, and in addition to any other authority provided by law that is not inconsistent with the purposes of this part:

- (1) A law enforcement officer may access the property of a private entity to enforce the provisions of this part; and
- (2) A commissioned volunteer enforcement officer may access the property of a private entity during normal business hours of the entity to enforce the provisions of this part;

provided that the private entity's parking lot contains a parking space reserved for persons with disabilities.³²

In addition, HRS §291-55 was clarified to reflect that the exemption from payment of fees was only for metered parking spaces.

§291-55 Metered parking privileges. Any vehicle displaying special license plates, a removable windshield placard, or a temporary removable windshield placard issued under this part shall be permitted to park, without payment of metered parking fees, in any metered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.³³

Up to this time, the statute only provided a penalty for instances where a person parked in a space reserved for persons with disabilities without displaying a permit. The statute did not provide a penalty for people who used an invalid permit, used a permit belonging to another person, or parked in an access aisle (with or without a permit). The last scenario was particularly prevalent as people were consistently parking in an access aisle and thereby blocking ingress and egress by a person parked in the adjacent parking space.

In addition, the Legislature was informed of situations where individuals would seek dismissal of a fine at traffic court by presenting a placard and claiming they simply forgot to display their own placard or the placard of the person they transported. Therefore, the statute was changed to make it clear that even if the fine was waived by the court, an administrative fee of \$25-\$100 would be assessed to correct the behavior of forgetting to display one's placard or using another person's placard after being cited to get the fine waived.

³² Section 1, Act 30 (2003)

³³ Section 8, Act 30 (2003)

- §291-57 Parking spaces reserved for persons with disabilities; penalties. (a) Any person who uses a parking space reserved for persons with disabilities who:
- (1) Fails to properly display a removable windshield placard, a temporary removable windshield placard, or special license plates;
 - (2) Displays an invalid removable windshield placard, an invalid temporary removable windshield placard, or invalid special license plates;
 - (3) Uses a removable windshield placard, a temporary removable windshield placard, or special license plate that was not issued to that person or to any passengers occupying the vehicle in the parking space; or
 - (4) With or without a removable windshield placard, a temporary removable windshield placard, or special license plates:
 - (A) Parks in an access aisle; or
 - (B) Obstructs the ingress or egress to a parking space reserved for a person with a disability;

shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500 and pay any costs incurred by the court related to accessing the fine; provided that a person with a disability who has been issued a valid placard or special license plate that is currently in effect, and who has failed to display the placard or license plate while parking in a space reserved for persons with disabilities, shall pay a fine of not less than \$25 nor more than \$100 and any costs incurred by the court related to assessing the fine.

(b) Any person who uses a parking space reserved for persons with disabilities and refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500.³⁴

The definitions of several terms were also amended. Because HRS §291-57 was clarified to make parking in the access aisle illegal, it was also necessary to add a new definition of “access aisle” and to amend the definition of “parking space reserved for persons with disabilities.”

§291-51 Definitions.

“Access aisle” means the area that is adjacent to a parking space reserved for a person with a disability and that is to be used exclusively by that person for the purpose of entering and exiting a vehicle.”

“Parking space reserved for persons with disabilities” means a public or private parking space, including the access aisle, designated for the use of a person with a disability that is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines, and is marked with a sign designating the parking space as reserved for persons with disabilities.³⁵

Individuals testified at the Legislature to expand the definition of a person who is eligible to receive a placard. After much discussion, “vascular condition” was added to the list of qualifying conditions.

§291-51 Definitions.

“Person with a disability” means a person with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

³⁴ Section 10, Act 30 (2003)

³⁵ Section 2, Act 30 (2003)

- (1) Cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, orthopedic, renal, vascular, or oncological condition;
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (4) Uses portable oxygen; or
- (5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.³⁶

Law enforcement had also encountered situations where an individual refused a citation. Thus, the law was amended to allow for citations to be mailed to violators.

§291-57 Parking spaces reserved for persons with disabilities; penalties.

(c) Any citation issued under this chapter may be mailed to the violator pursuant to section 291C-165(b).

