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## A BILL FOR AN ACT

RELATING TO TESTING FOR INTOXICANTS.

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

1           SECTION 1. The legislature finds that the criminalization  
2 of the refusal to submit to a breath, blood, or urine test for  
3 the use of intoxicants while driving by Act 166, Session Laws of  
4 Hawaii 2010, enacted as section 291E-68, Hawaii Revised  
5 Statutes, is causing serious problems with the prosecution of  
6 individuals for the use of intoxicants while operating a  
7 vehicle. The possibility of criminal sanctions raises concerns  
8 regarding an individual's right to remain silent and to obtain  
9 counsel under the fifth and sixth amendment of the United States  
10 Constitution. The legislature finds that the result is a  
11 tedious arrest and testing process, which risks evidence being  
12 lost as law enforcement waits for counsel to arrive.

13           More importantly, the legislature finds the previous  
14 penalty for refusal of administratively revoking an arrestee's  
15 license for one year was adequate incentive to encourage  
16 submission. Accordingly, the purpose of this Act is to repeal  
17 section 291E-68, Hawaii Revised Statutes.



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

3 "**§291E-15 Refusal to submit to breath, blood, or urine**  
4 **test; subject to administrative revocation proceedings.** If a  
5 person under arrest refuses to submit to a breath, blood, or  
6 urine test, none shall be given, except as provided in section  
7 291E-21. Upon the law enforcement officer's determination that  
8 the person under arrest has refused to submit to a breath,  
9 blood, or urine test, if applicable, then a law enforcement  
10 officer shall:

11 (1) Inform the person under arrest of the sanctions under  
12 section 291E-41[7] or 291E-65[~~7~~~~or~~~~291E-68~~]; and

13 (2) Ask the person if the person still refuses to submit  
14 to a breath, blood, or urine test, thereby subjecting  
15 the person to the procedures and sanctions under part  
16 III or section 291E-65, as applicable; provided that  
17 if the law enforcement officer fails to comply with  
18 paragraphs (1) and (2), the person shall not be  
19 subject to the refusal sanctions under part III or  
20 IV."

21



1 SECTION 3. Section 291E-68, Hawaii Revised Statutes,  
2 is repealed.

3 [~~"§291E-68 Refusal to submit to a breath, blood, or~~  
4 ~~urine test; penalty. Refusal to submit to a breath, blood, or~~  
5 ~~urine test as required by part II is a petty misdemeanor."~~]

6 SECTION 4. This Act does not affect rights and duties that  
7 matured, penalties that were incurred, and proceedings that were  
8 begun before its effective date.

9 SECTION 5. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

~~A.C. Cook-Ogawa~~  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*

JAN 17 2012



# H.B. NO. 1928

**Report Title:**

Driver's Licensing; Penalties; Refusal to Submit to Testing

**Description:**

Repeals section 291E-68, Hawaii Revised Statutes, regarding refusing to submit to a breath, blood, or urine test for those arrested for the use of intoxicants while operating a vehicle. Makes conforming amendments to section 291E-15, Hawaii Revised Statutes.

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

