



GOV. MSG. NO. 919

EXECUTIVE CHAMBERS
HONOLULU

July 9, 2008

LINDA LINGLE
GOVERNOR

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1804 SD2 HD2 CD1

On July 8, 2008, Senate Bill No. 1804, entitled "A Bill for an Act Relating to the Trauma System Special Fund" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to increase available revenues in the Trauma System Special Fund by establishing additional surcharges for traffic violations.

I am concerned that this bill creates additional surcharges that will increase costs on the driving public. These surcharges cover a wide variety of traffic violations and range between \$10 and \$500. Although discretionary, I believe some of these charges are excessive, given the existing penalties in law.

However, everyone has a vested interest in improving trauma care in our state. All residents deserve access to high-quality, specialized care should they find themselves critically injured in a motor vehicle accident or other emergency situation. Providing such high-quality care is expensive, especially on our neighbor islands, and this bill is one way to help improve the structure of our current trauma care system.

For the foregoing reasons, I allowed Senate Bill No. 1804 to become law as Act 231, effective July 8, 2008, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE



8 JL-9 A8:57

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

A BILL FOR AN ACT

RELATING TO THE TRAUMA SYSTEM SPECIAL FUND.

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

1 PART I

2 SECTION 1. Chapter 291, Hawaii Revised Statutes, is
3 amended by adding a new section to part I, to be appropriately
4 designated and to read as follows:

5 "§291- Trauma system surcharge. (a) In addition to any
6 other civil penalties ordered by the court, a person who
7 violates any offense under this part may be ordered to pay a
8 trauma system surcharge, provided that:

9 (1) The maximum of which may be \$10 if the violator is not
10 already required to pay a trauma system surcharge
11 pursuant to the violation of the offense; and

12 (2) The maximum of which may be \$100 if the violation is
13 an offense under section 291-12.

14 (b) The surcharge shall not be ordered when the court
15 determines that the defendant is unable to pay the surcharge.

16 (c) The person shall pay the surcharge to the clerk of the
17 court. The surcharge shall be deposited with the state director



1 of finance who shall transmit the surcharge to the trauma system
2 special fund pursuant to section 321-22.5.

3 SECTION 2. Chapter 291C, Hawaii Revised Statutes, is
4 amended by adding a new section to part I, to be appropriately
5 designated and to read as follows:

6 "§291C- Trauma system surcharge. (a) In addition to
7 any other civil penalties ordered by the court, a person who
8 violates any offense under this part may be ordered to pay a
9 trauma system surcharge, provided that:

10 (1) The maximum of which may be \$10 if the violator is not
11 already required to pay a trauma system surcharge
12 pursuant to the violation of the offense;

13 (2) The maximum of which may be \$100 if the violation is
14 an offense under sections 291C-12.6, 291C-13, 291C-14,
15 291C-15, 291C-16, 291C-103, 291C-104, or 291C-105;

16 (3) The maximum of which may be \$500 if the violation is
17 an offense under section 291C-12; and

18 (4) The maximum of which may be \$250 if the violation is
19 an offense under section 291C-12.5.

20 (b) The surcharge shall not be ordered when the court
21 determines that the defendant is unable to pay the surcharge.



1 (c) The person shall pay the surcharge to the clerk of the
2 court. The surcharge shall be deposited with the state director
3 of finance who shall transmit the surcharge to the trauma system
4 special fund pursuant to section 321-22.5.

5 SECTION 3. Chapter 291E, Hawaii Revised Statutes, is
6 amended by adding a new section to part I, to be appropriately
7 designated and to read as follows:

8 "\$291E- Trauma system surcharge. (a) In addition to any
9 other civil penalties ordered by the court, a person who
10 violates any offense under this part may be ordered to pay a
11 trauma system surcharge, provided that:

12 (1) The maximum of which may be \$10 if the violator is not
13 already required to pay a trauma system surcharge
14 pursuant to the violation of the offense;

15 (2) The maximum of which may be \$25 if the violation is an
16 offense under sections 291E-61(a)(1), 291E-61(a)(3),
17 or 291E-61(a)(4);

18 (3) The maximum of which may be \$50 if the violation is an
19 offense under sections 291E-61(a)(2), or 291E-61.5 or
20 the offense under 291E-61(a)(3) or 291E-61(a)(4) was
21 committed by a highly intoxicated driver as defined by
22 section 291E-1, or if the offense under 291E-61(a)(3)



1 or 291E-61(a)(4) is a second or subsequent offense
2 that occurred within five years of the first offense.

3 (b) The surcharge shall not be ordered when the court
4 determines that the defendant is unable to pay the surcharge.

5 (c) The person shall pay the surcharge to the clerk of the
6 court. The surcharge shall be deposited with the state director
7 of finance who shall transmit the surcharge to the trauma system
8 special fund pursuant to section 321-22.5.