§291C-165

(b) In every case when a citation is issued, the original of the citation shall be given to the violator; provided that:

- (1) In the case of an unattended vehicle, the original of the citation shall be affixed to the vehicle as provided for in section 291C-167; or
- (2) In the case of:
 - (A) A vehicle utilizing the high occupancy vehicle lane illegally; or
 - (B) A vehicle illegally utilizing a parking space reserved for persons with disabilities, where the violator refused the citation;

the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, as provided in section 291C-223 for vehicles illegally utilizing the high occupancy vehicle lane, or within seventy-two hours of the time of the incident for vehicles illegally utilizing a parking space reserved for persons with disabilities, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the applicable forty-eight or seventy-two hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday; provided that the administrative judge of the district courts may allow a carbon copy of the citation to be given to the violator or affixed to the vehicle and provide for the disposition of the original and any other copies of the citation.³⁷

The statute was also changed to make the fraudulent manufacture or alteration of a placard or identification card a misdemeanor, replacing the lesser penalty of petty misdemeanor.

§291-52.7 Fraudulent manufacture or alteration of placards and identification cards.

Any person who fraudulently manufactures or alters a removable windshield placard, temporary removable windshield placard, or identification card for personal use, sale, or issuance to another person to circumvent the issuance requirements of this part, or any

³⁶ Section 1, Act 30 (2003)

³⁷ Sections 10 and 11, respectively, Act 30 (2003)

person who uses a fraudulently manufactured or altered placard or identification card to circumvent the issuance requirements of this part, shall be guilty of a misdemeanor. The fraudulent manufacture or alteration of each placard and of each identification card for personal use, sale, or issuance or is otherwise used in violation of this section shall constitute a separate offense.³⁸

In an effort to streamline the statute, §§291-51.6, 291-52, 291-52.5, 291-52.6 relating to the issuance and replacement of placards and identification cards were amended to remove administrative details that were deemed more appropriate for administrative rules.

§291-51.6 Issuance of temporary removable windshield parking placards. Each county may issue one temporary removable windshield placard and a second temporary removable windshield placard to each applicant who requests and presents a certificate of disability that verifies the duration of the applicant's disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52 Issuance of removable windshield placard. Each county may issue one removable windshield placard and a second removable windshield placard to each applicant who so requests and presents a certificate of disability that verifies that the applicant's disability is expected to last for at least four years. The removable windshield placard shall expire four years after the date of its issuance. The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52.5 Issuance of identification card. Each issuing agency shall issue one identification card at the same time it issues a removable windshield placard, temporary removable windshield placard, or special license plates to a person with a disability.

§291-52.6 Replacement of a lost, stolen, or mutilated placard or identification card. A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost, stolen, or mutilated may be replaced upon the submittal of a written statement by a person with a disability that the placard or identification card was either lost, stolen, or mutilated and a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency.³⁹

The definitions of "removable windshield placard" and "temporary removable windshield placard" were also amended to remove administrative details that were deemed more appropriate for administrative rules.

§291-51 Definitions.

"Removable windshield placard" means a two-sided, hanger-style placard issued under this part to a person with a disability who presents a certificate that verifies that the applicant's disability is expected to last for at least four years.

³⁸ Section 7, Act 30 (2003)

³⁹ Sections 3, 4, 5, and 6, respectively, Act 30 (2003)

“Temporary removable windshield placard” means a two-sided, hanger style placard issued under this part to a person with a disability who presents a certificate of disability that verifies the person’s disability in monthly increments, which shall not exceed six months.⁴⁰

With the streamlining of wording in the statute to remove administrative details, the portion of the statute that enabled DCAB to adopt rules was simultaneously amended to strengthen DCAB’s rulemaking responsibilities.

