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February 7, 2011

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE BILL NO. 1435

COMMITTEE ON TRANSPORTATION

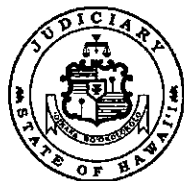
On behalf of the Ignition Interlock Task Force (“Task Force”), we fully support House Bill No. 1435, relating to highway safety. In particular, this bill will enable repeat offenders arrested under Sections 291E-61 and 291E-61.5 of the Hawaii Revised Statutes to receive their vehicle registration back and drive under the requirements of the ignition interlock. The bill also makes some housekeeping changes that were identified by the Task Force as necessary to be consistent with other provisions in Chapter 291E, Hawaii Revised Statutes.

As the interim director of the Department of Transportation, I serve as the chair of the Task Force. The Task Force was established in 2009 and examined ways for implementing the ignition interlock program statewide. Under the program, all drivers adjudicated or convicted of operating a vehicle under the influence of an intoxicant must have an ignition interlock device installed in any vehicle that they drive. Currently, however, for repeat offenders, the law requires the revocation of all vehicle registration(s) and license plate(s) in their name – it does not take into consideration any participation in the ignition interlock program. This bill incorporates the ignition interlock program by deleting all references to the revocation of motor vehicle registrations and providing for repeat offenders who were arrested and had their vehicle registration(s) and license plate(s) revoked after January 1, 2011. The Task Force believes this bill will enable repeat offenders to install an ignition interlock to enable them to drive.

Additionally, there are minor housekeeping changes proposed in the bill to be consistent with other provisions of Chapter 291E, Hawaii Revised Statutes.

The Ignition Interlock Task Force and the Department of Transportation ask your support in passing House Bill No. 1435.

Thank you for the opportunity to testify.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Sixth Legislature, 2011 Regular Session

House Committee on Transportation
Representative Joseph M. Souki, Chair
Representative Linda Ichiyama, Vice Chair

Monday, February 7, 2011
9:00 a.m.
State Capitol, Conference Room 309

by
Marie C. Laderta
Chief Adjudicator
Administrative Driver's License Revocation Office (ADLRO)

Bill No. and Title: House Bill No. 1435, Relating to Highway Safety.

Purpose: To allow repeat intoxicated drivers to install ignition interlock devices in their vehicles by eliminating the revocation of the motor vehicle registrations of such drivers. Also makes housekeeping amendments to Chapter 291E, HRS, and extends the life of the ignition interlock implementation task force to June 30, 2012.

Judiciary's Position:

The ADLRO recognizes that the clarifications proposed by this measure seek to reconcile inconsistencies within the law. On January 1, 2011, Act 171, SLH, as amended by Act 88, SLH 2009, as further amended by Act 166, SLH 2010, became law. The Acts amend Chapter 291E, HRS, relating to use of intoxicants while operating a motor vehicle to require the use of ignition interlock devices by any person whose driver's license is revoked for operating a vehicle while under the influence of an intoxicant (OVUII).

Act 171 stated that the purpose of the law is to require use of ignition interlock devices so that persons arrested for OVUII (hereinafter referred to as "respondents") can drive, but are prevented from drinking and driving, during the pendency of the case and the revocation period thereafter. According to the statement of purpose, "the requirement of installation of an ignition



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interlock device would replace the provisions to take custody of the motor vehicle registration and number plates and to issue conditional license permits.” Emphasis added.

Notwithstanding the foregoing, §291E-41(b) (2), (3) and (4), HRS, of the law which took effect on January 1, 2011, revokes the motor vehicle registration of any vehicle registered to a respondent who has more than one alcohol enforcement contact during certain specified periods of time while §291E-41(b), HRS, requires that except for certain limited classes of respondents, a respondent “shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period.” The revocation of the motor vehicle registration of respondents with multiple OVUII revocations effectively forecloses such respondents from driving during the revocation period because they would be unable to operate an unregistered vehicle. The only recourse for such respondents would appear to have the owner of a vehicle agree to the installation of an ignition interlock device in his/her vehicle and allow the respondent to drive that vehicle.

The Administrative Driver’s License Revocation Office, which administers the driver’s license revocation law, has already encountered problems dealing with respondents who have multiple OVUII revocations and who desire to install an ignition interlock device in their motor vehicle.

