

S.B. NO. 2899

JAN 23 2014

A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

1 SECTION 1. Section 291E-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§291E-6~~ **Ignition interlock devices; certification**~~[-]~~,
4 monitoring, and operations and compliance. (a) The director of
5 transportation shall establish and administer a statewide
6 program relating to certification, ~~[and]~~ monitoring, and
7 operating compliance of ignition interlock devices installed
8 pursuant to chapter 291E and shall select a single vendor to
9 install and maintain them.

10 (b) The program shall include standards and model
11 specifications for the alcohol ignition interlock devices and
12 procedures established by the National Highway Traffic Safety
13 Administration for the certification of ignition interlock
14 devices installed pursuant to chapter 291E. At a minimum, the
15 standards shall require that the devices:

16 (1) Be certified by an independent laboratory to meet or
17 exceed the guidelines published by the National
18 Highway Traffic Safety Administration;

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- 1 (2) Operate using an alcohol-specific sensor technology;
- 2 (3) Employ a digital camera by which a photograph of the
- 3 person using the device can be incorporated into the
- 4 electronic record generated by each use of the device;
- 5 (4) Require a rolling retest by which the driver must,
- 6 within a specified period of time or distance driven
- 7 after starting the vehicle, be retested and found to
- 8 have an alcohol concentration of less than .02, with a
- 9 margin of error of .01; and
- 10 (5) Generate a record of vehicle usage, including dates
- 11 and times driven.
- 12 (c) The program shall include standards and procedures for
- 13 the certification of the vendor selected to install and maintain
- 14 ignition interlock devices pursuant to chapter 291E. At a
- 15 minimum, the standards shall require that the vendor:
- 16 (1) Install only an ignition interlock device that is
- 17 certified pursuant to this section;
- 18 (2) Offer or contract for ignition interlock device
- 19 installation and maintenance statewide;
- 20 (3) Train drivers who are required to install an ignition
- 21 interlock device, pursuant to chapter 291E, in how to
- 22 use the device;

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1 (4) Schedule the driver for all necessary readings and
2 maintenance of the device; and

3 (5) Provide periodic reports regarding the use of each
4 ignition interlock device installed pursuant to
5 chapter 291E, including incidents of test failure,
6 attempts to circumvent the device, and dates, times,
7 and distances the vehicle was driven.

8 (d) The vendor selected for installation and maintenance
9 of ignition interlock devices pursuant to chapter 291E shall be
10 audited annually by the director of transportation pursuant to
11 this section and the rules adopted thereunder. The director of
12 transportation may require the vendor to pay for all or part of
13 the costs incurred in conducting the audit.

14 (e) The director of transportation shall review all
15 ignition interlock reports submitted by the vendor and monitor
16 these reports for the compliance and violation as established by
17 rules.

18 [~~(e)~~] (f) The director of transportation shall adopt rules
19 pursuant to chapter 91 necessary for the purposes of this
20 section."

21 SECTION 2. Section 291E-44.5, Hawaii Revised Statutes, is
22 amended by amending subsection (c) to read as follows:

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1 "(c) Except as provided in subsection (b), the director
2 may issue a separate permit authorizing a respondent to operate
3 a vehicle owned by the respondent's employer during the period
4 of revocation without installation of an ignition interlock
5 device if the respondent is gainfully employed in a position
6 that requires driving and the respondent will be discharged if
7 prohibited from driving a vehicle not equipped with an ignition
8 interlock device[-]; provided that the respondent's record shows
9 no prior alcohol enforcement contact or drug enforcement contact
10 during the five years preceding the date the notice of
11 administrative revocation was issued."