§291-56 Rules. The disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for:

- (1) The issuance, renewal, confiscation, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates;
- (2) Decertification, reciprocity, and the replacement of placards and identification cards;
- (3) The design of the placard, identification card, and special license plates;
- (4) The establishment of fees for placards;
- (5) Signage and marking of parking spaces; and
- (6) Penalties.⁴¹

⁴⁰ Section 1, Act 30 (2003)

⁴¹ Section 9, Act 30 (2003)

Hawaii Administrative Rules, Title 11, Chapter 219 (2004)

DCAB amended HAR, Title 11, Chapter 219 on July 26, 2004 to conform to Act 30, Session Laws of Hawaii. The specific changes were as follows:

- Amended the definition of “licensed practicing physician” by adding doctor of podiatry; amended the definition of “parking space reserved for persons with disabilities” to include the access aisle; and amended the definition of “person with a disability” to include those with vascular condition (HAR §11-219-4).
- Set the cost and process for the replacement of placards at \$10 (HAR §11-219-7).
- Repealed the section related to parking privileges and penalties that are duplicative of the statute, eliminating the need to amend the rules to conform to any future statutory changes on parking privileges and penalties, because these provisions are unrelated to the issuance of the permits (HAR §§11-219-1 and 11-219-12).

Act 269 (2006 Legislature)

Act 269 (2006) reflected a shift in the manner in which the State partnered with the counties to issue the permits and the manner in which the counties were reimbursed. The parking permit for persons with disabilities is a State permit per federal law. Because the State of Hawaii does not have a department of motor vehicles, which is common in virtually all other states, the function of issuing placards rested with the counties (that have similar functions of issuing driver's licenses and other motor vehicle permits).

Prior to Dare v. State of California, the counties were able to charge a fee and retain the revenue. However, as noted earlier, the U.S. Court of Appeals for the Ninth Circuit ruled that assessing a fee to disabled individuals for parking placards was an impermissible surcharge as it relates to individuals with four year placards and therefore in violation of the ADA. This did not apply to individuals needing temporary placards, and therefore the counties could still charge a fee.

The loss of a revenue stream in terms of fees to pay for the program was replaced by an appropriation to DCAB, which then paid the counties through separate memorandums of agreement (MOA).⁴² As a result of the concerns from the counties, the mechanism for reimbursing the counties was changed from a flat rate, regardless of volume, to a per unit cost. It was determined that an appropriate rate was \$12 per placard issued. This rate was reaffirmed in the statute:

§291-51.3 Reimbursement to counties. The State shall reimburse the counties for the unit cost of issuing a removable windshield placard or a temporary removable windshield placard on behalf of the State. Beginning July 1, 2006, the rate of the per unit cost reimbursement shall be \$12.⁴³

The Legislature augmented the DCAB budget by \$51,900 to cover the cost increase due to the \$12 rate.⁴⁴

At the same time, the State Auditor was directed to conduct an analysis of the cost to the State of reimbursing the counties for issuing removable and temporary windshield placards as provided in Act 269 (2006).⁴⁵

⁴² In FY 2000-01, \$176,000 was appropriated to administer the parking program for persons with disabilities, specifically as it relates to issuing removable windshield placards. Then for FY 2001-02 and 2002-03, no appropriations were made. The year following, in FY 2003-04, an appropriation of \$210,600 was made, but only 50 percent was released immediately, as moneys were directed towards cost savings for the State. Eventually, the remaining 50 percent was released at fiscal year end. This led to the passage of Act 269, Session Laws of Hawaii (2006), which required the State to reimburse the counties at a rate of \$12 per placard.

⁴³ Section 1, Act 269 (2006)

⁴⁴ Section 7, Act 269 (2006)

⁴⁵ Section 6, Act 269 (2006). The Auditor reported its findings to the 2007 Legislature and found that the \$12 fee was a fair reimbursement at that time.

At the same time that the Legislature “tightened the language” outlining the relationship between the State and the counties, it required the State to reimburse the counties and amended the statute to make it mandatory, rather than permissive, for the counties to issue the placards. It also required DCAB to adopt rules, changing relevant portions of the statute from “may” to “shall”; thus, making clear that the entire arrangement between the State (DCAB) and the counties was mandatory.