9 PART II

10 SECTION 4. Section 291-11.5, Hawaii Revised Statutes, is
11 amended by amending subsection (e) to read as follows:

12 "(e) Violation of this section shall be considered an
13 offense as defined under section 701-107(5) and shall subject
14 the violator to the following penalties:

15 (1) For a first conviction, the person shall:

16 (A) Be fined not more than \$100;

17 (B) Be required by the court to attend a child
18 passenger restraint system safety class conducted
19 by the division of driver education; provided
20 that:

21 (i) The class may include video conferences as
22 determined by the administrator of the



- 1 division of driver education as an
2 alternative method of education; and
3 (ii) The class shall not exceed four hours;
4 (C) Pay a \$50 driver education assessment as provided
5 in section 286G-3; and
6 (D) Pay a \$10 surcharge to be deposited into the
7 neurotrauma special fund;
8 (E) Pay up to a \$10 surcharge to be deposited into
9 the trauma system fund if the court so orders;
10 (2) For a conviction of a second offense committed within
11 three years of any other conviction under this
12 section, the person shall:
13 (A) Be fined not less than \$100 but not more than
14 \$200;
15 (B) Be required by the court to attend a child
16 passenger restraint system safety class not to
17 exceed four hours in length conducted by the
18 division of driver education if the person has
19 not previously attended such a class;
20 (C) Pay a \$50 driver education assessment as provided
21 in section 286G-3 if the person has not
22 previously attended a child passenger restraint



- 1 system safety class conducted by the division of
2 driver education; and
- 3 (D) Pay a \$10 surcharge to be deposited into the
4 neurotrauma special fund;
- 5 (E) Pay up to a \$10 surcharge to be deposited into
6 the trauma system fund if the court so orders;
7 and
- 8 (3) For a conviction of a third or subsequent offense
9 committed within three years of any other conviction
10 under this section, the person shall:
- 11 (A) Be fined not less than \$200 but not more than
12 \$500;
- 13 (B) Be required by the court to attend a child
14 passenger restraint system safety class not to
15 exceed four hours in length conducted by the
16 division of driver education if the person has
17 not previously attended such a class;
- 18 (C) Pay a \$50 driver education assessment as provided
19 in section 286G-3 if the person has not
20 previously attended a child passenger restraint
21 system safety class conducted by the division of
22 driver education; and



1 (D) Pay a \$10 surcharge to be deposited into the
2 neurotrauma special fund;

3 (E) Pay up to a \$10 surcharge to be deposited into
4 the trauma system fund if the court so orders.

5 SECTION 5. Section 291-11.6, Hawaii Revised Statutes, is
6 amended by amending subsection (e) to read as follows:

7 "(e) A person who fails to comply with the requirements of
8 this section shall be subject to a fine of \$45 for each
9 violation ~~and~~ a surcharge of \$10 which shall be deposited into
10 the neurotrauma special fund, and may be subject to a surcharge
11 of up to \$10 which shall be deposited into the trauma system
12 special fund."

13 SECTION 6. Section 291-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§291-12 Inattention to driving.** Whoever operates any
16 vehicle without due care or in a manner as to cause a collision
17 with, or injury or damage to, as the case may be, any person,
18 vehicle or other property shall be fined not more than \$500 or
19 imprisoned not more than thirty days, or both, and may be
20 subject to a surcharge of up to \$100 which shall be deposited
21 into the trauma system special fund."



1 SECTION 7. Section 291C-12, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§291C-12 Accidents involving death or serious bodily**
4 **injury.** (a) The driver of any vehicle involved in an accident
5 resulting in serious bodily injury to or death of any person
6 shall immediately stop the vehicle at the scene of the accident
7 or as close thereto as possible but shall then forthwith return
8 to and in every event shall remain at the scene of the accident
9 until the driver has fulfilled the requirements of section 291C-
10 14. Every such stop shall be made without obstructing traffic
11 more than is necessary.

12 (b) Any person who violates subsection (a) shall be guilty
13 of a class B felony.

14 (c) The license or permit to drive and any nonresident
15 operating privilege of the person so convicted shall be revoked.

16 (d) For any violation under this section, a surcharge of
17 \$500 shall be imposed, in addition to any other penalties, and
18 shall be deposited into the neurotrauma special fund.

19 (e) For any violation under this section, a surcharge of up
20 to \$500 may be imposed, in addition to other penalties, which
21 shall be deposited into the trauma system special fund."



1 SECTION 8. Section 291C-12.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§291C-12.5 Accidents involving substantial bodily injury.**

4 (a) The driver of any vehicle involved in an accident resulting
5 in substantial bodily injury to any person shall immediately
6 stop the vehicle at the scene of the accident or as close
7 thereto as possible but shall then forthwith return to and in
8 every event shall remain at the scene of the accident until the
9 driver has fulfilled the requirements of section 291C-14. Every
10 such stop shall be made without obstructing traffic more than is
11 necessary.

12 (b) Any person who violates subsection (a) shall be guilty
13 of a class C felony.

14 (c) For any violation under this section, a surcharge of
15 \$250 shall be imposed, in addition to any other penalties, and
16 shall be deposited into the neurotrauma special fund.

17 (d) For any violation under this section, a surcharge of up
18 to \$250 may be imposed, in addition to other penalties, which
19 shall be deposited into the trauma system special fund."

20 SECTION 9. Section 291C-12.6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§291C-12.6 Accidents involving bodily injury.** (a) The
2 driver of any vehicle involved in an accident resulting in
3 bodily injury to any person shall immediately stop the vehicle
4 at the scene of the accident or as close thereto as possible but
5 shall then forthwith return to and in every event shall remain
6 at the scene of the accident until the driver has fulfilled the
7 requirements of section 291C-14. Every such stop shall be made
8 without obstructing traffic more than is necessary.

