
A BILL FOR AN ACT

RELATING TO MOTOR VEHICLES.

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

1 SECTION 1. Section 286-132, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§286-132 Driving while license suspended or revoked. (a)

4 Except as provided in section 291E-62, no resident or
5 nonresident whose driver's license, right, or privilege to
6 operate a motor vehicle in this State has been canceled,
7 suspended, or revoked may drive any motor vehicle upon the
8 highways of this State while the license, right, or privilege
9 remains canceled, suspended, or revoked.

10 (b) Any authorized police officer, upon making an arrest
11 for violation of this section, shall cause any vehicle operated
12 in violation of this section to be towed away at the expense of
13 the registered owner of the vehicle pursuant to section 291C-
14 165.5; provided that any exemption pursuant to section 291C-
15 165.5(g) shall not be operative under this section."

16 SECTION 2. Section 286-136, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "§286-136 Penalty. (a) Except as provided in subsection
2 (b), any person who violates section 286-102, 286-122, 286-130,
3 286-131, 286-132, 286-133, or 286-134 shall be fined not more
4 than \$1,000 or imprisoned not more than thirty days, or both.
5 Any person who violates any other section in this part shall be
6 fined not more than \$1,000.

7 (b) Any person who is convicted of violating section 286-
8 102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134
9 shall be subject to a minimum fine of \$500 and a maximum fine of
10 \$1,000, or imprisoned not more than one year, or both, if the
11 person has two or more prior convictions for the same offense in
12 the preceding five-year period.

13 (c) Notwithstanding subsections (a) and (b), a minor under
14 the age of eighteen under the jurisdiction of the family court
15 who is subject to this section shall either lose the right to
16 drive a motor vehicle until the age of eighteen or be subject to
17 a fine of \$500.

18 (d) Any authorized police officer, upon issuing a citation
19 or making an arrest for violation of section 286-102, shall
20 cause the vehicle operated in violation of this section to be
21 towed away at the expense of the registered owner of the vehicle
22 pursuant to section 291C-165.5; provided that any exemption



1 pursuant to section 291C-165.5(g) shall not be operative under
2 this section."

3 SECTION 3. Section 291E-61, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§291E-61 Operating a vehicle under the influence of an
6 intoxicant. (a) A person commits the offense of operating a
7 vehicle under the influence of an intoxicant if the person
8 operates or assumes actual physical control of a vehicle:

9 (1) While under the influence of alcohol in an amount
10 sufficient to impair the person's normal mental
11 faculties or ability to care for the person and guard
12 against casualty;

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

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

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

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



- 1 (1) For the first offense, or any offense not preceded
- 2 within a five-year period by a conviction for an
- 3 offense under this section or section 291E-4(a):
- 4 (A) A fourteen-hour minimum substance abuse
- 5 rehabilitation program, including education and
- 6 counseling, or other comparable program deemed
- 7 appropriate by the court;
- 8 (B) One-year revocation of license and privilege to
- 9 operate a vehicle during the revocation period
- 10 and installation during the revocation period of
- 11 an ignition interlock device on any vehicle
- 12 operated by the person;
- 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

1 (E) A surcharge, if the court so orders, of up to \$25
2 to be deposited into the trauma system special
3 fund;

4 (2) For an offense that occurs within five years of a
5 prior conviction for an offense under this section or
6 section 291E-4(a):

7 (A) Revocation for not less than eighteen months nor
8 more than two years of license and privilege to
9 operate a vehicle during the revocation period
10 and installation during the revocation period of
11 an ignition interlock device on any vehicle
12 operated by the person;

13 (B) Either one of the following:

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

16 (ii) Not less than five days but not more than
17 thirty days of imprisonment, of which at
18 least forty-eight hours shall be served
19 consecutively;

20 (C) A fine of not less than \$500 but not more than
21 \$1,500;