§291-51.6 Issuance of temporary removable windshield parking placards. Each county shall issue one temporary removable windshield placard and a second temporary removable windshield placard to each applicant who requests and presents a certificate of disability that verifies the duration of the applicant’s disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52 Issuance of removable windshield placard. Each county shall issue one removable windshield placard and a second removable windshield placard to each applicant who so requests and presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least four years. The removable windshield placard shall expire four years after the date of its issuance. The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52.6 Replacement of a lost, stolen, or mutilated placard or identification card. A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost, stolen, or mutilated shall be replaced upon the submittal of a written statement by a person with a disability that the placard or identification card was either lost, stolen, or mutilated and a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency.

§291-56 Rules. The disability and communication access board shall adopt rules under chapter 91 to carry out the purposes of this part, including rules for:

- (1) The issuance, renewal, confiscation, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates;
- (2) Decertification, reciprocity, and the replacement of placards and identification cards;
- (3) The design of the placard, identification card, and special license plates;
- (4) The establishment of fees for placards;
- (5) Signage and marking of parking spaces; and
- (6) Penalties.⁴⁶

⁴⁶ Sections 2, 3, 4, and 5, Act 269 (2006)

Hawaii Administrative Rules, Title 11, Chapter 219 (2006)

DCAB amended HAR, Title 11, Chapter 219 on August 19, 2006 as follows:

- Increased the issuance fee for temporary placards and replacement placards from \$10 to \$12 (HAR §§11-219-6 and 11-219-7).
- Required mailing a renewal notification to a permittee before the expiration of the parking permit (HAR §11-219-7.5).
- Added a provision to specify the placement of the “No Parking — Access Aisle” sign for van accessible parking spaces (HAR §11-219-14).

Act 77 (2007 Legislature)

The purpose of Act 77 (2007) was to clarify that fees collected by the counties were to be deposited into the State General Fund.

§291-51.3 Reimbursement to counties. The State shall reimburse the counties for the unit cost of issuing a removable windshield placard or a temporary removable windshield placard on behalf of the State. Beginning July 1, 2006, the rate of the per unit cost reimbursement shall be \$12. All fees collected by the counties for issuing the removable and temporary removable windshield placards shall be deposited into the state general fund.

§291-51.6 Issuance of temporary removable windshield placards. Each county shall issue one temporary removable windshield placard and a second temporary removable windshield placard to each applicant who requests and presents a certificate of disability that verifies the duration of the applicant's disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. All fees collected by the counties for issuing temporary removable windshield placards shall be deposited into the state general fund. The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.

§291-52.6 Replacement of a lost, stolen, or mutilated removable windshield placard or identification card. A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost, stolen, or mutilated shall be replaced upon:

- (1) Submittal to the issuing agency of:
 - (A) A written statement by a person with a disability that the placard or identification card was either lost, stolen, or mutilated; and
 - (B) A completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency;
and
- (2) Payment of a fee to the issuing agency.

All fees collected by the counties for replacement of a lost, stolen, or mutilated removable windshield placard shall be deposited into the state general fund.⁴⁷

⁴⁷ Sections 1, 2, and 3, Act 77 (2007)

Act 141 (2010 Legislature)

The purpose of Act 141 (2010) was again to clarify the relationship between DCAB and the counties. The law was amended to clearly state that DCAB acting as the State, not the counties, was the issuing agency for the program. This action made clear that even though the counties handle the walk-in applications, a delegated task, the permit is a State permit issued by the State (DCAB).

§291-51 Definitions.

“Issuing agency” means the disability and communication access board.⁴⁸

All the relevant sections of the statute referencing the counties were simultaneously changed from “county” to “issuing agency,” meaning DCAB.

§291-51.5 Special license plates. Upon application by a person with a disability the issuing agency shall issue special license plates for the vehicle registered in the applicant’s name if the vehicle is primarily used to transport that person. The fee for the issuance of special license plates shall not exceed the fee charged for similar license plates for the same class vehicle.

