

JAN 22 2010

S.B. NO. 2344

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# A BILL FOR AN ACT

RELATING TO ALCOHOL.

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

1           SECTION 1. The legislature finds that deaths caused by  
2 intoxicated drivers, as well as the liquor establishments that  
3 may serve them alcohol, cause untold misery, hardship, and  
4 mental and emotional damage to loved ones of victims of motor  
5 vehicle accidents caused by intoxication. Society can no longer  
6 afford to allow drunk driving to continue without doing more  
7 than current law provides.

8           The purpose of this Act is to:

- 9           (1) Strengthen the enforcement of liquor license law and  
10           increase the punishment for driving under the  
11           influence of alcohol; and  
12           (2) Make an appropriation to the counties for police  
13           departments to increase sobriety check points at high  
14           risk sites statewide.

15           SECTION 2. Section 281-78, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:



1           "(b) At no time under any circumstances shall any licensee  
2 or its employee:

3           (1) Sell, serve, or furnish any liquor to, or allow the  
4 consumption of any liquor by:

5           (A) Any minor;

6           (B) Any person at the time under the influence of  
7 liquor;

8           (C) Any person known to the licensee to be addicted  
9 to the excessive use of intoxicating liquor; or

10          (D) Any person for consumption in any vehicle that is  
11 licensed to travel on public highways;

12 provided that the consumption or sale of liquor to a  
13 minor shall not be deemed to be a violation of this  
14 subsection if, in making the sale or allowing the  
15 consumption of any liquor by a minor, the licensee was  
16 misled by the appearance of the minor and the  
17 attending circumstances into honestly believing that  
18 the minor was of legal age and the licensee acted in  
19 good faith; and provided further that it shall be  
20 incumbent upon the licensee to prove that the licensee  
21 so acted in good faith;



1        (2) Repeatedly sell, serve, or furnish any liquor to, or  
2        allow the consumption of any liquor to any person at  
3        the time under the influence of liquor; provided that  
4        the liquor commission shall adopt rules under section  
5        281-17 for purposes of enforcement of this paragraph;  
6        and provided further that a single violation of this  
7        paragraph shall constitute grounds for revocation of  
8        license under section 281-91;

9        [~~2~~] (3) Permit any liquor to be consumed on the premises  
10       of the licensee or on any premises connected  
11       therewith, whether there purchased or not, except as  
12       permitted by the terms of its license;

13       [~~3~~] (4) Permit any liquor to be sold or served by any  
14       person eighteen to twenty years of age except in  
15       licensed establishments where selling or serving the  
16       intoxicating liquor is part of the minor's employment,  
17       and where there is proper supervision of these minor  
18       employees to ensure that the minors shall not consume  
19       the intoxicating liquor;

20       [~~4~~] (5) Permit any liquor to be sold or served by any  
21       person below the age of eighteen years upon any  
22       licensed premises, except in individually specified



1 licensed establishments found to be otherwise suitable  
2 by the liquor commission in which an approved program  
3 of job training and employment for dining room waiters  
4 and waitresses is being conducted in cooperation with  
5 the University of Hawaii, the state community college  
6 system, or a federally sponsored personnel development  
7 and training program, under arrangements that ensure  
8 proper control and supervision of employees;

9 ~~[(5)]~~ (6) Knowingly permit any person under the influence  
10 of liquor or disorderly person to be or remain in or  
11 on the licensed premises;

12 ~~[(6)]~~ (7) Fail immediately to prevent or suppress any  
13 violent, quarrelsome, disorderly, lewd, immoral, or  
14 unlawful conduct of any person on the premises;

15 ~~[(7)]~~ (8) Sell any draught beer unless upon the faucet,  
16 spigot, or outlet wherefrom the beer is drawn there is  
17 attached a clear and legible notice, placard, or  
18 marker which in the English language indicates and  
19 declares the name or brand adopted by the manufacturer  
20 of the draught beer, so situated as to be clearly  
21 legible for a distance of at least ten feet from the



1 spigot, faucet, or outlet, to a purchaser with normal  
2 vision; or  
3 ~~[-(8)-]~~ (9) Receive from a person, as payment or as a  
4 consideration for liquor, any personal or household  
5 goods, including clothing and food, or any implements  
6 of trade. Any person violating this paragraph shall  
7 be guilty of a misdemeanor and upon conviction shall  
8 be punished as provided in section 281-102."