9 (b) Any person who violates subsection (a) shall be guilty
10 of a misdemeanor.

11 (c) For any violation under this section, a surcharge of
12 \$100 shall be imposed, in addition to any other penalties, and
13 shall be deposited into the neurotrauma special fund.

14 (d) For any violation under this section, a surcharge of up
15 to \$100 may be imposed, in addition to other penalties, which
16 shall be deposited into the trauma system special fund."

17 SECTION 10. Section 291C-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§291C-13 Accidents involving damage to vehicle or**
20 **property.** The driver of any vehicle involved in an accident
21 resulting only in damage to a vehicle or other property that is
22 driven or attended by any person shall immediately stop such



1 vehicle at the scene of the accident or as close thereto as
2 possible, but shall forthwith return to, and in every event
3 shall remain at, the scene of the accident until the driver has
4 fulfilled the requirements of section 291C-14. Every such stop
5 shall be made without obstructing traffic more than is
6 necessary. For any violation under this section, a surcharge of
7 up to \$100 may be imposed, in addition to other penalties, which
8 shall be deposited into the trauma system special fund."

9 SECTION 11. Section 291C-14, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§291C-14 Duty to give information and render aid. (a)**
12 The driver of any vehicle involved in an accident resulting in
13 injury to or death of any person or damage to any vehicle or
14 other property which is driven or attended by any person shall
15 give the driver's name, address, and the registration number of
16 the vehicle the driver is driving, and shall upon request and if
17 available exhibit the driver's license or permit to drive to any
18 person injured in the accident or to the driver or occupant of
19 or person attending any vehicle or other property damaged in the
20 accident and shall give such information and upon request
21 exhibit such license or permit to any police officer at the
22 scene of the accident or who is investigating the accident and



1 shall render to any person injured in the accident reasonable
2 assistance, including the carrying, or the making of
3 arrangements for the carrying, of the person to a physician,
4 surgeon, or hospital for medical or surgical treatment if it is
5 apparent that such treatment is necessary, or if such carrying
6 is requested by the injured person; provided that if the vehicle
7 involved in the accident is a bicycle, the driver of the bicycle
8 need not exhibit a license or permit to drive.

9 (b) In the event that none of the persons specified is in
10 condition to receive the information to which they otherwise
11 would be entitled under subsection (a), and no police officer is
12 present, the driver of any vehicle involved in the accident
13 after fulfilling all other requirements of section 291C-12,
14 291C-12.5, or 291C-12.6, and subsection (a) of this section,
15 insofar as possible on the driver's part to be performed, shall
16 forthwith report the accident to the nearest police officer and
17 submit thereto the information specified in subsection (a).

18 (c) For any violation under this section, a surcharge of up
19 to \$100 may be imposed, in addition to other penalties, which
20 shall be deposited into the trauma system special fund."

21 SECTION 12. Section 291C-15, Hawaii Revised Statutes, is
22 amended to read as follows:



1 " ~~[+]~~§291C-15~~[+]~~ **Duty upon striking unattended vehicle or**
2 **other property.** The driver of any vehicle which collides with
3 or is involved in an accident with any vehicle or other property
4 which is unattended resulting in any damage to the other vehicle
5 or property shall immediately stop and shall then and there
6 either locate and notify the operator or owner of such vehicle
7 or other property of the driver's name, address, and the
8 registration number of the vehicle the driver is driving or
9 shall attach securely in a conspicuous place in or on such
10 vehicle or other property a written notice giving the driver's
11 name, address, and the registration number of the vehicle the
12 driver is driving and shall without unnecessary delay notify the
13 nearest police office. Every such stop shall be made without
14 obstructing traffic more than is necessary. For any violation
15 under this section, a surcharge of up to \$100 may be imposed, in
16 addition to other penalties, which shall be deposited into the
17 trauma system special fund."

18 SECTION 13. Section 291C-16, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§291C-16 Immediate notice of accident.** (a) The driver
21 of a vehicle involved in an accident resulting in injury or
22 death of any person or total damage to all property to an



1 apparent extent of \$3,000 or more shall immediately by the
2 quickest means of communication give notice of the accident to
3 the nearest police office. If sent to the site of the accident,
4 a responding police officer shall file a written report if it
5 appears at the time that the accident has resulted in the injury
6 or death of any person, or total damage to all property to an
7 apparent extent of \$3,000 or more.

8 (b) Whenever the driver of a vehicle is physically
9 incapable of giving an immediate notice of an accident as
10 required in subsection (a) and there was another occupant in the
11 vehicle at the time of the accident capable of doing so, such
12 occupant shall make or cause to be given the notice not given by
13 the driver.

14 (c) For any violation under this section, a surcharge of up
15 to \$100 may be imposed, in addition to other penalties, which
16 shall be deposited into the trauma system special fund."