This measure also makes housekeeping amendments to Chapter 291E, HRS, for purposes of efficiency and consistency. Of the housekeeping amendments, two may appear to substantively change the law, and therefore, are addressed in this testimony.

Section 3 of the bill amends the definition of “repeat intoxicated driver” to include “drug enforcement contacts” as a factor in defining a person as a repeat intoxicated driver. Under the present definition, only alcohol enforcement contacts are used to determine if a person is a repeat intoxicated driver. However, §291E-41, HRS, which sets forth the periods of license revocation mandated for repeat offenders counts prior drug enforcement contacts, as well as alcohol enforcement contacts, to impose longer periods of revocation for repeat offenders. The proposed amendment makes the definition consistent with §291E-41, HRS. The amendment also clarifies that a repeat intoxicated driver is someone who has two contacts during the five years preceding the date of the latest arrest. The present definition states that two contacts during the preceding seven years makes a person a repeat intoxicated driver. Again, the proposed amendment makes the definition consistent with §291E-41, HRS, which uses two contacts within five years, rather than seven years.

The ADLRO will continue to work with the ignition interlock implementation task force to monitor the law and make suggested improvements, if needed.

Thank you for the opportunity to testify on House Bill No. 1435.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE JOSEPH M. SOUKI, CHAIR
HOUSE TRANSPORTATION COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

February 7, 2011

RE: H.B. 1435; RELATING TO HIGHWAY SAFETY.

Chairs Souki, Vice Chair Ichiyama, and members of the House Committee on Transportation, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 1435.

Last year, the Ignition Interlock Implementation Task Force lobbied to pass 2010 Hawaii Session Laws 166 or Act 166 that amended Chapter 291E, Hawaii Revised Statutes, which required repeat intoxicated drivers to surrender their motor vehicle registrations and license plates. However, this new requirement conflicted with another mandate that was created in Act 166, which required an individual whose license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked, to obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the individual had a valid license at the time of the arrest. Under current law, if a repeat intoxicated driver had his motor vehicle registration and license plate revoked, and he or she had a valid driver license at the time of arrest, he or she cannot participate in the ignition interlock program without violating the vehicle license and registration law that requires one to have a valid vehicle license and registration in order to drive.

Therefore, the purpose of H.B. 1435 is to correct this mistake of conflicting laws to allow repeat intoxicated drivers to install ignition interlock devices in any vehicle they operate by eliminating the requirement to surrender motor vehicle registrations and license plates. This bill also extends the expiration date of the Ignition Interlock Implementation Task Force to June 30, 2012 to allow further discussion on this newly created program. Finally, there are housekeeping or technical amendments to Chapter 291E, Hawaii Revised Statutes. For these reasons, we strongly support the passage of S.B. 825. Thank you for this opportunity to testify.



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February 7, 2011

To: Representative Joseph M. Souki, Chair –House Committee on Transportation;
Representative Linda Ichiyama, Vice Chair and members of the Committee

From: Carol McNamee—Chairman, Public Policy Committee - MADD Hawaii

Re: House Bill 1435 – Relating to Highway Safety

I am Carol McNamee, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving in support of HB 1435. I am also speaking as Vice Chairman of the Hawaii Ignition Interlock Implementation Task Force. This bill amends Act 166 which, along with previous Acts 171 and 88, established the Ignition Interlock system for the state of Hawaii. This program was recently implemented on January 1st of this year.

This bill clarifies and resolves several language and numbering issues to conform the statutes relating to the interlock program.

An essential purpose of House Bill 1435 is to correct a problem which was not realized at the time of passage of the final draft of the Task Force's Interlock bill - SB2897 - in the last legislative session. In trying to keep sanctions in place for repeat offenders who do not install an interlock device, the provisions for the administrative revocation of vehicle registrations and the impoundment of license plates were reinserted in SB2897 last year. When the Task Force reanalyzed that action a few months ago, it determined that there was a legal conflict between the revocation of vehicle registration and the interlock program that was best resolved by deleting the requirement that "respondents" with prior OVUII enforcement contacts have their vehicles' registrations revoked and the vehicles' license plates impounded.

