

JAN 19 2007

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. Act 201, Session Laws of Hawaii 2006, is
2 amended by amending section 1 to read as follows:

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

6 ""Highly intoxicated driver" means a person whose
7 measurable amount of alcohol is 0.15 or more grams of alcohol
8 per one hundred milliliters or cubic centimeters of the person's
9 blood, or 0.15 or more grams of alcohol per two hundred ten
10 liters of the person's breath[~~, as measured at the time of the~~
11 ~~offense, or within three hours of the time of the offense]."~~

12 SECTION 2. Section 291E-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§291E-3 Evidence of intoxication. (a) In any criminal
15 prosecution for a violation of section 291E-61 or 291E-61.5 or
16 in any proceeding under part III:



- 1 (1) .08 or more grams of alcohol per one hundred
2 milliliters or cubic centimeters of the person's
3 blood;
- 4 (2) .08 or more grams of alcohol per two hundred ten
5 liters of the person's breath; or
- 6 (3) The presence of one or more drugs in an amount
7 sufficient to impair the person's ability to operate a
8 vehicle in a careful and prudent manner,

9 within three hours after the time of the alleged violation as
10 shown by chemical analysis or other approved analytical
11 techniques of the person's blood, breath, or urine shall be
12 competent evidence that the person was under the influence of an
13 intoxicant at the time of the alleged violation.

14 (b) In any criminal prosecution for a violation of section
15 291E-61 or 291E-61.5, the amount of alcohol found in the
16 defendant's blood or breath within three hours after the time of
17 the alleged violation as shown by chemical analysis or other
18 approved analytical techniques of the defendant's blood or
19 breath shall be competent evidence concerning whether the
20 defendant was under the influence of an intoxicant at the time
21 of the alleged violation and shall give rise to the following
22 presumptions:



1 (1) If there were .05 or less grams of alcohol per one
2 hundred milliliters or cubic centimeters of
3 defendant's blood or .05 or less grams of alcohol per
4 two hundred ten liters of defendant's breath, it shall
5 be presumed that the defendant was not under the
6 influence of alcohol at the time of the alleged
7 violation; and

8 (2) If there were in excess of .05 grams of alcohol per
9 one hundred milliliters or cubic centimeters of
10 defendant's blood or .05 grams of alcohol per two
11 hundred ten liters of defendant's breath, but less
12 than .08 grams of alcohol per one hundred milliliters
13 or cubic centimeters of defendant's blood or .08 grams
14 of alcohol per two hundred ten liters of defendant's
15 breath, that fact may be considered with other
16 competent evidence in determining whether the
17 defendant was under the influence of alcohol at the
18 time of the alleged violation, but shall not of itself
19 give rise to any presumption.

20 (c) In any criminal prosecution for a violation of section
21 291E-61 or in any proceeding under part III:



1 (1) .15 or more grams of alcohol per one hundred
2 milliliters or cubic centimeters of the person's
3 blood; or
4 (2) .15 or more grams of alcohol per two hundred ten
5 liters of the person's breath;
6 within three hours after the time of the alleged violation as
7 shown by chemical analysis or other approved analytical
8 techniques of the person's blood, breath, or urine, shall be
9 competent evidence that the person was a highly intoxicated
10 driver at the time of the alleged violation.

11 [~~(e)~~] (d) Nothing in this section shall be construed as
12 limiting the introduction, in any criminal proceeding for a
13 violation under section 291E-61 or 291E-61.5 or in any
14 proceeding under part III, of relevant evidence of a person's
15 alcohol concentration or drug content obtained more than three
16 hours after an alleged violation; provided that the evidence is
17 offered in compliance with the Hawaii rules of evidence."

18 SECTION 3. Act 201, Session Laws of Hawaii 2006, is
19 amended by amending section 5(1) to read as follows:

20 "SECTION 5. Section 291E-41, Hawaii Revised Statutes, is
21 amended as follows:

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



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

5 (1) A minimum of three months up to a maximum of one year
6 revocation of license and privilege to operate a
7 vehicle, if the respondent's record shows no prior
8 alcohol enforcement contact or drug enforcement
9 contact during the five years preceding the date the
10 notice of administrative revocation was issued;

11 (2) For a respondent who is a highly intoxicated driver,
12 if the respondent's record shows no prior alcohol
13 enforcement contact or drug enforcement contact during
14 the five years preceding the date the notice of
15 administrative revocation was issued, a mandatory
16 minimum of six [~~month~~] months up to a maximum of one
17 year revocation of license and privilege to operate a
18 vehicle and of the registration of any motor vehicle
19 registered to the highly intoxicated driver; provided
20 that the highly intoxicated driver shall not qualify
21 for a conditional license permit under section
22 291E-44;



