
A BILL FOR AN ACT

RELATING TO USE OF INTOXICANTS.

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

1 SECTION 1. Section 291E-11, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

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

10 ~~(1) A] a lawful arrest[; and~~

11 ~~(2) The person has been informed by a law enforcement~~
12 ~~officer of the sanctions under section 291E-41 or~~
13 ~~291E-65, as applicable to the offense]."~~

14 SECTION 2. Section 291E-15, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§291E-15[+] Refusal to submit to breath, blood, or
17 urine test; subject to administrative revocation proceedings.

18 If a person under arrest refuses to submit to a breath, blood,



1 or urine test, none shall be given, except as provided in
2 section 291E-21 [~~7, but the~~]. Upon the law enforcement officer's
3 determination that the person under arrest has refused to submit
4 to a breath, blood, or urine test, if applicable, then a law
5 enforcement officer shall inform the person under arrest of the
6 sanctions under section 291E-41 or 291E-65, and that person
7 shall be subject to the procedures and sanctions under part III
8 or section 291E-65, as applicable [~~-~~]; provided that if the law
9 enforcement officer fails to so inform the person under arrest,
10 then that person shall not be subject to the refusal sanctions
11 under part III or section 291E-65."

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

14 "(a) Whenever a person is arrested for a violation of
15 section 291E-61 or 291E-61.5 on a determination by the arresting
16 law enforcement officer that:

17 (1) There was reasonable suspicion to stop the vehicle or
18 the vehicle was stopped at an intoxicant control
19 roadblock established and operated in compliance with
20 sections 291E-19 and 291E-20; and



1 (2) There was probable cause to believe that the person
2 was operating the vehicle while under the influence of
3 an intoxicant;
4 the law enforcement officer immediately shall take possession of
5 any license held by the person and request the person to take a
6 test for alcohol concentration, in the case of an alcohol
7 related offense, or a test for drug content in the blood or
8 urine, in the case of a drug related offense. The law
9 enforcement officer shall inform the person that, in the case of
10 an alcohol related offense, the person shall elect to take a
11 breath test, a blood test, or both, pursuant to section 291E-11.
12 In the case of a drug related offense, the person shall elect to
13 take a blood test, a urine test, or both, pursuant to section
14 291E-11. ~~[The]~~ In compliance with the requirements of section
15 291E-15, the law enforcement officer also shall inform the
16 person of the sanctions under section 291E-41, including the
17 sanction for refusing to take a breath, blood, or urine test~~[-]~~,
18 if applicable, upon the law enforcement officer's determination
19 that the person under arrest has refused to submit to a breath,
20 blood, or urine test. Thereafter, the law enforcement officer
21 shall complete and issue to the person a notice of
22 administrative revocation and shall indicate thereon whether the



1 notice shall serve as a temporary permit. The notice shall
2 serve as a temporary permit, unless, at the time of arrest: the
3 person was unlicensed; the person's license or privilege to
4 operate a vehicle was revoked or suspended; or the person had no
5 license in the person's possession."

6 SECTION 4. Section 291E-34, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) The notice, when completed by the law enforcement
9 officer and issued to the respondent, shall contain at a minimum
10 the following information relating to the incident that gives
11 rise to the issuance of the notice of administrative revocation:

- 12 (1) Information identifying the respondent;
- 13 (2) The specific violation for which the respondent was
14 arrested;
- 15 (3) The date issued and the date the administrative
16 revocation is scheduled to go into effect;
- 17 ~~[(4) That the respondent was informed of the sanctions of~~
18 ~~this part and of the consequences of refusing to be~~
19 ~~tested for alcohol concentration or drug content in~~
20 ~~the blood or urine and whether the respondent~~
21 ~~consented to be tested;~~



1 ~~(5)~~ (4) The expiration date of the temporary permit, and
2 the temporary motor vehicle registration and temporary
3 number plates if applicable; and

4 ~~(6)~~ (5) That the issuance of the notice of administrative
5 revocation will be administratively reviewed."

6 SECTION 5. Section 291E-36, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Whenever a respondent has been arrested for a
9 violation of section 291E-61 or 291E-61.5 and submits to a test
10 that establishes: the respondent's alcohol concentration was
11 .08 or more; the presence, in the respondent's blood or urine,
12 of any drug that is capable of impairing the respondent's
13 ability to operate a vehicle in a careful and prudent manner; or
14 whenever a respondent has been involved in a collision resulting
15 in injury or death and a blood or urine test performed pursuant
16 to section 291E-21 establishes that the respondent's alcohol
17 concentration was .08 or more or establishes the presence in the
18 respondent's blood or urine of any drug that is capable of
19 impairing the respondent's ability to operate a vehicle in a
20 careful and prudent manner, the following shall be forwarded
21 immediately to the director:



1 (1) A copy of the arrest report or the report of the law
2 enforcement officer who issued the notice of
3 administrative revocation to the person involved in a
4 collision resulting in injury or death and the sworn
5 statement of the arresting law enforcement officer or
6 the officer who issued the notice of administrative
7 revocation, stating facts that establish that:

8 (A) There was reasonable suspicion to stop the
9 vehicle, the vehicle was stopped at an intoxicant
10 control roadblock established and operated in
11 compliance with sections 291E-19 and 291E-20, or
12 the respondent was tested pursuant to section
13 291E-21;

14 (B) There was probable cause to believe that the
15 respondent had been operating the vehicle while
16 under the influence of an intoxicant;

17 ~~[(C) The respondent was informed of:~~
18 ~~(i) The sanctions of section 291E-41;~~
19 ~~(ii) The possibility that criminal charges may be~~
20 ~~filed; and~~



1 ~~(iii) The probable consequences of refusing to be~~
2 ~~tested for alcohol concentration or drug~~
3 ~~content,] and~~

4 [~~(D)~~] (C) The respondent agreed to be tested or the
5 person was tested pursuant to section 291E-21;

6 (2) In a case involving an alcohol related offense, the
7 sworn statement of the person responsible for
8 maintenance of the testing equipment, stating facts
9 that establish that, pursuant to section 321-161 and
10 rules adopted thereunder:

11 (A) The equipment used to conduct the test was
12 approved for use as an alcohol testing device in
13 this State;

14 (B) The person had been trained and at the time the
15 test was conducted was certified and capable of
16 maintaining the testing equipment; and

17 (C) The testing equipment used had been properly
18 maintained and was in good working condition when
19 the test was conducted;

20 (3) In a case involving an alcohol related offense, the
21 sworn statement of the person who conducted the test,



1 stating facts that establish that, pursuant to section
2 321-161 and rules adopted thereunder:
3 (A) The person was trained and at the time the test
4 was conducted was certified and capable of
5 operating the testing equipment;
6 (B) The person followed the procedures established
7 for conducting the test;
8 (C) The equipment used to conduct the test functioned
9 in accordance with operating procedures and
10 indicated that the respondent's alcohol
11 concentration was at, or above, the prohibited
12 level; and
13 (D) The person whose breath or blood was tested is
14 the respondent;
15 (4) In a case involving a drug related offense, the sworn
16 statement of the person responsible for maintenance of
17 the testing equipment, stating facts that establish
18 that, pursuant to section 321-161 and rules adopted
19 thereunder:
20 (A) The equipment used to conduct the test was
21 approved for use in drug testing;



1 (B) The person conducting the test had been trained
2 and, at the time of the test, was certified and
3 capable of maintaining the testing equipment; and

4 (C) The testing equipment used had been properly
5 maintained and was in good working condition when
6 the test was conducted;

7 (5) In a case involving a drug related offense, the sworn
8 statement of the person who conducted the test,
9 stating facts that establish that, pursuant to section
10 321-161 and rules adopted thereunder:

11 (A) At the time the test was conducted, the person
12 was trained and capable of operating the testing
13 equipment;

14 (B) The person followed the procedures established
15 for conducting the test;

16 (C) The equipment used to conduct the test functioned
17 in accordance with operating procedures and
18 indicated the presence of one or more drugs or
19 their metabolites in the respondent's blood or
20 urine; and

21 (D) The person whose blood or urine was tested is the
22 respondent;



1 (6) A copy of the notice of administrative revocation
 2 issued by the law enforcement officer to the
 3 respondent;

4 (7) Any license, and motor vehicle registration and number
 5 plates, if applicable, taken into possession by the
 6 law enforcement officer; and

7 (8) A listing of any prior alcohol or drug enforcement
 8 contacts involving the respondent."

9 SECTION 6. Section 291E-37, Hawaii Revised Statutes, is
 10 amended by amending subsections (d) and (e) to read as follows:

11 "(d) The director shall administratively revoke the
 12 respondent's license and privilege to operate a vehicle if the
 13 director determines that:

14 (1) There existed reasonable suspicion to stop the
 15 vehicle, the vehicle was stopped at an intoxicant
 16 control roadblock established and operated in
 17 compliance with sections 291E-19 and 291E-20, or the
 18 person was tested pursuant to section 291E-21;

19 (2) There existed probable cause to believe that the
 20 respondent operated the vehicle while under the
 21 influence of an intoxicant; and

22 (3) The evidence proves by a preponderance that:



1 (A) The respondent operated the vehicle while under
2 the influence of an intoxicant; or

3 (B) The respondent operated the vehicle and refused
4 to submit to a breath, blood, or urine test
5 [~~after being~~] and was informed of the sanctions
6 of this part[-] in compliance with the
7 requirements of section 291E-15.