17 SECTION 14. Section 291C-103, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§291C-103 Racing on highways.** (a) Except as provided in
20 section 291C-149, no person shall drive any vehicle in any race,
21 speed competition or contest, drag race or acceleration contest,
22 test of physical endurance, exhibition of speed or acceleration,



1 or for the purpose of making a speed record, and no person shall
2 in any manner participate in any race, competition, contest,
3 test, or exhibition prohibited by this section.

4 (b) "Drag race" means the operation of two or more
5 vehicles from a point side by side at accelerating speeds in a
6 competitive attempt to outdistance each other, or the operation
7 of one or more vehicles over a common selected course, from the
8 same point to the same point, for the purpose of comparing the
9 relative speeds or power of acceleration of the vehicle or
10 vehicles within a certain distance or time limit.

11 (c) "Racing" means the use of one or more vehicles in an
12 attempt to outgain, outdistance, or prevent another vehicle from
13 passing, to arrive at a given destination ahead of another
14 vehicle or vehicles, or to test the physical stamina or
15 endurance of drivers over long distance driving routes.

16 (d) "Exhibition of speed or acceleration" means the sudden
17 acceleration of a vehicle resulting in the screeching of the
18 vehicle's tires which is done to intentionally draw the
19 attention of persons present toward the vehicle.

20 (e) Any person who violates this section, except
21 subsection (d), shall be fined not more than \$500 or imprisoned
22 not more than six months, or both. Any person who violates



1 subsection (d) shall be fined not more than \$500 or be sentenced
2 to perform community service, or both.

3 (f) Any person who violates this section while operating a
4 vehicle at a speed exceeding the posted speed limit by thirty
5 miles per hour or more shall be subject to a fine of not more
6 than \$2,000, a term of imprisonment of not more than one year,
7 or both; provided that the following additional penalties shall
8 also apply:

9 (1) For an offense that occurs within five years of a
10 prior conviction, a one-year license suspension;

11 (2) For an offense that occurs within five years of two
12 prior convictions:

13 (A) A three-year license suspension; and

14 (B) A vehicle owned by the defendant and used in the
15 commission of the offense which has been used in
16 at least two prior offenses that resulted in
17 convictions may be ordered by the court to be
18 subject to forfeiture under chapter 712A.

19 (3) For all offenses under this section, a surcharge of up
20 to \$100 may be deposited in the trauma system special
21 fund if the court so orders."



1 SECTION 15. Section 291C-104, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§291C-104 Speeding in a school zone or construction area.**

4 (a) No person shall drive a motor vehicle at a speed greater
5 than the maximum speed limit established pursuant to subsection
6 (b) within a school zone or a construction area; provided that
7 if the person drives a motor vehicle at a speed greater than
8 thirty miles an hour or more over the maximum speed limit
9 established in subsection (b), or over eighty miles per hour or
10 more in a school zone or a construction zone, the provisions of
11 section 291C-105 shall control. Appropriate law enforcement
12 personnel may enforce the maximum speed limits established for
13 school zones and construction areas.

14 (b) Section 291C-102 notwithstanding, the director of
15 transportation and the counties, in their respective
16 jurisdictions, shall establish maximum speed limits for school
17 zones and construction areas and shall require the owner,
18 general contractor, or other person responsible for construction
19 to provide proper signs in construction areas. The director of
20 transportation shall place official signs in school zones.

21 Signs posted pursuant to this subsection shall be plainly
22 visible at all times under ordinary traffic conditions.



1 (c) Any person who violates this section shall be fined
2 \$250 and may be charged with a surcharge of up to \$100 to be
3 deposited into the trauma system special fund.

4 (d) For purposes of this section:

5 "Construction area" includes any area in which there is
6 occurring the installation, construction, or demolition of
7 connections for streets, roads, driveways, concrete curbs and
8 sidewalks, structures, drainage systems, landscaping, or grading
9 within the highway rights-of-way, including aboveground and
10 underground utility work, excavation and backfilling of trenches
11 or other openings in state highways, the restoration,
12 replacement, or repair of the base course, pavement surfaces,
13 highway structures, or any other highway improvements.

14 "School zone" means every street and all public property in
15 the vicinity of a school as designated by the department of
16 transportation and the counties, in their respective
17 jurisdictions.

18 (e) The director shall adopt rules pursuant to chapter 91
19 as may be necessary to implement this section. "

20 SECTION 16. Section 291C-105, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§291C-105 Excessive speeding. (a) No person shall drive
2 a motor vehicle at a speed exceeding:

3 (1) The applicable state or county speed limit by thirty
4 miles per hour or more; or

5 (2) Eighty miles per hour or more irrespective of the
6 applicable state or county speed limit.

7 (b) For the purposes of this section, "the applicable
8 state or county speed limit" means:

9 (1) The maximum speed limit established by county
10 ordinance;

11 (2) The maximum speed limit established by official signs
12 placed by the director of transportation on highways
13 under the director's jurisdiction; or

14 (3) The maximum speed limit established pursuant to
15 section 291C-104 by the director of transportation or
16 the counties for school zones and construction areas
17 in their respective jurisdictions.