- 1 (3) A minimum of one year up to a maximum of two years
2 revocation of license and privilege to operate a
3 vehicle and of the registration of any motor vehicle
4 registered to the respondent, if the respondent's
5 record shows one prior alcohol enforcement contact or
6 drug enforcement contact during the five years
7 preceding the date the notice of administrative
8 revocation was issued;
- 9 (4) A minimum of two years up to a maximum of four years
10 revocation of license and privilege to operate a
11 vehicle and of the registration of any motor vehicle
12 registered to the respondent, if the respondent's
13 record shows two prior alcohol enforcement contacts or
14 drug enforcement contacts during the seven years
15 preceding the date the notice of administrative
16 revocation was issued;
- 17 (5) Lifetime revocation of license and privilege to
18 operate a vehicle and of the registration of any motor
19 vehicle registered to the respondent and a lifetime
20 prohibition on any subsequent registration of motor
21 vehicles by the respondent, if the respondent's record
22 shows three or more prior alcohol enforcement contacts



1 or drug enforcement contacts during the ten years
2 preceding the date the notice of administrative
3 revocation was issued; or
4 (6) For respondents under the age of eighteen years who
5 were arrested for a violation of section 291E-61 or
6 291E-61.5, revocation of license and privilege to
7 operate a vehicle either for the period remaining
8 until the respondent's eighteenth birthday or, if
9 applicable, for the appropriate revocation period
10 provided in paragraphs (1) to (5) or in subsection
11 (d), whichever is longer and such respondents shall
12 not qualify for a conditional permit;
13 provided that when more than one administrative revocation,
14 suspension, or conviction arises out of the same arrest, it
15 shall be counted as only one prior alcohol enforcement contact
16 or drug enforcement contact, whichever revocation, suspension,
17 or conviction occurs later."

18 SECTION 4. Act 201, Session Laws of Hawaii 2006, is
19 amended by amending section 7 to read as follows:

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



1 "(b) A person committing the offense of operating a
2 vehicle under the influence of an intoxicant shall be sentenced
3 as follows without possibility of probation or suspension of
4 sentence:

5 (1) ~~[For]~~ Except as provided in section 291E-61(b)(2), for
6 the first offense, or any offense not preceded within
7 a five-year period by a conviction for an offense
8 under this section or section 291E-4(a):

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

13 (B) Ninety-day prompt suspension of license and
14 privilege to operate a vehicle during the
15 suspension period, or the court may impose, in
16 lieu of the ninety-day prompt suspension of
17 license, a minimum thirty-day prompt suspension
18 of license with absolute prohibition from
19 operating a vehicle and, for the remainder of the
20 ninety-day period, a restriction on the license
21 that allows the person to drive for limited



- 1 work-related purposes and to participate in
2 substance abuse treatment programs;
- 3 (C) Any one or more of the following:
- 4 (i) Seventy-two hours of community service work;
- 5 (ii) Not less than forty-eight hours and not more
6 than five days of imprisonment; or
- 7 (iii) A fine of not less than \$150 but not more
8 than \$1,000; and
- 9 (D) A surcharge of \$25 to be deposited into the
10 neurotrauma special fund;
- 11 (2) ~~[For an offense committed by a highly intoxicated~~
12 ~~driver, prompt suspension of license and privilege to~~
13 ~~operate a vehicle for a period of six months with an~~
14 ~~absolute prohibition from operating a vehicle during~~
15 ~~the suspension period;] For a first offense committed~~
16 ~~by a highly intoxicated driver, or for any offense~~
17 ~~committed by a highly intoxicated driver not preceded~~
18 ~~within a five-year period by a conviction for an~~
19 ~~offense under this section or section 291E-4(a);~~
- 20 (A) A fourteen-hour minimum substance abuse
21 rehabilitation program, including education and



1 counseling, or other comparable program deemed
2 appropriate by the court;

3 (B) Prompt suspension of license and privilege to
4 operate a vehicle for a period of six months with
5 an absolute prohibition from operating a vehicle
6 during the suspension;

7 (C) Any one of the following:

8 (i) Seventy-two hours of community service work;
9 and

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

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

14 (iv) A surcharge of \$25 to be deposited into the
15 neurotrauma special fund;

16 (3) For an offense that occurs within five years of a
17 prior conviction for an offense under this section or
18 section 291E-4(a) by:

19 (A) Prompt suspension of license and privilege to
20 operate a vehicle for a period of one year with
21 an absolute prohibition from operating a vehicle
22 during the suspension period;



- 1 (B) Either one of the following:
 - 2 (i) Not less than two hundred forty hours of
 - 3 community service work; or
 - 4 (ii) Not less than five days but not more than
 - 5 fourteen days of imprisonment of which at
 - 6 least forty-eight hours shall be served
 - 7 consecutively;
- 8 (C) A fine of not less than \$500 but not more than
- 9 \$1,500; and
- 10 (D) A surcharge of \$25 to be deposited into the
- 11 neurotrauma special fund;
- 12 (4) For an offense that occurs within five years of two
- 13 prior convictions for offenses under this section or
- 14 section 291E-4(a):
 - 15 (A) A fine of not less than \$500 but not more than
 - 16 \$2,500;
 - 17 (B) Revocation of license and privilege to operate a
 - 18 vehicle for a period not less than one year but
 - 19 not more than five years;
 - 20 (C) Not less than ten days but not more than thirty
 - 21 days imprisonment of which at least forty-eight
 - 22 hours shall be served consecutively;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund; and
- 3 (E) Forfeiture under chapter 712A of the vehicle
- 4 owned and operated by the person committing the
- 5 offense; provided that the department of
- 6 transportation shall provide storage for vehicles
- 7 forfeited under this subsection; and
- 8 (5) Any person eighteen years of age or older who is
- 9 convicted under this section and who operated a
- 10 vehicle with a passenger, in or on the vehicle, who
- 11 was younger than fifteen years of age, shall be
- 12 sentenced to an additional mandatory fine of \$500 and
- 13 an additional mandatory term of imprisonment of
- 14 forty-eight hours; provided that the total term of
- 15 imprisonment for a person convicted under this
- 16 paragraph shall not exceed the maximum term of
- 17 imprisonment provided in paragraph (1), (2), or (3)."

18 SECTION 5. Act 201, Session Laws of Hawaii 2006, is
19 amended by amending section 8 to read as follows:

20 "SECTION 8. Section 291E-64, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) A person who violates this section shall be sentenced
2 as follows:

3 (1) For a first violation or any violation not preceded
4 within a five-year period by a prior alcohol
5 enforcement contact:

6 (A) The court shall impose:

7 (i) A requirement that the person and, if the
8 person is under the age of eighteen, the
9 person's parent or guardian attend an
10 alcohol abuse education and counseling
11 program for not more than ten hours; and

12 (ii) A one hundred eighty-day prompt suspension
13 of license and privilege to operate a
14 vehicle with absolute prohibition from
15 operating a vehicle during the suspension
16 period, or in the case of a person eighteen
17 years of age or older, the court may impose,
18 in lieu of the one hundred eighty-day prompt
19 suspension of license, a minimum thirty-day
20 prompt suspension of license with absolute
21 prohibition from operating a vehicle and,
22 for the remainder of the one hundred eighty-



1 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 alcohol abuse education and treatment
5 programs; and

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

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

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

12 (2) For a violation [~~committed by a highly intoxicated~~
13 ~~driver or~~] that occurs within five years of a prior
14 alcohol enforcement contact:

15 (A) The court shall impose prompt suspension of
16 license and privilege to operate a vehicle for a
17 period of one year with absolute prohibition from
18 operating a vehicle during the suspension period;
19 and

20 (B) In addition, the court may impose any of the
21 following:



- 1 (i) Not more than fifty hours of community
- 2 service work; or
- 3 (ii) A fine of not less than \$300 but not more
- 4 than \$1,000; and

5 (3) For a violation that occurs within five years of two
6 prior alcohol enforcement contacts:

7 (A) The court shall impose revocation of license and
8 privilege to operate a vehicle for a period of
9 two years; and

10 (B) In addition, the court may impose any of the
11 following:

- 12 (i) Not more than one hundred hours of community
- 13 service work; or
- 14 (ii) A fine of not less than \$300 but not more
- 15 than \$1,000."

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun, before its effective date.



1 SECTION 8. This Act shall take effect on July 1, 2007.

2

INTRODUCED BY: Francis D. Poyne
Will Egan



Report Title:

Use of Intoxicants; Motor Vehicle Drivers

Description:

Provides for blood alcohol competent evidence standard for criminal prosecution; requires mandatory sentence of six months to one year if driver has no prior alcohol enforcement contact or drug enforcement contact; requires mandatory sentence for first offense committed by a highly intoxicated driver.