- 1 (D) A surcharge of \$25 to be deposited into the
- 2 neurotrauma special fund; and
- 3 (E) A surcharge of up to \$50 if the court so orders,
- 4 to be deposited into the trauma system special
- 5 fund;
- 6 (3) For an offense that occurs within five years of two
- 7 prior convictions for offenses under this section or
- 8 section 291E-4(a):
- 9 (A) A fine of not less than \$500 but not more than
- 10 \$2,500;
- 11 (B) Revocation for two years of license and privilege
- 12 to operate a vehicle during the revocation period
- 13 and installation during the revocation period of
- 14 an ignition interlock device on any vehicle
- 15 operated by the person;
- 16 (C) Not less than ten days but not more than thirty
- 17 days imprisonment, of which at least forty-eight
- 18 hours shall be served consecutively;
- 19 (D) A surcharge of \$25 to be deposited into the
- 20 neurotrauma special fund; and



1 (E) A surcharge of up to \$50 if the court so orders,
2 to be deposited into the trauma system special
3 fund;

4 (4) In addition to a sentence imposed under paragraphs (1)
5 through (3), any person eighteen years of age or older
6 who is convicted under this section and who operated a
7 vehicle with a passenger, in or on the vehicle, who
8 was younger than fifteen years of age, shall be
9 sentenced to an additional mandatory fine of \$500 and
10 an additional mandatory term of imprisonment of forty-
11 eight hours; provided that the total term of
12 imprisonment for a person convicted under this
13 paragraph shall not exceed the maximum term of
14 imprisonment provided in paragraph (1), (2), or (3),
15 as applicable. Notwithstanding paragraphs (1) and
16 (2), the revocation period for a person sentenced
17 under this paragraph shall be not less than two years;
18 and

19 (5) If the person demonstrates to the court that the
20 person:

- 1 (A) Does not own or have the use of a vehicle in
- 2 which the person can install an ignition
- 3 interlock device during the revocation period; or
- 4 (B) Is otherwise unable to drive during the
- 5 revocation period,

6 the person shall be absolutely prohibited from driving during
7 the period of applicable revocation provided in paragraphs (1)
8 to (4); provided that the court shall not issue an ignition
9 interlock permit pursuant to subsection [~~i~~] (j) and the person
10 shall be subject to the penalties provided by section 291E-62 if
11 the person drives during the applicable revocation period.

12 (c) Notwithstanding any other law to the contrary,
13 including county ordinances, any authorized police officer, upon
14 making an arrest for violation of this section, shall cause the
15 vehicle operated in violation of this section to be towed away
16 at the expense of the registered owner of the vehicle pursuant
17 to section 291C-165.5; provided that any exemption pursuant to
18 section 291C-165.5(g) shall not be operative under this section.

19 [~~e~~] (d) Notwithstanding any other law to the contrary,
20 the court shall not issue an ignition interlock permit to:

1 (1) A defendant whose license is expired, suspended, or
2 revoked as a result of action other than the instant
3 offense;

4 (2) A defendant who does not hold a valid license at the
5 time of the instant offense; or

6 (3) A defendant who holds either a category 4 license
7 under section 286-102(b) or a commercial driver's
8 license under section 286-239(b), unless the ignition
9 interlock permit is restricted to a category 1, 2, or
10 3 license under section 286-102(b).

11 [~~(d)~~] (e) Except as provided in subsection [~~(e)~~] (d), the
12 court may issue a separate permit authorizing a defendant to
13 operate a vehicle owned by the defendant's employer during the
14 period of revocation without installation of an ignition
15 interlock device if the defendant is gainfully employed in a
16 position that requires driving and the defendant will be
17 discharged if prohibited from driving a vehicle not equipped
18 with an ignition interlock device.

19 [~~(e)~~] (f) A request made pursuant to subsection [~~(d)~~] (e)
20 shall be accompanied by:

21 (1) A sworn statement from the defendant containing facts
22 establishing that the defendant currently is employed



1 in a position that requires driving and that the
2 defendant will be discharged if prohibited from
3 driving a vehicle not equipped with an ignition
4 interlock device; and

5 (2) A sworn statement from the defendant's employer
6 establishing that the employer will, in fact,
7 discharge the defendant if the defendant is prohibited
8 from driving a vehicle not equipped with an ignition
9 interlock device and identifying the specific vehicle
10 and hours of the day, not to exceed twelve hours per
11 day, the defendant will drive for purposes of
12 employment.

