

# PROPOSED

HOUSE OF REPRESENTATIVES  
TWENTY-THIRD LEGISLATURE, 2006  
STATE OF HAWAII

H.B. NO. 2639  
H.D. 2  
S.D. 2

---

## A BILL FOR AN ACT

RELATING TO USE OF INTOXICANTS WHILE OPERATING A MOTOR VEHICLE.

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

1 SECTION 1. Section 291E-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately inserted  
3 and to read as follows:

4 "Highly intoxicated driver" means a person whose  
5 measurable amount of alcohol is 0.20 or more grams of alcohol  
6 per one hundred milliliters or cubic centimeters of the person's  
7 blood or 0.20 or more grams of alcohol per two hundred ten  
8 liters of the person's breath, as measured in accordance with  
9 the procedures under this chapter."

10 SECTION 2. Section 291E-31, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§291E-31 Notice of administrative revocation; effect.** As  
13 used in this part, the notice of administrative revocation:

14 (1) Establishes that the respondent's license and  
15 privilege to operate a vehicle in the State or on or  
16 in the waters of the State shall be terminated:



- 1 (A) Thirty days after the date the notice of
- 2 administrative revocation is issued in the case
- 3 of an alcohol related offense;
- 4 (B) Forty-four days after the date the notice of
- 5 administrative revocation is issued in the case
- 6 of a drug related offense; or
- 7 (C) Such later date as is established by the director
- 8 under section 291E-38,
- 9 if the director administratively revokes the
- 10 respondent's license and privilege;
- 11 (2) Establishes that the registration of any motor vehicle
- 12 registered to a respondent who is a repeat intoxicated
- 13 driver or a highly intoxicated driver shall be
- 14 terminated thirty days after the date of an arrest
- 15 pursuant to section 291E-33(c);
- 16 (3) Establishes the date on which administrative
- 17 revocation proceedings against the respondent were
- 18 initiated; and
- 19 (4) Serves as a temporary permit, if applicable, to
- 20 operate a vehicle as provided in section 291E-33."

21 SECTION 3. Section 291E-33, Hawaii Revised Statutes, is  
 22 amended by amending subsection (c) to read as follows:

PROPOSED

H.B. NO. 2639  
H.D. 2  
S.D. 2

1           "(c) Whenever a respondent under this section is a repeat  
2 intoxicated driver[~~7~~] or highly intoxicated driver, the  
3 arresting law enforcement officer shall take possession of the  
4 motor vehicle registration and, if the motor vehicle being  
5 driven by the respondent is registered to the respondent, remove  
6 the number plates and issue a temporary motor vehicle  
7 registration and temporary number plates for the motor vehicle.  
8 No temporary motor vehicle registration or temporary number  
9 plates shall be issued if the respondent's registration has  
10 expired or been revoked. The applicable police department, upon  
11 determining that the respondent is a repeat intoxicated  
12 driver[~~7~~] or highly intoxicated driver, shall notify the  
13 appropriate county director of finance to enter a stopper on the  
14 motor vehicle registration files to prevent the respondent from  
15 conducting any motor vehicle transactions, except as permitted  
16 under this part."

17           SECTION 4. Section 291E-38, Hawaii Revised Statutes, is  
18 amended by amending subsection (d) to read as follows:

19           "(d) The director shall conduct the hearing and have  
20 authority to:

- 21           (1) Administer oaths and affirmations;
- 22           (2) Examine witnesses and take testimony;



PROPOSED

H.B. NO. 2639  
H.D. 2  
S.D. 2

- 1 (3) Receive and determine the relevance of evidence;
- 2 (4) Issue subpoenas;
- 3 (5) Regulate the course and conduct of the hearing; [~~and~~]
- 4 (6) Impose up to the maximum license revocation period as
- 5 specified under section 291E-41(b); and
- 6 [~~+~~] (7) Make a final ruling."