Because of this statutory conflict, at the present time repeat intoxicated drivers are not eligible to install an interlock device and obtain an interlock permit because their vehicle registration has been revoked. The Task Force is eager to correct this situation so that all OVUII drivers with a valid license at the time of arrest can receive an interlock to protect themselves and members of the public who share the road with these individuals. Therefore, HB 1435 has been drafted to remove all references to vehicle registration revocation and license plate impoundment for respondents with prior alcohol enforcement contacts. The measure will go into effect on July 1, 2011 and after its effective date, repeat intoxicated drivers arrested on or after January 1, 2011 will be able to apply for an ignition interlock device to use for the remainder of their revocation periods.

HB 1435 includes a provision for the Task Force to be officially extended until June 30, 2012 to provide an official group to oversee the all-important first year of interlock operation in Hawaii. The June date will allow the Task Force to submit and monitor additional interlock legislation in 2012 if it is found to be necessary. There will be no cost to the State for this extension of the Task Force.

MADD Hawaii respectfully urges passage of House Bill 1435.

Thank you for this opportunity to testify.

TO: The House of Representatives
Committee on Transportation

FROM: Steven T. Barta, as an individual
and Lobbyist for Lynn Ramer
1188 Bishop Street, Suite 3405
Honolulu, Hawaii 96813-3314
533-7330; sbarta@BartaLaw.com

SUBJECT: HB 1435 - Testimony in Favor, but with revisions

Hearing Date: Monday, February 7, 2011
Time: 9:00 a.m.
Place: Conference Room 309

Chair Souki, Vice Chair Ichuyama, and members of the Committee on Transportation, thank you for allowing me to present testimony on House Bill 1435.

My name is Steve Barta. I am an attorney with over twenty-five years of experience in the area of prosecuting and defending citizens who have lost their driver's license because of drunk driving. I started my career over twenty-five years ago as a Honolulu deputy prosecutor with a lead role in prosecuting drunk drivers; I spoke on behalf of MADD and trained police personnel and other deputy prosecutors on how to handle drunk driving cases. I presently represent those who have run afoul of the law.

Both as a prosecutor and as a defense attorney I have seen how alcohol has destroyed the lives of those who drive and those who have been victimized as a result of drunk drivers.

I have also seen how well intending laws have destroyed peoples lives and made them dependent upon the State for support. For many years I have introduced and lobbied for a law that would permit those who have lost their driver's license for life an opportunity to drive again and become productive members of our community. I have been rebuffed by some who have confused the purpose of an administrative license revocation which is to keep the community safe with the purpose of a criminal prosecution which is to punish; others have in the past opposed restoration arguing that it should wait until the ignition interlock legislation became law.

We now have an ignition interlock law and there is no longer any reason not to welcome our neighbors without driver's licenses back into our community.

Under our present law a drunk driver can no longer lose their license for life. The ignition interlock requirement protects the community from a violator driving a vehicle again while intoxicated.

There is no justifiable reason to treat those who violated our drunk driving laws prior to this year any different than those who are now subject to the ignition interlock law.

Accordingly, I have drafted an amendment to House Bill 1435 which is attached and referenced as H.B. No. 1435, H.D. 2. This amendment puts those who offended prior to this year on an equal footing with those that have offended this year or will do so in the future.

Under the new ignition interlock law, a motorist who under the prior drunk driving law would have received a lifetime revocation (three or more prior alcohol enforcement contacts within 10 years) may drive, but shall be required to install and maintain an ignition interlock system for for a period of five to ten years.

Accordingly, my proposed amendment allows motorist with a lifetime revocation that have been without driving privileges for more than ten years to drive with an ignition interlock system and be eligible for re-licensing after one year (same as those who are first time offenders); those who have been without driving privileges between five to ten years to drive with an ignition interlock system and be eligible for re-licensing after eighteen months (same as those who are second time offenders); those who have been without driving privileges between two to five years to drive with an ignition interlock system and be eligible for re-licensing after two years (same as those who are third time offenders); and for those who have been without driving privileges less than two years to drive with an ignition interlock system and be eligible for re-licensing after five to ten years (same as those who are fourth time offenders);

Life time revocations became effective in Hawaii in 1991. That means there members of our community that have been without a drivers' license for twenty (20) years. The present law has done away with lifetime revocations, but it does not address the burden placed on individuals and society by those still having to live with a lifetime revocation.