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

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

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

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



1 (B) Ninety-day prompt suspension of license and  
2 privilege to operate a vehicle during the  
3 suspension period, or the court may impose, in  
4 lieu of the ninety-day prompt suspension of  
5 license, a minimum thirty-day prompt suspension  
6 of license with absolute prohibition from  
7 operating a vehicle and, for the remainder of the  
8 ninety-day period, a restriction on a category  
9 (1), (2), or (3) license under section 286-102(b)  
10 that allows the person to drive for limited work-  
11 related purposes and to participate in substance  
12 abuse treatment programs;

13 (C) Any one or more of the following:  
14 (i) Seventy-two hours of community service work;  
15 (ii) Not less than forty-eight hours and not more  
16 than five days of imprisonment; or  
17 (iii) A fine of not less than \$150 but not more  
18 than \$1,000;

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

21 (E) [~~May be charged~~] If the court so orders, a  
22 surcharge of up to \$25 to be deposited into the



1                   trauma system special fund [~~if the court so~~  
2                   ~~orders~~];

3           (2) For a first offense committed by a highly intoxicated  
4           driver, or for any offense committed by a highly  
5           intoxicated driver not preceded within a five-year  
6           period by a conviction for an offense under this  
7           section or section 291E-4(a):

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

12           (B) Prompt suspension of a license and privilege to  
13           operate a vehicle for a period of six months with  
14           an absolute prohibition from operating a vehicle  
15           during the suspension period;

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

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

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

20                   (iii) A fine of not less than \$150 but not more  
21                   than \$1,000;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund; and
- 3 (E) [~~May be charged~~] If the court so orders, a
- 4 surcharge of up to \$50 to be deposited into the
- 5 trauma system special fund [~~if the court so~~
- 6 ~~orders~~];

7 (3) For an offense that occurs within five years of a

8 prior conviction for an offense under this section or

9 section 291E-4(a) by:

10 (A) Prompt suspension of license and privilege to

11 operate a vehicle for a period of one year with

12 an absolute prohibition from operating a vehicle

13 during the suspension period;

14 (B) Either one of the following:

- 15 (i) Not less than two hundred forty hours of
- 16 community service work; or
- 17 (ii) Not less than five days but not more than
- 18 fourteen days of imprisonment of which at
- 19 least forty-eight hours shall be served
- 20 consecutively;

21 (C) A fine of not less than \$500 but not more than

22 \$1,500;





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

3 (E) [~~May be charged~~] If the court so orders, a  
4 surcharge of up to \$50 to be deposited into the  
5 trauma system special fund [~~if the court so~~  
6 ~~orders~~];

7 (4) For an offense that occurs within five years of two  
8 prior convictions for offenses under this section or  
9 section 291E-4(a):

10 (A) A fine of not less than \$500 but not more than  
11 \$2,500;

12 (B) Revocation of license and privilege to operate a  
13 vehicle for a period not less than one year but  
14 not more than five years[+] if the offense is for  
15 operating a vehicle under the influence of any  
16 drug; or for a period of five years if the  
17 offense is for operating a vehicle under the  
18 influence of alcohol;

19 (C) Not less than ten days but not more than thirty  
20 days imprisonment of which at least forty-eight  
21 hours shall be served consecutively;



- 1 (D) A surcharge of \$25 to be deposited into the  
2 neurotrauma special fund;
- 3 (E) [~~May be charged~~] If the court so orders, a  
4 surcharge of up to \$50 to be deposited into the  
5 trauma system special fund [~~if the court so~~  
6 ~~orders~~]; [and]
- 7 (F) Forfeiture under chapter 712A of the vehicle  
8 owned and operated by the person committing the  
9 offense; provided that the department of  
10 transportation shall provide storage for vehicles  
11 forfeited under this subsection; and
- 12 (G) House arrest for a period of six months if the  
13 offense is for operating a vehicle under the  
14 influence of alcohol; and
- 15 (5) Any person eighteen years of age or older who is  
16 convicted under this section and who operated a  
17 vehicle with a passenger, in or on the vehicle, who  
18 was younger than fifteen years of age, shall be  
19 sentenced to an additional mandatory fine of \$500 and  
20 an additional mandatory term of imprisonment of forty-  
21 eight hours; provided that the total term of  
22 imprisonment for a person convicted under this



1 paragraph shall not exceed the maximum term of  
2 imprisonment provided in paragraph (1), (3), or (4)."