18 (c) Any person who violates this section shall be guilty
19 of a petty misdemeanor and shall be sentenced as follows without
20 the possibility of probation or suspension of sentence:



1 (1) For a first offense not preceded by a prior conviction
2 for an offense under this section in the preceding
3 five years:

4 (A) A fine of not less than \$500 and not more than
5 \$1,000;

6 (B) Thirty-day prompt suspension of license and
7 privilege to operate a vehicle during the
8 suspension period, or the court may impose, in
9 lieu of the thirty-day prompt suspension of
10 license, a minimum fifteen-day prompt suspension
11 of license with absolute prohibition from
12 operating a vehicle and, for the remainder of the
13 thirty-day period, a restriction on the license
14 that allows the person to drive for limited
15 work-related purposes;

16 (C) Attendance in a course of instruction in driver
17 retraining;

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

20 (E) May be charged a surcharge of up to \$100 to be
21 deposited into the trauma system special fund if
22 the court so orders;



- 1 (E) May be charged a surcharge of up to \$100 to be
2 deposited into the trauma system special fund if
3 the court so orders;
- 4 ~~(E)~~ (F) An assessment for driver education pursuant to
5 section 286G-3; and
- 6 ~~(F)~~ (G) Either one of the following:
- 7 (i) Not less than one hundred twenty hours of
8 community service work; or
- 9 (ii) Not less than five days but not more than
10 fourteen days of imprisonment of which at
11 least forty-eight hours shall be served
12 consecutively; and
- 13 (3) For an offense that occurs within five years of two
14 prior convictions for offenses under this section, by:
- 15 (A) A fine of \$1,000;
- 16 (B) Revocation of license and privilege to operate a
17 vehicle for a period of not less than ninety days
18 but not more than one year;
- 19 (C) Attendance in a course of instruction in driver
20 retraining;



1 (D) No fewer than ten days but no more than thirty
2 days of imprisonment of which at least
3 forty-eight hours shall be served consecutively;

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

6 (F) May be charged a surcharge of up to \$100 to be
7 deposited into the trauma system special fund if
8 the court so orders; and

9 ~~(F)~~ (G) An assessment for driver education pursuant to
10 section 286G-3."

11 SECTION 17. Section 291E-61, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **§291E-61 Operating a vehicle under the influence of an**
14 **intoxicant.** (a) A person commits the offense of operating a
15 vehicle under the influence of an intoxicant if the person
16 operates or assumes actual physical control of a vehicle:

17 (1) While under the influence of alcohol in an amount
18 sufficient to impair the person's normal mental
19 faculties or ability to care for the person and guard
20 against casualty;



1 (2) While under the influence of any drug that impairs the
2 person's ability to operate the vehicle in a careful
3 and prudent manner;

4 (3) With .08 or more grams of alcohol per two hundred ten
5 liters of breath; or

6 (4) With .08 or more grams of alcohol per one hundred
7 milliliters or cubic centimeters of blood.

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

12 (1) Except as provided in [paragraph] (2), for the first
13 offense, or any offense not preceded within a
14 five-year period by a conviction for an offense under
15 this section or section 291E-4(a):

16 (A) A fourteen-hour minimum substance abuse
17 rehabilitation program, including education and
18 counseling, or other comparable program deemed
19 appropriate by the court;

20 (B) Ninety-day prompt suspension of license and
21 privilege to operate a vehicle during the
22 suspension period, or the court may impose, in



1 lieu of the ninety-day prompt suspension of
2 license, a minimum thirty-day prompt suspension
3 of license with absolute prohibition from
4 operating a vehicle and, for the remainder of the
5 ninety-day period, a restriction on the license
6 that allows the person to drive for limited
7 work-related purposes and to participate in
8 substance abuse treatment programs;

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

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

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

17 (E) May be charged a surcharge of up to \$25 to be
18 deposited into the trauma system special fund if
19 the court so orders;

20 (2) For a first offense committed by a highly intoxicated
21 driver, or for any offense committed by a highly
22 intoxicated driver not preceded within a five-year



1 period by a conviction for an offense under this
2 section or section 291E-4(a):

3 (A) A fourteen-hour minimum substance abuse
4 rehabilitation program, including education and
5 counseling, or other comparable program deemed
6 appropriate by the court;

7 (B) Prompt suspension of a license and privilege to
8 operate a vehicle for a period of six months with
9 an absolute prohibition from operating a vehicle
10 during the suspension period;

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

12 (i) Seventy-two hours of community service work;

13 (ii) Not less than forty-eight hours and not more
14 than five days of imprisonment; or

15 (iii) A fine of not less than \$150 but not more
16 than \$1,000; and

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

19 (E) May be charged a surcharge of up to \$50 to be
20 deposited into the trauma system special fund if
21 the court so orders;



- 1 (3) For an offense that occurs within five years of a
- 2 prior conviction for an offense under this section or
- 3 section 291E-4(a) by:
- 4 (A) Prompt suspension of license and privilege to
- 5 operate a vehicle for a period of one year with
- 6 an absolute prohibition from operating a vehicle
- 7 during the suspension period;
- 8 (B) Either one of the following:
- 9 (i) Not less than two hundred forty hours of
- 10 community service work; or
- 11 (ii) Not less than five days but not more than
- 12 fourteen days of imprisonment of which at
- 13 least forty-eight hours shall be served
- 14 consecutively;
- 15 (C) A fine of not less than \$500 but not more than
- 16 \$1,500; and
- 17 (D) A surcharge of \$25 to be deposited into the
- 18 neurotrauma special fund; and
- 19 (E) May be charged a surcharge of up to \$50 to be
- 20 deposited into the trauma system special fund if
- 21 the court so orders;