7 SECTION 5. Section 291E-41, Hawaii Revised Statutes, is  
8 amended as follows:

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

10 "(b) The periods of administrative revocation with respect  
11 to a license and privilege to operate a vehicle, and motor  
12 vehicle registration if applicable, that shall be imposed under  
13 this part are as follows:

14 (1) A minimum of three months up to a maximum of one year  
15 revocation of license and privilege to operate a  
16 vehicle, if the respondent's record shows no prior  
17 alcohol enforcement contact or drug enforcement  
18 contact during the five years preceding the date the  
19 notice of administrative revocation was issued;

20 (2) For a respondent who is a highly intoxicated driver, a  
21 mandatory six month revocation of license and  
22 privilege to operate a vehicle and of the registration

PROPOSED

1 of any motor vehicle registered to the highly  
2 intoxicated driver; provided that the highly  
3 intoxicated driver shall not qualify for a conditional  
4 license permit under section 291E-44;

5 [~~+2~~] (3) A minimum of one year up to a maximum of two  
6 years revocation of license and privilege to operate a  
7 vehicle and of the registration of any motor vehicle  
8 registered to the respondent, if the respondent's  
9 record shows one prior alcohol enforcement contact or  
10 drug enforcement contact during the five years  
11 preceding the date the notice of administrative  
12 revocation was issued;

13 [~~+3~~] (4) A minimum of two years up to a maximum of four  
14 years revocation of license and privilege to operate a  
15 vehicle and of the registration of any motor vehicle  
16 registered to the respondent, if the respondent's  
17 record shows two prior alcohol enforcement contacts or  
18 drug enforcement contacts during the seven years  
19 preceding the date the notice of administrative  
20 revocation was issued;

21 [~~+4~~] (5) Lifetime revocation of license and privilege to  
22 operate a vehicle and of the registration of any motor



PROPOSED

H.B. NO.

2639  
H.D. 2  
S.D. 2

1 vehicle registered to the respondent and a lifetime  
 2 prohibition on any subsequent registration of motor  
 3 vehicles by the respondent, if the respondent's record  
 4 shows three or more prior alcohol enforcement contacts  
 5 or drug enforcement contacts during the ten years  
 6 preceding the date the notice of administrative  
 7 revocation was issued; or

8 [~~5~~] (6) For respondents under the age of eighteen years  
 9 who were arrested for a violation of section 291E-61  
 10 or 291E-61.5, revocation of license and privilege to  
 11 operate a vehicle either for the period remaining  
 12 until the respondent's eighteenth birthday or, if  
 13 applicable, for the appropriate revocation period  
 14 provided in paragraphs (1) to [~~4~~] (5) or in  
 15 subsection (d), whichever is longer and such  
 16 respondents shall not qualify for a conditional  
 17 permit;

18 provided that when more than one administrative revocation,  
 19 suspension, or conviction arises out of the same arrest, it  
 20 shall be counted as only one prior alcohol enforcement contact  
 21 or drug enforcement contact, whichever revocation, suspension,  
 22 or conviction occurs later."

1           2. By amending subsection (d) to read:

2           "(d) If a respondent has refused to be tested after being  
3 informed of the sanctions of this part, the revocation imposed  
4 under subsection (b)(1), [~~+2~~], (3), [~~and~~] (4), and (5) shall be  
5 for a period of one year, two years, four years, and a lifetime,  
6 respectively."

7           SECTION 6. Section 291E-44, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9           "(a) (1) During the administrative hearing, the director,  
10 at the request of a respondent who is subject to  
11 administrative revocation for a period as  
12 provided in section 291E-41(b)(1), may issue a  
13 conditional license permit that will allow the  
14 respondent, after a minimum period of absolute  
15 license revocation of thirty days, to drive for  
16 the remainder of the revocation period; provided  
17 that one or more of the following conditions are  
18 met:

19           (A) The respondent is gainfully employed in a  
20 position that requires driving and will be  
21 discharged if the respondent's driving privileges  
22 are administratively revoked; or

1 (B) The respondent has no access to alternative  
 2 transportation and therefore must drive to work  
 3 or to a substance abuse treatment facility or  
 4 counselor for treatment ordered by the director  
 5 under section 291E-41; or

6 (2) Notwithstanding any other law to the contrary, the  
 7 director shall not issue a conditional license permit  
 8 to:

9 (A) A respondent whose license, during the  
 10 conditional license permit period, is expired or  
 11 is suspended or revoked as a result of action  
 12 other than the instant revocation for which the  
 13 respondent is requesting a conditional license  
 14 permit under this section;

15 (B) A respondent who has refused breath, blood, or  
 16 urine tests for purposes of determining alcohol  
 17 concentration or drug content of the person's  
 18 breath, blood, or urine, as applicable; [~~or~~]

19 (C) A respondent who is a highly intoxicated driver;  
 20 and

21 [~~(C)~~] (D) A respondent who holds either a category 4  
 22 license under section 286-102(b) or a



1 commercial driver's license under section  
2 286-239(b)."