13 [~~f~~] (g) A permit issued pursuant to subsection [~~d~~] (e)
14 shall include restrictions allowing the defendant to drive:

15 (1) Only during specified hours of employment, not to
16 exceed twelve hours per day, and only for activities
17 solely within the scope of the employment;

18 (2) Only the vehicle specified; and

19 (3) Only if the permit is kept in the defendant's
20 possession while operating the employer's vehicle.

21 [~~g~~] (h) Notwithstanding any other law to the contrary,
22 any:



- 1 (1) Conviction under this section, section 291E-4(a), or
2 section 291E-61.5;
- 3 (2) Conviction in any other state or federal jurisdiction
4 for an offense that is comparable to operating or
5 being in physical control of a vehicle while having
6 either an unlawful alcohol concentration or an
7 unlawful drug content in the blood or urine or while
8 under the influence of an intoxicant or habitually
9 operating a vehicle under the influence of an
10 intoxicant; or
- 11 (3) Adjudication of a minor for a law violation that, if
12 committed by an adult, would constitute a violation of
13 this section or an offense under section 291E-4(a), or
14 section 291E-61.5,
- 15 shall be considered a prior conviction for the purposes of
16 imposing sentence under this section. Any judgment on a verdict
17 or a finding of guilty, a plea of guilty or nolo contendere, or
18 an adjudication, in the case of a minor, that at the time of the
19 offense has not been expunged by pardon, reversed, or set aside
20 shall be deemed a prior conviction under this section. No
21 license and privilege revocation shall be imposed pursuant to
22 this section if the person's license and privilege to operate a



1 vehicle has previously been administratively revoked pursuant to
2 part III for the same act; provided that, if the administrative
3 revocation is subsequently reversed, the person's license and
4 privilege to operate a vehicle shall be revoked as provided in
5 this section. There shall be no requirement for the
6 installation of an ignition interlock device pursuant to this
7 section if the requirement has previously been imposed pursuant
8 to part III for the same act; provided that, if the requirement
9 is subsequently reversed, a requirement for the installation of
10 an ignition interlock device shall be imposed as provided in
11 this section.

12 [~~h~~] (i) Whenever a court sentences a person pursuant to
13 subsection (b), it also shall require that the offender be
14 referred to the driver's education program for an assessment, by
15 a certified substance abuse counselor, of the offender's
16 substance abuse or dependence and the need for appropriate
17 treatment. The counselor shall submit a report with
18 recommendations to the court. The court shall require the
19 offender to obtain appropriate treatment if the counselor's
20 assessment establishes the offender's substance abuse or
21 dependence. All costs for assessment and treatment shall be
22 borne by the offender.



1 ~~[(i)]~~ (j) Upon proof that the defendant has:
2 (1) Installed an ignition interlock device in any vehicle
3 the defendant operates pursuant to subsection (b); and
4 (2) Obtained motor vehicle insurance or self-insurance
5 that complies with the requirements under either
6 section 431:10C-104 or section 431:10C-105,
7 the court shall issue an ignition interlock permit that will
8 allow the defendant to drive a vehicle equipped with an ignition
9 interlock device during the revocation period.

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

18 ~~[(k)]~~ (l) Any person sentenced under this section may be
19 ordered to reimburse the county for the cost of any blood or
20 urine tests conducted pursuant to section 291E-11. The court
21 shall order the person to make restitution in a lump sum, or in
22 a series of prorated installments, to the police department or



1 other agency incurring the expense of the blood or urine test.
 2 Except as provided in section 291E-5, installation and
 3 maintenance of the ignition interlock device required by
 4 subsection (b) shall be at the defendant's own expense.

5 ~~[(1)]~~ (m) As used in this section, the term "examiner of
 6 drivers" has the same meaning as provided in section 286-2."