12 SECTION 3. Section 291E-61, Hawaii Revised Statutes, is
13 amended as follows:

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

15 "(b) A person committing the offense of operating a
16 vehicle under the influence of an intoxicant shall be sentenced
17 without possibility of probation or suspension of sentence as
18 follows:

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

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- 1 (A) A fourteen-hour minimum substance abuse
2 rehabilitation program, including education and
3 counseling, or other comparable program deemed
4 appropriate by the court;
- 5 (B) One-year revocation of license and privilege to
6 operate a vehicle during the revocation period
7 and the installation during the revocation period
8 of an ignition interlock device on any vehicle
9 operated by the person;
- 10 (C) Any one or more of the following:
- 11 (i) Seventy-two hours of community service
12 work;
- 13 (ii) Not less than forty-eight hours and not
14 more than five days of imprisonment; or
- 15 (iii) A fine of not less than [~~\$150~~] \$300 but not
16 more than \$1,000;
- 17 (D) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and
- 19 (E) A surcharge, if the court so orders, of up to \$25
20 to be deposited into the trauma system special
21 fund;

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

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

10 (B) Either one of the following:

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

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

17 (C) A fine of not less than \$500 but not more than
18 \$1,500;

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

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- 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 (3) For an offense that occurs within five years of two
5 prior convictions for offenses under this section or
6 section 291E-4(a):
- 7 (A) A fine of not less than [~~\$500~~] \$1,000 but not
8 more than \$2,500;
- 9 (B) Revocation for two years of license [~~and~~
10 ~~privilege to operate a vehicle during the~~
11 ~~revocation period]~~ and the installation the
12 revocation period of an ignition interlock device
13 on any vehicle operated by the person;
- 14 (C) Not less than ten days but not more than thirty
15 days imprisonment [~~, of which at least forty eight~~
16 ~~hours shall be served consecutively]~~;
- 17 (D) A surcharge of \$25 to be deposited into the
18 neurotrauma special fund; and
- 19 (E) A surcharge of up to \$50 if the court so orders,
20 to be deposited into the trauma system special
21 fund;

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- 1 (4) In addition to a sentence imposed under paragraphs (1)
2 through (3), any person eighteen years of age or older
3 who is convicted under this section and who operated a
4 vehicle with a passenger, in or on the vehicle, who
5 was younger than fifteen years of age, shall be
6 sentenced to an additional mandatory fine of \$500 and
7 an additional mandatory term of imprisonment of forty-
8 eight hours; provided that the total term of
9 imprisonment for a person convicted under this
10 paragraph shall not exceed the maximum term of
11 imprisonment provided in paragraph (1), (2), or (3),
12 as applicable. Notwithstanding paragraphs (1) and
13 (2), the revocation period for a person sentenced
14 under this paragraph shall be not less than two years;
15 and
16 (5) If the person demonstrates to the court that the
17 person:
18 (A) Does not own or have the use of a vehicle in
19 which the person can install an ignition
20 interlock device during the revocation period; or
21 (B) Is otherwise unable to drive during the
22 revocation period, the person shall be absolutely

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1 prohibited from driving during the period of
2 applicable revocation provided in paragraphs (1)
3 to (4); provided that the court shall not issue
4 an ignition interlock permit pursuant to
5 subsection (i) and the person shall be subject to
6 the penalties provided by section 291E-62 if the
7 person drives during the applicable revocation
8 period."

9 2. By amending subsection (d) to read:

10 "(d) Except as provided in subsection (c), the court may
11 issue a separate permit authorizing a defendant to operate a
12 vehicle owned by the defendant's employer during the period of
13 revocation without installation of an ignition interlock device
14 if the defendant is gainfully employed in a position that
15 requires driving and the defendant will be discharged if
16 prohibited from driving a vehicle not equipped with an ignition
17 interlock device[-]; provided that it is the defendant's first
18 offense, or any offense not preceded within a five-year period
19 by a conviction for an offense under this section or section
20 291E-4(a)."

21 SECTION 4. Section 291E-61.5, Hawaii Revised Statutes, is
22 amended by amending subsection (d) to read as follows:

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1 "(d) For a conviction under this section, the sentence
2 shall be either:

3 (1) An indeterminate term of imprisonment of five years;
4 or

5 (2) A term of probation of five years, with
6 conditions to include:

7 (A) Mandatory revocation of license and privilege to
8 operate a vehicle for a period not less than ~~[one~~
9 ~~year]~~ three years but not more than five years~~[+]~~
10 and the installation during the revocation period
11 of an ignition interlock device on any vehicle
12 operated by the person to commence after
13 imprisonment;

14 (B) Not less than ten days imprisonment ~~[, of which at~~
15 ~~least forty eight hours shall be served~~
16 ~~consecutively,];~~

17 (C) Referral to a certified substance abuse counselor
18 as provided in section 291E-61(d);

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

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1 (E) May be charged a surcharge of up to \$50 to be
2 deposited into the trauma system special fund if
3 the court so orders.