§291-51.6 Issuance of temporary removable windshield placards.. The issuing agency shall issue one temporary removable windshield placard to each applicant who requests and presents a certificate of disability that verifies the duration of the applicant’s disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. Upon request of an applicant who was previously issued one temporary removable windshield placard, a second temporary removable windshield placard shall be issued to that applicant upon verification of the applicant’s disability.

§291-52 Issuance of removable windshield placard. The issuing agency shall issue one removable windshield placard to each applicant who presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least six years. The removable windshield placard shall expire six years after the date of its issuance.

§291-52.5 Issuance of identification card. The issuing agency shall issue one identification card at the same time it issues a removable windshield placard, temporary removable windshield placard, or special license plates to a person with a disability.⁴⁹

The change in reference to DCAB as the issuing agency was paralleled with other administrative changes. The first change was to lengthen the validity of the long term removable windshield placard from four to six years.

§291-51 Definitions.

“Removable windshield placard” means a two-sided, hanger-style placard issued under this part to a person with a disability who presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least six years.⁵⁰

⁴⁸ Section 1, Act 141 (2010)

⁴⁹ Sections 3, 4, 5, and 6, Act 141 (2010)

⁵⁰ Section 1, Act 141 (2010)

The second change was that individuals were only permitted to have one removable windshield placard instead of two.⁵¹

The third change was that DCAB decided to handle renewals of long term removable windshield placards in-house, rather than through the counties. This change was made through the administrative rules, but it impacted the decision to extend the life of the placard from four to six years.

Act 141 (2010) also changed the reference to how the counties were reimbursed. The designation of a \$12 per placard reimbursement was deemed to be better determined in administrative rules. Hence, the \$12 reference was removed from the statute.

§291-51.3 Reimbursement to counties; agreement with counties to provide permits. The State shall reimburse the counties for the unit cost of providing a removable windshield placard or a temporary removable windshield placard on behalf of the State. The reimbursement rate paid to the counties for providing removable windshield placards, temporary removable windshield placards, special license plates, and identification cards shall be established pursuant to section 291-56; provided that a county may retain any fees charged for a transaction.⁵²

References to the removable windshield placard and temporary removable windshield placard being fabricated and sold to the counties at cost were removed from the statute, because the placards were given without charge to the counties, and DCAB absorbed the cost in its budget.

References to fees collected by the counties being deposited in the State General Fund were also removed, because it made little sense (and created more unnecessary administrative paperwork) to collect the \$12 fee from the county that it charged the applicant for a temporary or replacement placard, and simultaneously reimburse the county \$12 for issuing the placard. Thus, the counties were allowed to keep the monies collected from applicants and were only reimbursed for issuing placards for which no fee was collected. Reimbursement rates and fees were thus now established in the rules, rather than in statute.

All the above changes were elaborated upon in the DCAB administrative rules.

§291-56 Rules. The disability and communication access board shall adopt rules under chapter 91 to carry out the purposes of this part, including rules for:

- (1) The issuance, renewal, confiscation, revocation, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates;
- (2) Decertification, reciprocity, and the replacement of placards and identification cards;
- (3) The design of the placard, identification card, and special license plates;
- (4) The establishment of transaction fees for placards;

⁵¹ Section 1, Act 141 (2010)

⁵² Section 1, Act 141 (2010)

- (5) Signage and marking of parking spaces;
- (6) Reimbursement rates to the counties; and
- (7) Penalties.⁵³

⁵³ Section 8, Act 141 (2010)

Act 183 (2011 Legislature)

Act 183 (2011) made a minor change to HRS §291-54 regarding the display of placards following the citation of a driver whose placard was not hung from the mirror, but instead placed on the dashboard.