- 1 (4) For an offense that occurs within five years of two
2 prior convictions for offenses under this section or
3 section 291E-4(a):
- 4 (A) A fine of not less than \$500 but not more than
5 \$2,500;
- 6 (B) Revocation of license and privilege to operate a
7 vehicle for a period not less than one year but
8 not more than five years;
- 9 (C) Not less than ten days but not more than thirty
10 days imprisonment of which at least forty-eight
11 hours shall be served consecutively;
- 12 (D) A surcharge of \$25 to be deposited into the
13 neurotrauma special fund; and
- 14 (E) May be charged a surcharge of up to \$50 to be
15 deposited into the trauma system special fund if
16 the court so orders; and
- 17 ~~(E)~~ (F) Forfeiture under chapter 712A of the vehicle
18 owned and operated by the person committing the
19 offense; provided that the department of
20 transportation shall provide storage for vehicles
21 forfeited under this subsection; and



- 1 (5) Any person eighteen years of age or older who is
2 convicted under this section and who operated a
3 vehicle with a passenger, in or on the vehicle, who
4 was younger than fifteen years of age, shall be
5 sentenced to an additional mandatory fine of \$500 and
6 an additional mandatory term of imprisonment of
7 forty-eight hours; provided that the total term of
8 imprisonment for a person convicted under this
9 paragraph shall not exceed the maximum term of
10 imprisonment provided in paragraph (1), (3), or (4).
- 11 (c) Notwithstanding any other law to the contrary, any:
- 12 (1) Conviction under this section, section 291E-4(a), or
13 section 291E-61.5;
- 14 (2) Conviction in any other state or federal jurisdiction
15 for an offense that is comparable to operating or
16 being in physical control of a vehicle while having
17 either an unlawful alcohol concentration or an
18 unlawful drug content in the blood or urine or while
19 under the influence of an intoxicant or habitually
20 operating a vehicle under the influence of an
21 intoxicant; or



1 (3) Adjudication of a minor for a law violation that, if
2 committed by an adult, would constitute a violation of
3 this section or an offense under section 291E-4(a), or
4 section 291E-61.5;
5 shall be considered a prior conviction for the purposes of
6 imposing sentence under this section. Any judgment on a verdict
7 or a finding of guilty, a plea of guilty or nolo contendere, or
8 an adjudication in the case of a minor, that at the time of the
9 offense has not been expunged by pardon, reversed, or set aside
10 shall be deemed a prior conviction under this section. No
11 license and privilege suspension or revocation shall be imposed
12 pursuant to this section if the person's license and privilege
13 to operate a vehicle has previously been administratively
14 revoked pursuant to part III for the same act; provided that, if
15 the administrative suspension or revocation is subsequently
16 reversed, the person's license and privilege to operate a
17 vehicle shall be suspended or revoked as provided in this
18 section.

19 (d) Whenever a court sentences a person pursuant to
20 subsection (b), it also shall require that the offender be
21 referred to the driver's education program for an assessment, by
22 a certified substance abuse counselor, of the offender's



1 substance abuse or dependence and the need for appropriate
2 treatment. The counselor shall submit a report with
3 recommendations to the court. The court shall require the
4 offender to obtain appropriate treatment if the counselor's
5 assessment establishes the offender's substance abuse or
6 dependence. All costs for assessment and treatment shall be
7 borne by the offender.

8 (e) Notwithstanding any other law to the contrary,
9 whenever a court revokes a person's driver's license pursuant to
10 this section, the examiner of drivers shall not grant to the
11 person a new driver's license until the expiration of the period
12 of revocation determined by the court. After the period of
13 revocation is completed, the person may apply for and the
14 examiner of drivers may grant to the person a new driver's
15 license.

16 (f) Any person sentenced under this section may be ordered
17 to reimburse the county for the cost of any blood or urine tests
18 conducted pursuant to section 291E-11. The court shall order
19 the person to make restitution in a lump sum, or in a series of
20 prorated installments, to the police department or other agency
21 incurring the expense of the blood or urine test.



1 (g) The requirement to provide proof of financial
2 responsibility pursuant to section 287-20 shall not be based
3 upon a sentence imposed under subsection (b)(1).

4 (h) As used in this section, the term "examiner of
5 drivers" has the same meaning as provided in section 286-2."

6 SECTION 18. Section 291E-61.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§291E-61.5 Habitually operating a vehicle under the**
9 **influence of an intoxicant.** (a) A person commits the offense
10 of habitually operating a vehicle under the influence of an
11 intoxicant if:

12 (1) The person is a habitual operator of a vehicle while
13 under the influence of an intoxicant; and

14 (2) The person operates or assumes actual physical control
15 of a vehicle:

16 (A) While under the influence of alcohol in an amount
17 sufficient to impair the person's normal mental
18 faculties or ability to care for the person and
19 guard against casualty;

20 (B) While under the influence of any drug that
21 impairs the person's ability to operate the
22 vehicle in a careful and prudent manner;



1 (C) With .08 or more grams of alcohol per two hundred
2 ten liters of breath; or

3 (D) With .08 or more grams of alcohol per one hundred
4 milliliters or cubic centimeters of blood.