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

5 "(b) A person committing the offense of operating a  
6 vehicle under the influence of an intoxicant shall be sentenced  
7 as follows:

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

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

15 (B) One-year revocation of license and privilege to  
16 operate a vehicle during the revocation period  
17 and installation during the revocation period of  
18 an ignition interlock device on any vehicle  
19 operated by the person;

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

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



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

3 (iii) A fine of not less than \$150 but not more  
4 than \$1,000;

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

7 (E) [~~May be charged~~] If the court so orders, a  
8 surcharge of up to \$25 to be deposited into the  
9 trauma system special fund [~~if the court so~~  
10 ~~orders~~];

11 (2) For an offense that occurs within five years of a  
12 prior conviction for an offense under this section or  
13 section 291E-4(a), and notwithstanding section  
14 706-623, by probation for not less than eighteen  
15 months nor more than two years on the following  
16 conditions:

17 (A) Revocation of license and privilege to operate a  
18 vehicle during the probation period and  
19 installation during the probation period of an  
20 ignition interlock device on any vehicle operated  
21 by the person;

22 (B) Either one of the following:



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

3 (ii) Not more than five days of imprisonment of  
4 which at least forty-eight hours shall be  
5 served consecutively;

6 (C) A fine of not less than \$500 but not more than  
7 \$1,500;

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

10 (E) [~~May be charged~~] If the court so orders, a  
11 surcharge of up to \$50 to be deposited into the  
12 trauma system special fund [~~if the court so~~  
13 ~~orders~~];

14 (3) For an offense that occurs within five years of two  
15 prior convictions for offenses under this section or  
16 section 291E-4(a), and notwithstanding section  
17 706-623, by probation for two years on the following  
18 conditions:

19 (A) A fine of not less than \$500 but not more than  
20 \$2,500;

21 (B) Revocation of license and privilege to operate a  
22 vehicle during the probation period and



- 1 installation during the probation period of an  
2 ignition interlock device on any vehicle operated  
3 by the person;
- 4 (C) Up to five days imprisonment of which at least  
5 forty-eight hours shall be served consecutively;
- 6 (D) A surcharge of \$25 to be deposited into the  
7 neurotrauma special fund; ~~[and]~~
- 8 (E) ~~[May be charged]~~ If the court so orders, a  
9 surcharge of up to \$50 to be deposited into the  
10 trauma system special fund ~~[if the court so~~  
11 ~~orders]~~;
- 12 (F) Revocation of license and privilege to operate a  
13 vehicle for a period of five years if the offense  
14 is for operating a vehicle under the influence of  
15 alcohol; and
- 16 (G) House arrest for a period of six months if the  
17 offense is for operating a vehicle under the  
18 influence of alcohol;
- 19 (4) In addition to a sentence imposed under paragraphs (1)  
20 through (3), any person eighteen years of age or older  
21 who is convicted under this section and who operated a  
22 vehicle with a passenger, in or on the vehicle, who



1 was younger than fifteen years of age, shall be  
2 sentenced to an additional mandatory fine of \$500 and  
3 an additional mandatory term of imprisonment of forty-  
4 eight hours; provided that the total term of  
5 imprisonment for a person convicted under this  
6 paragraph shall not exceed the maximum term of  
7 imprisonment provided in paragraph (1), (2), or (3),  
8 as applicable. Notwithstanding paragraph (2), the  
9 probation period for a person sentenced under this  
10 paragraph shall be not less than two years; and

11 (5) If the person demonstrates to the court that the  
12 person:

13 (A) Does not own or have the use of a vehicle in  
14 which the person can install an ignition  
15 interlock device during the probation period; or

16 (B) Is otherwise unable to drive during the probation  
17 period,

18 the person shall be absolutely prohibited from driving during  
19 the period of probation provided in paragraphs (1) to (4);  
20 provided that the court shall not issue an ignition interlock  
21 permit pursuant to subsection (i) and the person shall be



1 subject to the penalties provided by section 291E-62 if the  
2 person drives during the probation period."

3 SECTION 5. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$1,000,000 or so much  
5 thereof as may be necessary for fiscal year 2010-2011 for county  
6 police departments to increase sobriety check points at high  
7 risk sites throughout the State.

8 The sum appropriated shall be expended by the respective  
9 counties for the purposes of this Act.

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

13 SECTION 7. This Act shall take effect upon its approval;  
14 provided that section 5 shall take effect on July 1, 2010;  
15 provided further that the amendments made to section 291E-61,  
16 Hawaii Revised Statutes, under section 3 of this Act shall be  
17 repealed on December 31, 2010 and the amendments made to section  
18 291E-61, Hawaii Revised Statutes, under section 4 of this Act  
19 shall take effect on January 1, 2011.

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INTRODUCED BY:

*John Ahearn*

*Anzanne Chun Auland*

*Will Eyo  
Fred [unclear]*





*Mr. He*  
*Amid y ef*



**Report Title:**

Liquor License Revocation; Driving Under the Influence; §

**Description:**

Makes repeated service of liquor to intoxicated persons grounds for liquor license revocation; requires revocation of driver license and house arrest for third conviction of driving under the influence of alcohol. Makes appropriation to county police departments to set up more sobriety check points.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