§291-54 Display of removable and temporary removable windshield placards. The placard shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle when the placard is in use. If the design of the rearview mirror precludes hanging the placard in a secure manner, the placard shall be displayed on the dashboard.⁵⁴

⁵⁴ Section 1, Act 183 (2011)

Hawaii Administrative Rules, Title 11, Chapter 219 (2012)

DCAB amended HAR, Title 11, Chapter 219 on July 2, 2012 to conform to the amendments to the statute made by Acts 141 (2010) and 183 (2011), Session Laws of Hawaii. The amendments changed the references to “issuing agency” from the counties to DCAB, recognizing that the issuing agency must be a State agency. It further provided language for DCAB to enter into MOAs with the counties to issue various permits, changed all references to the validity of a removable windshield placard from four to six years, changed all references for the issuance of a removable windshield placard from two placards to one placard, and clarified language relating to the display of a placard on a vehicle. The specific changes were as follows:

- Added definitions for “parking meter,” “parking space,” “parking meter zone,” “person with a disability parking application,” “transaction fee;” amended the definitions of “certificate of disability” and “enforcement officer;” and removed the definitions of “religious entity,” “private parking,” and “public parking” because they were no longer used in the rules (HAR §11-219-4).
- Allowed DCAB to enter into MOAs with the counties to issue permits on behalf of the State, allowed the counties to retain fees collected, and set the reimbursement rate at \$12 per placard (HAR §11-219-4.5).
- Explained the content of the application form, provided reasons for rejecting an application, and established proof of identification required when completing the application (HAR §11-219-5).
- Clarified the issuance process for permits and identification cards (HAR §§11-219-6 and 11-219-6.5).
- Clarified the issuance process and fees for replacement permits and identification cards (HAR §§11-219-7 and 11-219-7.5).
- Clarified the requirements for the return of expired permits (HAR §11-219-8).
- Clarified the display of a placard if it cannot be hung from the rearview mirror (HAR §11-219-10).
- Created a new section to conform to the statute regarding the two and a half hours of free parking in metered parking spaces (HAR §11-219-10.5).
- Provided more details for the signage and marking of accessible parking spaces and access aisles to comply with the ADAAG; added signage requirements for van-accessible parking spaces; removed the requirement for signage in reserved, residential parking spaces; and provided for signage at parallel parking spaces (HAR §11-219-14).

Act 45 (2014 Legislature)

Act 45 (2014) was an omnibus bill relating to advanced practice registered nurses (APRN). It amended numerous sections of the HRS, giving APRNs the legal authority to undertake many actions, including prescriptive authority and signing on medical forms, heretofore not possible. Among the new authorizations was the ability to sign certificates of disability for the purpose of qualifying a person for a disabled person parking permit.

§291-51 Definitions.

“Certificate of disability” means a medical statement issued by a licensed practicing physician or advanced practice registered nurse which verifies that a person is disabled, limited, or impaired in the ability to walk.

§291-51.4 Fraudulent verification of an applicant as a person with a disability; penalty. A physician or advanced practice registered nurse who fraudulently verifies that an applicant is a person with a disability to enable the person to represent to the issuing agency that the person is qualified to obtain a removable windshield placard, temporary removable windshield placard, or special license plates shall be guilty of a petty misdemeanor. Each fraudulent verification shall constitute a separate offense.⁵⁵

⁵⁵ Sections 5 and 6, Act 45 (2011)

Hawaii Administrative Rules, Title 11, Chapter 219 (2015)

DCAB amended HAR, Title 11, Chapter 219 on September 25, 2015 to conform to Act 45 (2014), Session Laws of Hawaii, as it related to the expanded authority of APRNs to certify qualified persons with disabilities on the parking application form. Specific changes were as follows:

- Added a new definition of “advanced practice registered nurse” and amended the definitions of “certificate of disability,” “person with a disability parking application,” and “special license plates” (HAR §11-219-4).
- Amended the sections relating to the issuance of the permits to reflect APRNs in addition to physicians (HAR §§11-219-5 and 11-219-6).

Act 87 (2019 Legislature)

The Legislature enacted significant amendments to the parking statute in 2019 with legislation introduced by the Disability and Communication Access Board.

