

PROPOSED

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

H.B. NO. 3257
H.D. 1
S.D. 2

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 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.~~] that the
14 person may refuse to submit to testing under this
15 chapter."

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



1 "~~[+]§291E-15[+]~~ Refusal to submit to breath, blood, or
2 urine test; subject to administrative revocation proceedings.

3 If a person under arrest refuses to submit to a breath, blood,
4 or urine test, none shall be given, except as provided in
5 section 291E-21~~[, but the person shall be subject]~~. Upon the
6 law enforcement officer's determination that the person under
7 arrest has refused to submit to a breath, blood, or urine test,
8 if applicable, then a law enforcement officer shall:

9 (1) Inform the person under arrest of the sanctions under
10 section 291E-41 or 291E-65; and

11 (2) Ask the person if the person still refuses to submit
12 to a breath, blood, or urine test, thereby subjecting
13 the person to the procedures and sanctions under part
14 III or section 291E-65, as applicable~~[+]~~;

15 provided that if the law enforcement officer fails to comply
16 with paragraphs (1) and (2), the person shall not be subject to
17 the refusal sanctions under part III or section 291E-65."

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

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



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

5 (2) There was probable cause to believe that the person
6 was operating the vehicle while under the influence of
7 an intoxicant;

8 the law enforcement officer immediately shall take possession of
9 any license held by the person and request the person to take a
10 test for alcohol concentration, in the case of an alcohol
11 related offense, or a test for drug content in the blood or
12 urine, in the case of a drug related offense. The law
13 enforcement officer shall inform the person that, in the case of
14 an alcohol related offense, the person shall elect to take a
15 breath test, a blood test, or both, pursuant to section
16 291E-11[-], but that the person may refuse to submit to testing
17 under this chapter. In the case of a drug related offense, the
18 person shall elect to take a blood test, a urine test, or both,
19 pursuant to section 291E-11[-~~The~~], after being informed that
20 the person may refuse to submit to testing under this chapter.
21 When applicable under section 291E-15, the law enforcement
22 officer also shall [~~inform~~]:

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- 1 (1) Inform the person of the sanctions under section
- 2 291E-41, including the sanction for refusing to take a
- 3 breath, blood, or urine test[-], if applicable; and
- 4 (2) Ask the person if the person still refuses to submit
- 5 to a breath, blood, or urine test, upon the law
- 6 enforcement officer's determination that, after the
- 7 person has been informed by a law enforcement officer
- 8 that the person may refuse to submit to testing, the
- 9 person under arrest has refused to submit to a breath,
- 10 blood, or urine test.

11 Thereafter, the law enforcement officer shall complete and issue
 12 to the person a notice of administrative revocation and shall
 13 indicate thereon whether the notice shall serve as a temporary
 14 permit. The notice shall serve as a temporary permit, unless,
 15 at the time of arrest: the person was unlicensed; the person's
 16 license or privilege to operate a vehicle was revoked or
 17 suspended; or the person had no license in the person's
 18 possession."

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

21 "(b) The notice, when completed by the law enforcement
 22 officer and issued to the respondent, shall contain at a minimum

1 the following information relating to the incident that gives
2 rise to the issuance of the notice of administrative revocation:

3 (1) Information identifying the respondent;

4 (2) The specific violation for which the respondent was
5 arrested;

6 (3) The date issued and the date the administrative
7 revocation is scheduled to go into effect;

8 [~~4~~] ~~That the respondent was informed of the sanctions of~~
9 ~~this part and of the consequences of refusing to be~~
10 ~~tested for alcohol concentration or drug content in~~
11 ~~the blood or urine and whether the respondent~~
12 ~~consented to be tested;~~

13 ~~5~~] (4) The expiration date of the temporary permit, and
14 the temporary motor vehicle registration and temporary
15 number plates if applicable; and

16 [~~6~~] (5) That the issuance of the notice of administrative
17 revocation will be administratively reviewed."