7 SECTION 4. Section 291E-64, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 "§291E-64 Operating a vehicle after consuming a measurable
 10 amount of alcohol; persons under the age of twenty-one. (a) It
 11 shall be unlawful for any person under the age of twenty-one
 12 years to operate any vehicle with a measurable amount of
 13 alcohol. A law enforcement officer may arrest a person under
 14 this section when the officer has probable cause to believe the
 15 arrested person is under the age of twenty-one and had been
 16 operating a vehicle upon a public way, street, road, or highway
 17 or on or in the waters of the State with a measurable amount of
 18 alcohol. Upon arrest, the law enforcement officer shall cause
 19 the vehicle operated in violation of this section to be towed
 20 away at the expense of the registered owner of the vehicle
 21 pursuant to section 291C-165.5; provided that any exemption



1 pursuant to section 291C-165.5(g) shall not be operative under
2 this section.

3 (b) A person who violates this section shall be sentenced
4 as follows:

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

8 (A) The court shall impose:

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

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



1 prohibition from operating a vehicle and,
2 for the remainder of the one hundred eighty-
3 day period, a restriction on the license
4 that allows the person to drive for limited
5 work-related purposes and to participate in
6 alcohol abuse education and treatment
7 programs; and

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

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

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

14 (2) For a violation that occurs within five years of a
15 prior alcohol enforcement contact:

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

21 (B) In addition, the court may impose any of the
22 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 (c) Notwithstanding any other law to the contrary, any
17 conviction or plea under this section shall be considered a
18 prior alcohol enforcement contact.

19 (d) Whenever a court sentences a person pursuant to
20 subsection (b)(2) or (3), it also shall require that the person
21 be referred to the driver's education program for an assessment,
22 by a certified substance abuse counselor, of the person's



1 alcohol 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 person to obtain appropriate treatment if the counselor's
5 assessment establishes the person's alcohol abuse or dependence.
6 All costs for assessment and treatment shall be borne by the
7 person or by the person's parent or guardian, if the person is
8 under the age of eighteen.

9 (e) Notwithstanding section 831-3.2 or any other law to
10 the contrary, a person convicted of a first-time violation under
11 subsection (b)(1), who had no prior alcohol enforcement
12 contacts, may apply to the court for an expungement order upon
13 attaining the age of twenty-one, or thereafter, if the person
14 has fulfilled the terms of the sentence imposed by the court and
15 has had no subsequent alcohol or drug related enforcement
16 contacts.

17 (f) Notwithstanding any other law to the contrary,
18 whenever a court revokes a person's driver's license pursuant to
19 this section, the examiner of drivers shall not grant to the
20 person an application for a new driver's license for a period to
21 be determined by the court.



1 (g) Any person sentenced under this section may be ordered
2 to reimburse the county for the cost of any blood tests
3 conducted pursuant to section 291E-11. The court shall order
4 the person to make restitution in a lump sum, or in a series of
5 prorated installments, to the police department or other agency
6 incurring the expense of the blood test.

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

10 (i) Any person who violates this section shall be guilty
11 of a violation.

12 (j) As used in this section, the terms "driver's license"
13 and "examiner of drivers" have the same meanings as provided in
14 section 286-2."

15 SECTION 5. Section 431:10C-117, Hawaii Revised Statutes,
16 is amended to read as follows:

17 "§431:10C-117 Penalties. (a) (1) Any person subject to
18 this article in the capacity of the operator, owner, or
19 registrant of a motor vehicle operated in this State, or
20 registered in this State, who violates any applicable provision
21 of this article, shall be subject to [citation]:



1 (A) Citation for the violation by any county police
 2 department in a form and manner approved by the
 3 traffic violations bureau of the district court
 4 of the first circuit; and

5 (B) Tow of the vehicle operated at the time of the
 6 citation, at the expense of the registered owner,
 7 by any authorized police officer as provided by
 8 section 291C-165.5; provided that any exemption
 9 pursuant to section 291C-165.5(g) shall not be
 10 operative under this section.