The most significant amendment reflected a major policy change to the provision of an exemption from payment of parking meter fees. Before the amendment, the statute provided that a vehicle displaying a disabled person parking permit could be parked at a meter without payment for two and a half hours or the maximum time the meter allows, whichever is longer. When the law was passed, the Legislature noted that meters were often inaccessible to certain persons with physical disabilities. Notwithstanding, the Legislature provided the meter fee exemption privilege for all permit holders, not only for those who could not feed meters because they were inaccessible. However, the passage of two decades resulted in a larger number of permit holders and noted abuse of the permit by those whose motivation for having a permit was to obtain free parking (meter fee exemption) rather than the use of accessible parking spaces. The Legislature noted that the exemption from payment of meter fees was not intended as a benefit for persons with mobility impairments; but rather for those who drove themselves and who were unable to reach or operate a parking meter because of a physical disability. As a result, the Legislature followed the growing trend of other jurisdictions by narrowing the exemption so that it applies only to those disabled persons with a placard who drive and are unable to reach or operate a parking meter due to a physical disability. The law was further amended to state that the exemption also applies to areas where parking fee payment is made via an unattended pay station.

§291-55 Parking fees. (a) All parking fees not specifically exempted under this section shall remain in effect. (b) A driver who is issued a disabled paid parking exemption permit pursuant to section 291-A shall be permitted to park a vehicle in any parking area where payment is required, via a parking meter or unattended pay station, without payment of parking fees for the first two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer.⁵⁶

Recognizing that this change in the law would require time to implement and to educate permit holders of the changes, the Legislature provided that this amended exemption provision would take effect in two years on July 1, 2021 while the other provisions would become effective upon approval.

In addition to amending the fee exemption, a new definition was added to create another permit, again using the model employed in several other states, to identify those individuals who were unable to feed the meter while simultaneously authorizing DCAB as the administering agency, to issue such a permit.

"Disabled paid parking exemption permit" means a permit to be displayed on a dashboard or contained elsewhere on the vehicle, a code, or a two-sided, hanger style placard that

⁵⁶ Section 11, Act 87 (2019); The "A" designation is a placeholder for a future number; complete statutory reference will be added by Legislative Reference Bureau, anticipated October 2019.

indicates that the individual to whom the permit, code, or placard is issued pursuant to this part is licensed to drive a motor vehicle and not able to reach or operate a parking meter or unattended pay station because of a physical disability.

§291-A Issuance of a disabled paid parking exemption permit. The issuing agency shall issue one disabled paid parking exemption permit to each applicant who presents a certificate of disability that verifies that the applicant is licensed to drive a motor vehicle and that the applicant cannot reach or operate parking meters or unattended pay stations because of the applicant's physical disability. The disabled paid parking exemption permit shall have the same expiration as the removable windshield placard, temporary removable windshield placard, or special license plates issued to the applicant.⁵⁷

The specifics of the implementation were left to DCAB through the rulemaking process.

Several changes were made to strengthen the enforcement of the program. One change was to make the act of selling or purchasing a disability parking permit a misdemeanor. Up to now, only the illegal use of the permit was considered a fineable offense.

§291-B Sale or purchase. Only a state or county issuing agency may offer for sale a disability parking permit and no person may purchase a disability parking permit except from a state or county issuing agency. Any person who sells or purchases a disability parking permit in violation of this section shall be guilty of a misdemeanor. The sale or purchase of each disability parking permit in violation of this section shall constitute a separate offense.⁵⁸

The Legislature found that while HRS 291, Part III provides for the imposition of fines for the use of disability parking permits that were fraudulently manufactured or altered, used by unauthorized persons, or rendered invalid, it did not expressly authorize law enforcement to confiscate such invalid permits. Therefore, another change was made to strengthen enforcement to expressly authorize law enforcement officers to confiscate disability parking permits that are invalid or that have been fraudulently manufactured or altered in addition to assessing a penalty. Up to now, the authority to confiscate a permit was not clearly stated in the statute.

§291-C Confiscation. A disability parking permit may be confiscated by a law enforcement officer or a commissioned volunteer enforcement officer of a county law enforcement agency for:

- (1) Fraudulent manufacture or alteration pursuant to section 291-52.7;
- (2) Any unauthorized use pursuant to section 291-53;
- (3) Display of an invalid disability parking permit; or
- (4) Selling or purchasing a disability parking permit pursuant to section 291-B.