3 SECTION 7. Section 291E-61, Hawaii Revised Statutes, is  
4 amended by amending subsection (b) to read as follows:

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

9 (1) For the first offense, or any offense not preceded  
10 within a five-year period by a conviction for an  
11 offense under this section or section 291E-4(a):

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

16 (B) Ninety-day prompt suspension of license and  
17 privilege to operate a vehicle during the  
18 suspension period, or the court may impose, in  
19 lieu of the ninety-day prompt suspension of  
20 license, a minimum thirty-day prompt suspension  
21 of license with absolute prohibition from  
22 operating a vehicle and, for the remainder of the

1           ninety-day period, a restriction on the license  
2           that allows the person to drive for limited  
3           work-related purposes and to participate in  
4           substance abuse treatment programs;

5           (C) Any one or more of the following:

- 6           (i) Seventy-two hours of community service work;
- 7           (ii) Not less than forty-eight hours and not more
- 8           than five days of imprisonment; or
- 9           (iii) A fine of not less than \$150 but not more
- 10           than \$1,000; and

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

13           (2) For an offense committed by a highly intoxicated  
14           driver, prompt suspension of license and privilege to  
15           operate a vehicle for a period of six months with an  
16           absolute prohibition from operating a vehicle during  
17           the suspension period;

18           [+2+] (3) For an offense that occurs within five years of a  
19           prior conviction for an offense under this section or  
20           section 291E-4(a) by:

21           (A) Prompt suspension of license and privilege to  
22           operate a vehicle for a period of one year with



1 an absolute prohibition from operating a vehicle  
2 during the suspension period;

3 (B) Either one of the following:

4 (i) Not less than two hundred forty hours of  
5 community service work; or

6 (ii) Not less than five days but not more than  
7 fourteen days of imprisonment of which at  
8 least forty-eight hours shall be served  
9 consecutively;

10 (C) A fine of not less than \$500 but not more than  
11 \$1,500; and

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

14 [~~3~~] (4) For an offense that occurs within five years of  
15 two prior convictions for offenses under this section  
16 or section 291E-4(a):

17 (A) A fine of not less than \$500 but not more than  
18 \$2,500;

19 (B) Revocation of license and privilege to operate a  
20 vehicle for a period not less than one year but  
21 not more than five years;

1 (C) Not less than ten days but not more than thirty  
2 days imprisonment of which at least forty-eight  
3 hours shall be served consecutively; and

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

6 (E) Forfeiture under chapter 712A of the vehicle  
7 owned and operated by the person committing the  
8 offense, provided that the department of  
9 transportation shall provide storage for vehicles  
10 forfeited under this subsection; and

11 [~~4~~] (5) Any person eighteen years of age or older who is  
12 convicted under this section and who operated a  
13 vehicle with a passenger, in or on the vehicle, who  
14 was younger than fifteen years of age, shall be  
15 sentenced to an additional mandatory fine of \$500 and  
16 an additional mandatory term of imprisonment of  
17 forty-eight hours; provided that the total term of  
18 imprisonment for a person convicted under this  
19 paragraph shall not exceed the maximum term of  
20 imprisonment provided in paragraphs (1), (2), or (3)."

PROPOSED

H.B. NO. 2639  
H.D. 2  
S.D. 2

1 SECTION 8. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 9. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on July 1, 2007.



# PROPOSED

**Report Title:**

Use of Intoxicants While Operating a Motor Vehicle; Highly Intoxicated Driver

**Description:**

Increases sanctions for driving with a high blood alcohol level. Effective 7/1/07. (SD2)