The intent of my amendment is not to excuse the conduct of drunk drivers or to allow unsafe drivers back on the road. No one wants that. Rather it is to welcome back into the community those who have paid a steep price for their past indiscretions and are no longer a threat to society.

Presently, in Hawaii life time sentences without the possibility of parole/probation exist for only two offenses; First Degree Murder, and those who have had their licenses revoked administratively for Drunk Driving.

My amendment, corrected this injustice. It places those who previously offended in the same position as those who now or in the future may offend. It recognizes that those who have had their driver's license revoked for life prior to the ignition interlock law should also be given a chance to return to society as productive members. The bill(s) recognizes what most of us take for granted; one can NOT live a normal life without driving. The ability to drive effects every aspect of our lives; it effects our ability to work, it effects our ability to care for ourselves and our families; its absence makes us dependent upon others and ultimately the State.

My amendment, serve the public good by correcting an unintended result of the State's drunk driving laws. Our drunk driving laws were created to benefit public safety by removing dangerous drivers from our roads and penalizing them for their indiscretions. However, it was never intended to take away the ability to work or the collateral effects of unemployment - broken families, homelessness and a cycle of poverty and hopelessness.

A lifetime revocation of one's driver's license is a lifetime sentence of destituteness. Especially if one lives on the outer islands where public transportation is not available or is engaged in a trade that requires transporting tools or materials or otherwise requires driving.

Many of our citizens/neighbors that have had their license revoked for life fell upon hard times and turned to alcohol to cope. Some have been able to dig themselves out of that hole and become sober law abiding members of our community. But their inability to drive stretches them to the limit and holds them back from more fulfilling lives.

My amendment has an **implementation date of July 2011**. This date gives those that have paid the price for their indiscretions and have rehabilitated themselves the hope and opportunity to better their lives. Some, including one of my clients have been without a license for seventeen (17) years. The

implementation date of July 2011, allows those that have paid a high price for their fall from grace and are able to show that they are no longer a threat an opportunity to better their lives by regaining the privilege to drive.

Thank you for your consideration of these points and the opportunity to testify before your committee.

RESPECTFULLY SUBMITTED

STEVEN T. BARTA

A BILL FOR AN ACT

RELATING TO ADMINISTRATIVE REVOCATION.

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

SECTION 1. Chapter 291E-44,5(b)(1), Hawaii Revised Statutes is hereby amended as follows:

“~~§291E-44.5~~ Ignition interlock permits; driving for employment. (a) ~~[(1)]~~
Except as provided in ~~[paragraph (2),]~~ subsection (b), upon proof that the respondent has installed an ignition interlock device in ~~[the respondent’s vehicle,]~~ any vehicle the respondent operates, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device ~~8~~ during the revocation period;
or].

~~[(2)]~~ (b) Notwithstanding any other law to the contrary, the director shall not issue an ignition interlock permit to:

~~[(A)]~~ (1) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation[;] **except as provided in Section 291E-45(2);**

SECTION 2. Chapter 291E-45, Hawaii Revised Statutes is hereby amended as follows:

§291E-45 Eligibility for relicensing and reregistration of motor vehicle.

Subsection (2) is added as follows:

(2) Notwithstanding any law to the contrary, an individual shall be eligible for a permit to drive after a lifetime revocation upon the following conditions:

(A) Upon submitting proof to the Director that the individual has:

- (i) completed all requirements of any criminal conviction associated with the lifetime administrative revocation;
- (ii) complied with all requirements of his/her lifetime administrative revocation;
- (iii) has installed an Ignition Interlock System in his/her vehicle.

(3) The period required for an Ignition Interlock System shall be follows:

- (A) For those who have been without a license for 10 or more years, the period shall be the same as specified in Section 291E-41(b)(1);

- (B) For those who have been without a license for 5 to 10 years, the period shall be the same as specified in Section 291E-41(b)(2);
 - (C) For those who have been without a license for 2 to 5 years, the period shall be the same as specified in Section 291E-41(b)(3);
 - (D) For those who have been without a license for less than 2 years, the period shall be the same as specified in Section 291E-41(b)(4);
- (4) After expiration of the temporary permit, the individual shall be eligible for re-licensing as provided in subsection 1 of this Section (291E-45).

SECTION 3. This Act shall take effect on July 1, 2011.

INTRODUCED BY: _____