⁵⁷ Section 2, Act 87 (2019); The "A" designation is a placeholder for a future number; complete statutory reference to be added by Legislative Reference Bureau, anticipated October 2019.

⁵⁸ Section 2; Act 87 (2019); The "B" designation is a placeholder for a future number; complete statutory reference to be added by Legislative Reference Bureau, anticipated October 2019.

For the purposes of this section, "commissioned volunteer enforcement officer" means a civilian volunteer commissioned by a county chief of police to act as an enforcement officer for limited purposes as determined by the county chief of police.⁵⁹

To strengthen the confiscation provision, the statute was amended to add a definition of "invalid disability parking permit" to clarify which placards could be confiscated.

"Invalid disability parking permit" means an expired or voided removable windshield placard, temporary removable windshield placard, special license plates, or disabled paid parking exemption permit.⁶⁰

The Act clarified the definition of a person with a disability that qualifies for a permit without making any changes to eligibility. The rewording of the statute more clearly stated that a person must not only have a condition that limits mobility, but that the condition must also functionally limit the person's ability to walk two hundred feet without stopping to rest.

"Person with a disability" means a person with a disability that limits or impairs the ability to walk, and who, as determined by a licensed practicing physician or an advanced practice registered nurse:

- (1) Cannot walk two hundred feet without stopping to rest and who has been diagnosed with:
 - (A) An arthritic, neurological, orthopedic, renal, vascular, or oncological condition;
 - (B) Lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or
 - (C) A cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association; and
- (2) Because of a condition identified in paragraph (1):
 - (A) Cannot walk two hundred feet under the person's own power without stopping to rest; or
 - (B) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or
 - (C) Uses portable oxygen.⁶¹

The Act created a new term, "disability parking permit", to encompass all types of permits and eliminate the repetition of lengthy word strings throughout the statute.

"Disability parking permit" means a removable windshield placard, special license plate, temporary removable windshield placard, or disabled paid parking exemption permit.⁶²

⁵⁹ Section 2, Act 87 (2019); The "C" and "B" designation is a placeholder for a future number; complete statutory reference to be added by Legislative Reference Bureau, anticipated October 2019.

⁶⁰ Section 3, Act 87 (2019)

⁶¹ Section 3, Act 87 (2019)

⁶² Section 3, Act 87 (2019)

As a result of simplifying redundant wording, the following sections of the statute were amended to incorporate the reference to the new term “disability parking permit”, as appropriate:

- Section 291-51.4 Fraudulent verification of an applicant as a person with a disability; penalty.⁶³
- Section 291-51.7 Reciprocity.⁶⁴
- Section 291-52.5 Issuance of identification card.⁶⁵
- Section 291-52.6 Replacement of a removable windshield placard, disabled paid parking exemption permit, or identification card.⁶⁶
- Section 291-52.7 Fraudulent manufacture or alteration, sale, issuance, or use of disability parking permits and identification cards.⁶⁷
- Section 291-53 Nontransferability; penalty.⁶⁸
- Section 291-54 Display of removable windshield placard; temporary removable windshield placards; and disabled paid parking exemption permit.⁶⁹
- Section 291-56 Rules.⁷⁰
- Section 291-57 Parking space reserved for persons with disabilities; penalties.⁷¹

⁶³ Section 4, Act 87 (2019)

⁶⁴ Section 5, Act 87 (2019)

⁶⁵ Section 6, Act 87 (2019)

⁶⁶ Section 7, Act 87 (2019)

⁶⁷ Section 8, Act 87 (2019)

⁶⁸ Section 9, Act 87 (2019)

⁶⁹ Section 10, Act 87 (2019)

⁷⁰ Section 12, Act 87 (2019)

⁷¹ Section 13, Act 87 (2019)

Hawaii Administrative Rules, Title 11, Chapter 219 (20xx)

Amendments to the Hawaii Administrative Rules to conform to Act 87 (2019) are in development and are anticipated to be finalized within two years of the signing of Act 87 (2019) (no later than July 1, 2021) in order to implement Section 11 of the Act.