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

20 "(a) Whenever a respondent has been arrested for a
21 violation of section 291E-61 or 291E-61.5 and submits to a test
22 that establishes: the respondent's alcohol concentration was

1 .08 or more; the presence, in the respondent's blood or urine,
2 of any drug that is capable of impairing the respondent's
3 ability to operate a vehicle in a careful and prudent manner; or
4 whenever a respondent has been involved in a collision resulting
5 in injury or death and a blood or urine test performed pursuant
6 to section 291E-21 establishes that the respondent's alcohol
7 concentration was .08 or more or establishes the presence in the
8 respondent's blood or urine of any drug that is capable of
9 impairing the respondent's ability to operate a vehicle in a
10 careful and prudent manner, the following shall be forwarded
11 immediately to the director:

12 (1) A copy of the arrest report or the report of the law
13 enforcement officer who issued the notice of
14 administrative revocation to the person involved in a
15 collision resulting in injury or death and the sworn
16 statement of the arresting law enforcement officer or
17 the officer who issued the notice of administrative
18 revocation, stating facts that establish that:

19 (A) There was reasonable suspicion to stop the
20 vehicle, the vehicle was stopped at an intoxicant
21 control roadblock established and operated in
22 compliance with sections 291E-19 and 291E-20, or



1 the respondent was tested pursuant to section
2 291E-21;

3 (B) There was probable cause to believe that the
4 respondent had been operating the vehicle while
5 under the influence of an intoxicant;

6 [~~(C)~~ ~~The respondent was informed of:~~

7 ~~(i) The sanctions of section 291E-41;~~

8 ~~(ii) The possibility that criminal charges may be
9 filed; and~~

10 ~~(iii) The probable consequences of refusing to be
11 tested for alcohol concentration or drug
12 content;] and~~

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

15 (2) In a case involving an alcohol related offense, the
16 sworn statement of the person responsible for
17 maintenance of the testing equipment, stating facts
18 that establish that, pursuant to section 321-161 and
19 rules adopted thereunder:

20 (A) The equipment used to conduct the test was
21 approved for use as an alcohol testing device in
22 this State;



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1 (B) The person had been trained and at the time the
2 test was conducted was certified and capable of
3 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 (3) In a case involving an alcohol related offense, the
8 sworn 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) The person was trained and at the time the test
12 was conducted was certified and capable of
13 operating the testing 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 that the respondent's alcohol
19 concentration was at, or above, the prohibited
20 level; and

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



1 (4) In a case involving a drug related offense, the sworn
2 statement of the person responsible for maintenance of
3 the testing equipment, stating facts that establish
4 that, pursuant to section 321-161 and rules adopted
5 thereunder:

6 (A) The equipment used to conduct the test was
7 approved for use in drug testing;

8 (B) The person conducting the test had been trained
9 and, at the time of the test, was certified and
10 capable of maintaining the testing equipment; and

11 (C) The testing equipment used had been properly
12 maintained and was in good working condition when
13 the test was conducted;

14 (5) In a case involving a drug related offense, the sworn
15 statement of the person who conducted the test,
16 stating facts that establish that, pursuant to section
17 321-161 and rules adopted thereunder:

18 (A) At the time the test was conducted, the person
19 was trained and capable of operating the testing
20 equipment;

21 (B) The person followed the procedures established
22 for conducting the test;



1 (C) The equipment used to conduct the test functioned
2 in accordance with operating procedures and
3 indicated the presence of one or more drugs or
4 their metabolites in the respondent's blood or
5 urine; and

6 (D) The person whose blood or urine was tested is the
7 respondent;

8 (6) A copy of the notice of administrative revocation
9 issued by the law enforcement officer to the
10 respondent;

11 (7) Any license, and motor vehicle registration and number
12 plates, if applicable, taken into possession by the
13 law enforcement officer; and

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

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

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

21 (1) There existed reasonable suspicion to stop the
22 vehicle, the vehicle was stopped at an intoxicant

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1 control roadblock established and operated in
2 compliance with sections 291E-19 and 291E-20, or the
3 person was tested pursuant to section 291E-21;

4 (2) There existed probable cause to believe that the
5 respondent operated the vehicle while under the
6 influence of an intoxicant; and

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

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

10 (B) The respondent operated the vehicle and refused
11 to submit to a breath, blood, or urine test after
12 being informed [øf]:

13 (i) That the person may refuse to submit to
14 testing in compliance with section 291E-11;

15 and

16 (ii) Of the sanctions of this part[-] and then
17 asked if the person still refuses to submit
18 to a breath, blood, or urine test, in
19 compliance with the requirements of section
20 291E-15.

