

---

---

# A BILL FOR AN ACT

RELATING TO ILLEGAL DRUGS.

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

1           SECTION 1. The legislature finds that, under current  
2 Hawaii law, it is illegal to drive a vehicle under the influence  
3 of an intoxicant, whether it is alcohol or drugs. Chapter 291E,  
4 Hawaii Revised Statutes, authorizes both the administrative  
5 revocation of the driver's license of a person arrested for  
6 driving under the influence of an intoxicant and the criminal  
7 prosecution of the offender. It also prohibits a minor from  
8 operating a vehicle after consuming any alcohol, even if the  
9 minor is not impaired, because it is generally illegal for a  
10 minor to consume alcohol.

11           The legislature further finds that, under the "implied  
12 consent law," also found in chapter 291E, Hawaii Revised  
13 Statutes, every driver is deemed to have given consent to a test  
14 of their blood, breath, or urine for alcohol or drug content if  
15 the person is lawfully arrested for driving offenses involving  
16 intoxicants and there is probable cause to believe the test will  
17 reveal evidence of the presence of the intoxicant in the  
18 person's system. However, there is no law that prohibits a



1 person from operating a vehicle after consuming illegal drugs  
2 and existing law permits an arrest and test only if there is  
3 probable cause to believe the driver is under the influence of  
4 an intoxicant.

5 The purpose of this Act is to prohibit operating a vehicle  
6 after consuming illegal drugs, regardless of whether the driver  
7 is under the influence. This Act will permit police to require  
8 the driver to submit to a test to determine the presence in the  
9 person's blood, breath, or urine of an illegal drug if there is  
10 probable cause to believe the person has operated a vehicle  
11 after consuming an illegal drug.

12 The legislature finds that the approach taken in this Act  
13 is identical to that followed in section 291E-64 with respect to  
14 persons under age twenty-one who operate a motor vehicle after  
15 consuming a measurable amount of alcohol. Just as it is illegal  
16 for persons under the age of twenty-one to consume alcohol at  
17 any time, it is similarly illegal for any person (barring  
18 unusual circumstances) to use illegal drugs at any time.

19 While drug tests exist that can very reliably show that a  
20 person has consumed drugs, objective standards are not yet  
21 available to demonstrate impairment; rather, present  
22 administrative and criminal proceedings involve circumstantial



1 evidence of impairment. Consequently, while the legislature,  
2 courts, and law enforcement agencies can be confident that a  
3 person with a blood/alcohol count greater than 0.8 is impaired  
4 for purposes of driving, no similarly objective measure  
5 presently exists for illegal drugs.

6 Consequently, the legislature finds that this Act will be  
7 an effective tool in combating the use of illegal drugs. To  
8 prevent innocent persons from being convicted, this Act  
9 specifically:

- 10 (1) Requires that the amount of an illegal drug consumed  
11 be high enough to demonstrate actual use and not  
12 passive inhalation; and  
13 (2) Exempts consumption pursuant to prescription from a  
14 licensed physician.

15 SECTION 2. Chapter 291E, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:

18 **"§291E- Operating a vehicle after consuming an illegal**  
19 **drug.** (a) It shall be unlawful for any person to operate any  
20 vehicle after consuming any illegal drug. A law enforcement  
21 officer may arrest a person under this section when the officer  
22 has probable cause to believe the arrested person had been



1 operating a vehicle upon a public way, street, road, or highway  
2 or on or in the waters of the State after consuming any illegal  
3 drug.

4 No action shall be brought against any person under this  
5 section:

6 (1) Unless the results of any test indicate the presence  
7 of an illegal drug at a level that indicates actual  
8 consumption rather than mere passive inhalation; or

9 (2) If the consumption of the drug in question was  
10 pursuant to a prescription issued by a physician  
11 licensed under chapter 453 or 460, or comparable law  
12 of another jurisdiction.