5 (b) For the purposes of this section:

6 "Convicted three or more times for offenses of operating a
7 vehicle under the influence" means that, at the time of the
8 behavior for which the person is charged under this section, the
9 person had three or more times within ten years of the instant
10 offense:

11 (1) A judgment on a verdict or a finding of guilty, or a
12 plea of guilty or nolo contendere, for a violation of
13 this section or section 291-4, 291-4.4, or 291-7 as
14 those sections were in effect on December 31, 2001, or
15 section 291E-61 or 707-702.5;

16 (2) A judgment on a verdict or a finding of guilty, or a
17 plea of guilty or nolo contendere, for an offense that
18 is comparable to this section or section 291-4, 291-
19 4.4, or 291-7 as those sections were in effect on
20 December 31, 2001, or section 291E-61 or 707-702.5; or

21 (3) An adjudication of a minor for a law or probation
22 violation that, if committed by an adult, would



1 constitute a violation of this section or section 291-
2 4, 291-4.4, or 291-7 as those sections were in effect
3 on December 31, 2001, or section 291E-61 or 707-702.5;
4 that, at the time of the instant offense, had not been expunged
5 by pardon, reversed, or set aside. All convictions that have
6 been expunged by pardon, reversed, or set aside prior to the
7 instant offense shall not be deemed prior convictions for the
8 purposes of proving the person's status as a habitual operator
9 of a vehicle while under the influence of an intoxicant.

10 A person has the status of a "habitual operator of a
11 vehicle while under the influence of an intoxicant" if the
12 person has been convicted three or more times within ten years
13 of the instant offense, for offenses of operating a vehicle
14 under the influence of an intoxicant.

15 (c) Habitually operating a vehicle while under the
16 influence of an intoxicant is a class C felony.

17 (d) For a conviction under this section, the sentence
18 shall be either:

19 (1) An indeterminate term of imprisonment of five years;

20 or

21 (2) A term of probation of five years, with conditions to

22 include:



- 1 (A) Mandatory revocation of license and privilege to
- 2 operate a vehicle for a period not less than one
- 3 year but not more than five years;
- 4 (B) Not less than ten days imprisonment, of which at
- 5 least forty-eight hours shall be served
- 6 consecutively;
- 7 (C) Referral to a certified substance abuse counselor
- 8 as provided in section 291E-61(d); and
- 9 (D) A surcharge of \$25 to be deposited into the
- 10 neurotrauma special fund; and
- 11 (E) May be charged a surcharge of up to \$50 to be
- 12 deposited into the trauma system special fund if
- 13 the court so orders.

14 In addition to the foregoing, any vehicle owned and operated by
 15 the person committing the offense shall be subject to forfeiture
 16 pursuant to chapter 712A, provided that the department of
 17 transportation shall provide storage for vehicles forfeited
 18 under this subsection.

19 (e) Whenever a court sentences a person under this
 20 section, it shall also require that the offender be referred to
 21 the driver's education program for an assessment, by a certified
 22 substance abuse counselor, of the offender's substance abuse or



1 dependence and the need for appropriate treatment. The
2 counselor shall submit a report with recommendations to the
3 court. The court shall require the offender to obtain
4 appropriate treatment if the counselor's assessment establishes
5 the offender's substance abuse or dependence. All costs for
6 assessment and treatment shall be borne by the offender.

7 (f) Notwithstanding any other law to the contrary,
8 whenever a court revokes a person's driver's license pursuant to
9 this section, the examiner of drivers shall not grant to the
10 person a new driver's license until expiration of the period of
11 revocation determined by the court. After the period of
12 revocation is complete, the person may apply for and the
13 examiner of drivers may grant to the person a new driver's
14 license.

15 (g) Any person sentenced under this section may be ordered
16 to reimburse the county for the cost of any blood or urine tests
17 conducted pursuant to section 291E-11. The court shall order
18 the person to make restitution in a lump sum, or in a series of
19 prorated installments, to the police department or other agency
20 incurring the expense of the blood or urine test.

21 (h) As used in this section, the term "examiner of
22 drivers" has the same meaning as provided in section 286-2."



1 SECTION 19. Section 291C-161, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Every person convicted under or found in violation of
4 section 291C-12, 291C-12.5, 291C-12.6, 291C-13, 291C-14, 291C-
5 15, 291C-16, 291C-72, 291C-73, 291C-95, 291C-102, 291C-103,
6 291C-104, or 291C-105 shall be sentenced or fined in accordance
7 with those sections."

8 SECTION 20. Section 321-22.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§321-22.5[+] **Trauma system special fund.** (a) There
11 is established within the state treasury a special fund to be
12 known as the trauma system special fund to be administered and
13 expended by the department of health. The fund shall consist
14 of:

- 15 (1) Surcharges collected pursuant to sections 291- ,
- 16 291C- ,and 291E- ;
- 17 (2) Cigarette tax revenues designated under section
- 18 245-15;
- 19 (3) Federal funds granted by Congress or executive order
- 20 for the purpose of this chapter; provided that the
- 21 acceptance and use of federal funds shall not commit
- 22 state funds for services and shall not place an



1 obligation upon the legislature to continue the
2 purpose for which the federal funds are made
3 available;

4 (4) Funds appropriated by the legislature for this
5 purpose, including grants-in-aid;

6 (5) Grants, donations, and contributions from private or
7 public sources for the purposes of the trauma system
8 special fund; and

9 (6) Interest on and other income from the fund, which
10 shall be separately accounted for.