21 (e) The director shall administratively revoke the
22 registration of any vehicle owned or registered to the



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1 respondent and take custody of any number plates issued to the
2 respondent if the director determines that the respondent is a
3 repeat intoxicated driver and that:

4 (1) There existed reasonable suspicion to stop the
5 vehicle, the vehicle was stopped at an intoxicant
6 control roadblock established and operated in
7 compliance with sections 291E-19 and 291E-20, or the
8 person was tested pursuant to section 291E-21;

9 (2) There existed probable cause to believe that the
10 respondent operated the vehicle while under the
11 influence of an intoxicant; and

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

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

15 (B) The respondent operated the vehicle and refused
16 to submit to a breath, blood, or urine test after
17 being informed [of]:

18 (i) That the person may refuse to submit to
19 testing in compliance with section 291E-11;
20 and

21 (ii) Of the sanctions of this part[-] and then
22 asked if the person still refuses to submit



1 to a breath, blood, or urine test, in
 2 compliance with the requirements of section
 3 291E-15."

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

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

8 (1) There existed 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 the
 12 person was tested pursuant to section 291E-21;

13 (2) There existed probable cause to believe that the
 14 respondent operated the vehicle while under the
 15 influence of an intoxicant; and

16 (3) The evidence proves by a preponderance that:
 17 (A) The respondent operated the vehicle while under
 18 the influence of an intoxicant; or

19 (B) The respondent operated the vehicle [~~and,~~] and
 20 refused to submit to a breath, blood, or urine
 21 test after being informed [~~of~~]:

22 (i) That the person may refuse to submit to



1 testing in compliance with section 291E-11;

2 and

3 (ii) Of the sanctions of this part[~~7~~, refused] and

4 then asked if the person still refuses to

5 submit to a breath, blood, or urine test[~~7~~]

6 in compliance with the requirements of

7 section 291E-15."

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

10 "(d) If a respondent has refused to be tested after being
11 informed [~~of~~]:

12 (1) That the person may refuse to submit to testing in
13 compliance with section 291E-11; and

14 (2) Of the sanctions of this part[~~7~~] and then asked if the
15 person still refuses to submit to a breath, blood, or
16 urine test, in compliance with the requirements of
17 section 291E-15,

18 the revocation imposed under subsection (b) (1), (2), (3), and
19 (4) shall be for a period of one year, two years, four years,
20 and a lifetime, respectively.

1 (e) In addition to subsection (d), any motor vehicle
2 registration of a respondent who is a repeat intoxicated driver
3 and who refused to be tested after being informed [øf]:

4 (1) That the person may refuse to submit to testing in
5 compliance with section 291E-11; and

6 (2) Of the sanctions of this part and then asked if the
7 person still refuses to submit to a breath, blood, or
8 urine test, in compliance with the requirements of
9 section 291E-15,

10 shall be revoked for the periods specified in subsection (d),
11 and the respondent shall be prohibited from subsequently
12 registering any motor vehicle for the applicable revocation
13 period."

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

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



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

7 ~~[-(2) That the arrested person had been informed of the~~
8 ~~sanctions of this section; and~~

9 ~~-(3)]~~ (2) That the arrested person was informed that the
10 person may refuse to submit to a breath or blood test,
11 in compliance with section 291E-11;

12 (3) That the person had refused to submit to a breath or
13 blood test[-];

14 (4) That the arrested person was:

15 (A) Informed of the sanctions of this section; and
16 then

17 (B) Asked if the person still refuses to submit to a
18 breath or blood test, in compliance with the
19 requirements of section 291E-15; and

20 (5) That the arrested person continued to refuse to submit
21 to a breath or blood test.



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 (3) Whether the person was informed that the person may
14 refuse to submit to a breath or blood test, in
15 compliance with section 291E-11;

16 (4) Whether the person refused to submit to a test of the
17 person's breath or blood[-];

18 (5) Whether the person was:

19 (A) Informed of the sanctions of this section; and
20 then



1 (B) Asked if the person still refuses to submit to a
2 breath or blood test, in compliance with the
3 requirements of section 291E-15; and

4 (6) Whether the person continued to refuse to submit to a
5 breath or blood test."

6 SECTION 10. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun, before its effective date.

9 SECTION 11. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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



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Report Title:

Driving While Intoxicated; DUI; Revocation

Description:

Requires police to inform a 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. Effective on 1/1/07. (SD2)