13 (b) A person who violates this section shall be sentenced  
14 as follows:

15 (1) For a first violation or any violation not preceded  
16 within a five-year period by a prior alcohol or drug  
17 enforcement contact:

18 (A) The court shall impose:

19 (i) A requirement that the person attend a  
20 substance abuse education and counseling  
21 program for not more than ten hours; and



1           (ii) A one hundred eighty-day prompt suspension  
2           of license and privilege to operate a  
3           vehicle with absolute prohibition from  
4           operating a vehicle during the suspension  
5           period or a minimum thirty-day prompt  
6           suspension of license with absolute  
7           prohibition from operating a vehicle and,  
8           for the remainder of the one hundred eighty-  
9           day period, a restriction on the license  
10           that allows the person to drive for limited  
11           work-related purposes and to participate in  
12           alcohol abuse education and treatment  
13           programs; and

14           (B) In addition, the court may impose any one or more  
15           of the following:

16           (i) Not more than thirty-six hours of community  
17           service work; or

18           (ii) A fine of not less than \$150 but not more  
19           than \$500;

20           (2) For a violation that occurs within five years of a  
21           prior violation of this section or a prior alcohol or  
22           drug enforcement contact:



1           (A) The court shall impose prompt suspension of  
2           license and privilege to operate a vehicle for a  
3           period of one year with absolute prohibition from  
4           operating a vehicle during the suspension period;  
5           and

6           (B) In addition, the court may impose any of the  
7           following:

8           (i) Not more than fifty hours of community  
9           service work; or

10           (ii) A fine of not less than \$300 but not more  
11           than \$1,000; and

12           (3) For a violation that occurs within five years of two  
13           prior alcohol or drug enforcement contacts or two  
14           prior violations of this section:

15           (A) The court shall impose revocation of license and  
16           privilege to operate a vehicle for a period of  
17           two years; and

18           (B) In addition, the court may impose any of the  
19           following:

20           (i) Not more than one hundred hours of community  
21           service work; or



1                   (ii) A fine of not less than \$300 but not more  
2                                   than \$1,000.

3           (c) Notwithstanding any other law to the contrary, any  
4 conviction or plea under this section shall be considered a  
5 prior drug enforcement contact.

6           (d) Whenever a court sentences a person pursuant to  
7 subsection (b) (2) or (3), it also shall require that the person  
8 be referred to the driver's education program for an assessment,  
9 by a certified substance abuse counselor, of the person's drug  
10 abuse or dependence and the need for appropriate treatment. The  
11 counselor shall submit a report with recommendations to the  
12 court. The court shall require the person to obtain appropriate  
13 treatment if the counselor's assessment establishes the person's  
14 alcohol abuse or dependence. All costs for assessment and  
15 treatment shall be borne by the person.

16           (e) Notwithstanding any other law to the contrary,  
17 whenever a court revokes a person's driver's license pursuant to  
18 this section, the examiner of drivers shall not grant to the  
19 person an application for a new driver's license for a period to  
20 be determined by the court.

21           (f) Any person sentenced under this section may be ordered  
22 to reimburse the county for the cost of any blood or urine tests

1 conducted pursuant to section 291E-11. The court shall order  
2 the person to make restitution in a lump sum, or in a series of  
3 prorated installments, to the police department or other agency  
4 incurring the expense of the blood test.

5 (g) Any person who violates this section shall be guilty  
6 of a violation.

7 (h) As used in this section:

8 (1) "Driver's license" and "examiner of drivers" have the  
9 same meanings as provided in section 286-2; and

10 (2) "Illegal drug" means any controlled substance, as  
11 defined and enumerated in schedules I through IV of  
12 chapter 329, or its metabolites, for which the  
13 operator does not have a lawful prescription."

14 SECTION 3. Chapter 291E, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 **"§291E- Refusal to submit to testing for illegal drugs;**  
18 **district court hearing; sanctions; appeals; admissibility. (a)**

19 If a person under arrest for operating a vehicle after consuming  
20 an illegal drug, pursuant to section 291E- , refuses to submit  
21 to a breath or blood test, none shall be given, except as  
22 provided in section 291E-21, but the arresting law enforcement





1 officer, as soon as practicable, shall submit an affidavit to a  
2 district judge of the circuit in which the arrest was made,  
3 stating:

4       (1) That at the time of the arrest, the arresting officer  
5       had probable cause to believe the arrested person had  
6       been operating a vehicle upon a public way, street,  
7       road, or highway or on or in the waters of the State  
8       after consuming an illegal drug;

9       (2) That the arrested person had been informed of the  
10       sanctions of this section; and

11       (3) That the person had refused to submit to a blood or  
12       urine test.