11 Moneys in the trauma system special fund shall not lapse at
12 the end of the fiscal year. Expenditures from the trauma system
13 special fund shall be exempt from chapters 103D and 103F.

14 (b) The moneys in the trauma system special fund shall be
15 used by the department to support the continuing development and
16 operation of a comprehensive state trauma system. The trauma
17 system special fund shall be used to subsidize the documented
18 costs for the comprehensive state trauma system, including but
19 not limited to the following:

20 (1) Costs of under-compensated and uncompensated trauma
21 care incurred by hospitals providing care to trauma
22 patients; and



1 (2) Costs incurred by hospitals providing care to trauma
2 patients to maintain on-call physicians for trauma
3 care.

4 The money in the trauma system special fund shall not be
5 used to supplant funding for trauma services authorized prior to
6 July 1, 2006, and shall not be used for ambulance or medical air
7 transport services.

8 (c) ~~[Interest and investment earnings attributable to the
9 moneys in the trauma system special fund, federal funding,
10 legislative appropriations, and grants, donations, and
11 contributions from private or public sources for the purposes of
12 the trauma system special fund shall be deposited into the
13 trauma system special fund.~~

14 ~~(d)]~~ Disbursements from the fund shall be made in
15 accordance with a methodology established by the department of
16 health to calculate costs incurred by a hospital providing care
17 to trauma patients that are eligible to receive reimbursement
18 under subsection (d). The methodology shall take into account:

- 19 (1) Physician on-call coverage that is demonstrated to be
20 essential for trauma services within the hospital;
21 (2) Equipment that is demonstrated to be essential for
22 trauma services within the hospital;



1 (3) The creation of overflow or surge capacity to allow a
2 trauma center to respond to mass casualties resulting
3 from an act of terrorism or natural disaster; and

4 (4) All other hospital services and resources that are
5 demonstrated to be essential for trauma services
6 within the hospital.

7 The department shall adopt rules pursuant to chapter 91 to
8 effectuate the purposes of this section~~[, including the~~
9 ~~methodology for disbursements from the trauma system special~~
10 ~~fund].~~

11 [+e)] (d) To receive reimbursement, a hospital providing
12 care to trauma patients shall apply to the trauma system special
13 fund on a form and in a manner approved by the department;
14 provided that recipients of reimbursements from the trauma
15 system special fund shall be subject to the following
16 conditions:

- 17 (1) The recipient of a reimbursement shall:
- 18 (A) Comply with applicable federal, state, and county
 - 19 laws;
 - 20 (B) Comply with any other requirements the director
 - 21 may prescribe;



- 1 (C) Allow the director, the legislative bodies, and
2 the state auditor access to records, reports,
3 files, and other related documents, to the extent
4 permissible under applicable state and federal
5 law, so that the program, management, and fiscal
6 practices of the recipient may be monitored and
7 evaluated to ensure the proper and effective
8 expenditure of public funds;
- 9 (D) Provide care to all injured patients regardless
10 of their ability to pay; and
- 11 (E) Participate in data collection and peer review
12 activities for the purpose of system evaluation
13 and improvement of patient care; and
- 14 (2) Every reimbursement shall be monitored according to
15 rules established by the director under chapter 91 to
16 ensure compliance with this section.
- 17 [~~f~~] (e) Necessary administrative expenses to carry out
18 this section shall not exceed five per cent of the total amount
19 collected in any given year.
- 20 [~~g~~] (f) The department shall submit an annual report to
21 the legislature no later than twenty days prior to the convening



1 of each regular session that outlines the receipts of and
2 expenditures from the trauma system special fund.

3 ~~(h)~~ (g) For the purposes of this section:

4 "Comprehensive state trauma system" means a coordinated
5 integrated system providing a spectrum of medical care
6 throughout the State designed to reduce death and disability by
7 appropriate and timely diagnosis and specialized treatment of
8 injuries, which includes hospitals with successive levels of
9 advanced capabilities for trauma care in accordance with
10 nationally accepted standards established by the American
11 College of Surgeons Committee on Trauma.

12 "Hospital providing care to trauma patients" means a
13 hospital with emergency services that receives and treats
14 injured patients.

15 "Trauma care" means specialized medical care intended to
16 reduce death and disability from injuries.

17 "Trauma center" means a facility verified by the American
18 College of Surgeons or designated by the department applying
19 American College of Surgeons recommendations as guidelines as
20 being a level I, level II, level III, or level IV trauma center.
21 Level I represents the highest level attainable by a verified



1 trauma center, and level IV represents the lowest level
2 attainable by a verified trauma center."

3 SECTION 21. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 22. This Act shall take effect on July 1, 2008.

APPROVED this day of , 2008

GOVERNOR OF THE STATE OF HAWAII