8 (e) The director shall administratively revoke the
9 registration of any vehicle owned or registered to the
10 respondent and take custody of any number plates issued to the
11 respondent if the director determines that the respondent is a
12 repeat intoxicated driver and that:

13 (1) There existed reasonable suspicion to stop the
14 vehicle, the vehicle was stopped at an intoxicant
15 control roadblock established and operated in
16 compliance with sections 291E-19 and 291E-20, or the
17 person was tested pursuant to section 291E-21;

18 (2) There existed probable cause to believe that the
19 respondent operated the vehicle while under the
20 influence of an intoxicant; and

21 (3) The evidence proves by a preponderance that:



1 (A) The respondent operated the vehicle while under
2 the influence of an intoxicant; or

3 (B) The respondent operated the vehicle and refused
4 to submit to a breath, blood, or urine test
5 ~~[after being]~~ and was informed of the sanctions
6 of this part~~[-]~~ in compliance with the
7 requirements of section 291E-15."

8 SECTION 7. Section 291E-38, Hawaii Revised Statutes, is
9 amended by amending subsection (e) to read as follows:

10 "(e) The director shall affirm the administrative
11 revocation only if the director determines that:

12 (1) There existed reasonable suspicion to stop the
13 vehicle, the vehicle was stopped at an intoxicant
14 control roadblock established and operated in
15 compliance with sections 291E-19 and 291E-20, or the
16 person was tested pursuant to section 291E-21;

17 (2) There existed probable cause to believe that the
18 respondent operated the vehicle while under the
19 influence of an intoxicant; and

20 (3) The evidence proves by a preponderance that:

21 (A) The respondent operated the vehicle while under
22 the influence of an intoxicant; or



1 (B) The respondent: operated the vehicle [~~and, after~~
2 ~~being informed of the sanctions of this part,~~];
3 refused to submit to a breath, blood, or urine
4 test[-]; and was informed of the sanctions of
5 this part in compliance with the requirements of
6 section 291E-15."

7 SECTION 8. Section 291E-41, Hawaii Revised Statutes, is
8 amended by amending subsection (d) and (e) to read as follows:

9 "(d) If a respondent has refused to be tested [~~after~~
10 ~~being~~] and was informed of the sanctions of this part, in
11 compliance with the requirements of section 291E-15, the
12 revocation imposed under subsection (b) (1), (2), (3), and (4)
13 shall be for a period of one year, two years, four years, and a
14 lifetime, respectively.

15 (e) In addition to subsection (d), any motor vehicle
16 registration of a respondent who is a repeat intoxicated driver
17 and who refused to be tested [~~after being~~] and was informed of
18 the sanctions of this part, in compliance with the requirement
19 of section 291E-15, shall be revoked for the periods specified
20 in subsection (d), and the respondent shall be prohibited from
21 subsequently registering any motor vehicle for the applicable
22 revocation period."



1 SECTION 9. Section 291E-65, Hawaii Revised Statutes, is
2 amended by amending subsection (a) and (b) to read as follows:

3 "(a) If a person under arrest for operating a vehicle
4 after consuming a measurable amount of alcohol, pursuant to
5 section 291E-64, refuses to submit to a breath or blood test,
6 none shall be given, except as provided in section 291E-21, but
7 the arresting law enforcement officer, as soon as practicable,
8 shall submit an affidavit to a district judge of the circuit in
9 which the arrest was made, stating:

10 (1) That at the time of the arrest, the arresting officer
11 had probable cause to believe the arrested person was
12 under the age of twenty-one and had been operating a
13 vehicle upon a public way, street, road, or highway or
14 on or in the waters of the State with a measurable
15 amount of alcohol;

16 [~~(2)~~ ~~That the arrested person had been informed of the~~
17 ~~sanctions of this section; and~~

18 ~~(3)]~~ (2) That the person had refused to submit to a breath
19 or blood test~~[.];~~ and

20 (3) That the arrested person was informed of the sanctions
21 of this section in compliance with the requirements of
22 section 291E-15.



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

4 (1) Whether the arresting law enforcement officer had
5 probable cause to believe that the person was under
6 the age of twenty-one and had been operating a vehicle
7 upon a public way, street, road, or highway or on or
8 in the waters of the State with a measurable amount of
9 alcohol;

10 (2) Whether the person was lawfully arrested;

11 ~~[(3) Whether the arresting officer had informed the person
12 of the sanctions of this section; and~~

13 ~~+(4)]~~ (3) Whether the person refused to submit to a test of
14 the person's breath or blood~~[-]~~; and

15 (4) Whether the person was informed of the sanctions of
16 this section in compliance with the requirements of
17 section 291E-15."

18 SECTION 10. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun, before its effective date.

21 SECTION 11. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 12. This Act shall take effect on January 1, 2007.

2

INTRODUCED BY:



JAN 25 2006



Report Title:

Driving While Intoxicated; DUI; Revocation

Description:

Requires police to inform person arrested for driving under the influence of intoxicants of the sanctions for refusal to submit to breath, blood, or urine test only if person withdraws consent to testing implied by operation of a vehicle on public highway or waters of the State.