13       (b) Upon receipt of the affidavit, the district judge  
14 shall hold a hearing within twenty days. The district judge  
15 shall hear and determine:

16       (1) Whether the arresting law enforcement officer had  
17       probable cause to believe that the person had been  
18       operating a vehicle upon a public way, street, road,  
19       or highway or on or in the waters of the State after  
20       consuming an illegal drug;

21       (2) Whether the person was lawfully arrested;



1       (3) Whether the arresting officer had informed the person  
2           of the sanctions of this section; and

3       (4) Whether the person refused to submit to a test of the  
4           person's blood or urine.

5       (c) If the district judge finds the statements contained  
6       in the affidavit are true, the judge shall suspend the arrested  
7       person's license and privilege to operate a vehicle as follows:

8       (1) For a first suspension, or any suspension not preceded  
9           within a five-year period by a suspension under this  
10          section, for a period of twelve months; and

11       (2) For any subsequent suspension under this section, for  
12          a period not less than two years and not more than  
13          five years.

14       (d) An order of a district court issued under this section  
15       may be appealed to the supreme court.

16       (e) If a legally arrested person refuses to submit to a  
17       test of the person's breath or blood, proof of refusal shall be  
18       admissible only in a hearing under this section or part III and  
19       shall not be admissible in any other action or proceeding,  
20       whether civil or criminal."

21       SECTION 4. Section 291E-11, Hawaii Revised Statutes, is  
22       amended as follows:

1           1.    By amending subsection (b) to read:

2           "(b)   The test or tests shall be administered at the  
3 request of a law enforcement officer having probable cause to  
4 believe the person operating a vehicle upon a public way,  
5 street, road, or highway or on or in the waters of the State is  
6 under the influence of an intoxicant or is under the age of  
7 twenty-one and has consumed a measurable amount of alcohol, only  
8 after:

9           (1)   A lawful arrest; and

10          (2)   The person has been informed by a law enforcement  
11 officer of the sanctions under section 291E-41 [~~or~~],  
12 291E-65, or 291E- , as applicable to the offense.

13          2.    By amending subsections (d) and (e) to read:

14          "(d)   If there is probable cause to believe that a person  
15 is in violation of section 291E-61 [~~or~~], 291E-61.5, or 291E- ,  
16 as a result of having consumed any drug, then the person shall  
17 elect to take a blood or urine test, or both, for the purpose of  
18 determining the drug content. Drug content shall be measured by  
19 the presence of any drug or its metabolic products, or both.

20          (e)   A person who chooses to submit to a breath test under  
21 subsection (c) also may be requested to submit to a blood or  
22 urine test, if the law enforcement officer has probable cause to



1 believe that the person was operating a vehicle while under the  
2 influence of any drug under section 291E-61 or 291E-61.5 or that  
3 the person was operating a vehicle after consuming any illegal  
4 drug under section 291E- and the officer has probable cause to  
5 believe that a blood or urine test will reveal evidence of the  
6 person being under the influence of any drug. The law  
7 enforcement officer shall state in the officer's report the  
8 facts upon which that belief is based. The person shall elect  
9 to take a blood or urine test, or both, for the purpose of  
10 determining the person's drug content. Results of a blood or  
11 urine test conducted to determine drug content also shall be  
12 admissible for the purpose of determining the person's alcohol  
13 concentration. Submission to testing for drugs under subsection  
14 (d) or this subsection shall not be a substitute for alcohol  
15 tests requested under subsection (c)."

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

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



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

2

INTRODUCED BY:

Cindy Evans

Jyle B. Berg  
Tilene H. Ball

Wynn Snow

JAN 19 2006



**Report Title:**

Motor Vehicles; Use of Intoxicants

**HB NO 1940**

**Description:**

Prohibits operation of a motor vehicle with illegal drugs in the bloodstream. Requires operator to submit to testing for the presence of illegal drugs in the bloodstream. Establishes penalties for failing test and refusing to submit to test.