11 (2) Notwithstanding any provision of the Hawaii Penal
 12 Code:

13 (A) Each violation shall be deemed a separate offense
 14 and shall be subject to a fine of not less than
 15 \$100 nor more than \$5,000 which shall not be
 16 suspended except as provided in subparagraph (B);
 17 and

18 (B) If the person is convicted of not having had a
 19 motor vehicle insurance policy in effect at the
 20 time the citation was issued, the fine shall be
 21 \$500 for the first offense and a minimum of
 22 \$1,500 for each subsequent offense that occurs



1 within a five-year period from any prior offense;
2 provided that the judge:

3 (i) Shall have the discretion to suspend all or
4 any portion of the fine if the defendant
5 provides proof of having a current motor
6 vehicle insurance policy; provided further
7 that upon the defendant's request, the judge
8 may grant community service in lieu of the
9 fine, of not less than seventy-five hours
10 and not more than one hundred hours for the
11 first offense, and not less than two hundred
12 hours nor more than two hundred seventy-five
13 hours for the second offense; and

14 (ii) May grant community service in lieu of the
15 fine for subsequent offenses at the judge's
16 discretion;

17 (3) In addition to the fine in paragraph (2), the court
18 shall either:

19 (A) Suspend the driver's license of the driver or of
20 the registered owner for:

21 (i) Three months for the first conviction; and



- 1 (ii) One year for any subsequent offense within a
2 five-year period from a previous offense;
3 provided that the driver or the registered owner
4 shall not be required to obtain proof of
5 financial responsibility pursuant to section 287-
6 20; or
- 7 (B) Require the driver or the registered owner to
8 keep a nonrefundable motor vehicle insurance
9 policy in force for six months;
- 10 (4) Any person cited under this section shall have an
11 opportunity to present a good faith defense, including
12 but not limited to lack of knowledge or proof of
13 insurance. The general penalty provision of this
14 section shall not apply to:
- 15 (A) Any operator of a motor vehicle owned by another
16 person if the operator's own insurance covers
17 such driving;
- 18 (B) Any operator of a motor vehicle owned by that
19 person's employer during the normal scope of that
20 person's employment; or



1 (C) Any operator of a borrowed motor vehicle if the
2 operator holds a reasonable belief that the
3 subject vehicle is insured;

4 (5) In the case of multiple convictions for driving
5 without a valid motor vehicle insurance policy within
6 a five-year period from any prior offense, the court,
7 in addition to any other penalty, shall impose the
8 following penalties:

9 (A) Imprisonment of not more than thirty days;

10 (B) Suspension or revocation of the motor vehicle
11 registration plates of the vehicle involved;

12 (C) Impoundment, or impoundment and sale, of the
13 motor vehicle for the costs of storage and other
14 charges incident to seizure of the vehicle, or
15 any other cost involved pursuant to section
16 431:10C-301; or

17 (D) Any combination of those penalties; and

18 (6) Any violation as provided in subsection (a) (2) (B)
19 shall not be deemed to be a traffic infraction as
20 defined by chapter 291D.

21 (b) Any person, in the capacity of a licensed or
22 unlicensed motor vehicle insurer, self-insurer, producer, or



1 other representative, who violates any provision of this article
2 shall be assessed a civil penalty not to exceed \$5,000 for each
3 violation.

4 (c) Any person, in the capacity of a licensed or
5 unlicensed motor vehicle insurer, self-insurer, producer, or
6 other representative, who knowingly violates any provision of
7 this article shall be assessed a civil penalty of not less than
8 \$3,000 and not to exceed \$10,000 for each violation.

9 (d) (1) Violations of subsections (b) and (c) shall be
10 subject to the construction that each repetition of
11 such act shall constitute a separate violation; and
12 (2) The imposition of any civil penalty under subsection
13 (a), (b), or (c) shall be in addition to, and shall
14 not in any way limit or affect the application of, any
15 other civil or criminal penalty, or public safety
16 condition or requirement, provided by law."

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



1 SECTION 7. This Act shall take effect upon its approval.

2

INTRODUCED BY:

~~Scott. Ag~~
Curt
[Signature]
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JAN 13 2012



H.B. NO. 1790

Report Title:

Traffic Violations; DUI; Driving Without a License; Driving Without Proof of Insurance; Mandatory Tow

Description:

Requires that the vehicle used by a person cited or arrested for driving without a license, driving while license suspended or revoked, driving under the influence of alcohol, or driving without proof of insurance be towed at the owner's expense.

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