4 (3) If the person demonstrates to the court that the
5 person:

6 (A) Does not own or have the use of a vehicle in
7 which the person can install an ignition
8 interlock device during the revocation period; or

9 (B) Is otherwise unable to drive during the
10 revocation period, the person shall be absolutely
11 prohibited from driving during the period of
12 applicable revocation provided in paragraph
13 (2) (A); provided that the court shall not issue
14 an ignition interlock permit pursuant to
15 subsection (2) (A) and the person shall be subject
16 to the penalties provided by section 291E-62 if
17 the person drives during the applicable
18 revocation period.

19 (C) The courts shall require that the person be
20 subject to an in home monitoring device that will
21 require the person to be tested for alcohol at

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1 unannounced times each day during the revocation
 2 period.

3 In addition to the foregoing, any vehicle owned and operated by
 4 the person committing the offense shall be subject to forfeiture
 5 pursuant to chapter 712A, provided that the department of
 6 transportation shall provide storage for vehicles forfeited
 7 under this subsection."

8 SECTION 5. This Act does not affect rights and duties that
 9 matured, penalties that were incurred, and proceedings that were
 10 begun, before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act, upon its approval, shall take effect
 14 on January 1, 2015.

15
 16 INTRODUCED BY: 

17 BY REQUEST

18

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Report Title:

Highway Safety; Motor Vehicle; Ignition Interlock

Description:

Mandates use of an ignition interlock for all offenders convicted and adjudicated for the offense of operating a vehicle under the influence of an intoxicant. Increases fines for violation. Removes the exemption for the repeat offender of driving without an ignition interlock for those who are employed and must drive a company vehicle for employment. Authorizes the Director of Transportation to make administrative rules governing the operation and compliance of the ignition interlock and authorizes penalties under these rules.

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

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY.

PURPOSE: To amend the law for operating a vehicle under the influence of an intoxicant; to mandate the use of an ignition interlock for all offenders convicted and adjudicated for the offense of operating a vehicle under the influence of an intoxicant; to remove the exemption for repeat offenders of driving without an ignition interlock for those who are employed and must drive a company's vehicle for employment; to increase the fines; to authorize the Director of Transportation to adopt administrative rules governing the operations and compliances of the ignition interlock and to establish penalties.

MEANS: Amend sections 291E-6, 291E-44.5, 291E-61, and 291E-61.5, Hawaii Revised Statutes.

JUSTIFICATION: Hawaii's ignition interlock law came into effect on January 1, 2011. An ignition interlock task force was formed to draft Hawaii's law on interlock. At the time the law was passed, everyone knew it was not a perfect law and there were many other factors and unknowns the task force new would have to fix as time passed. Since the law went into effect, it has been successful in terms of the percentage of offenders installing the interlock and the number of preventive starts due to the presence of alcohol in a person. Because the program has not been funded, the department of transportation has had to depend on federal highway safety grants to educate the public about the program. In applying for the federal highway safety grants, there were several requirements that Hawaii did not meet in the law. In order to qualify for grant funding, it is imperative

that Hawaii laws be amended to qualify for these grants. It is the nature of these grants that because Hawaii's laws do not qualify, a percentage of highway funds obtained from the Federal Highway Administration will be transferred to impaired driving. Although this is good for the impaired driving aspect, it is not good for the state's highway funding. In 2013, \$7,000,000 was subject to this transfer. In 2014, the amount will be \$6,600,000. Without the highway funding, many highway road projects would be cancelled due to funding. Although the obligated money is not lost it will be diverted to specific areas of transportation but the general obligation for highways will be decreased.

Under the present fine structure, the first offense is \$150, the second is \$500, and the third is \$500. The fines are too low or equal to the same offense for the second and third time. The recommended fines should be \$300, \$500, and \$1,000.

The present law authorizes the Director of Transportation to promulgate administrative rules to establish the certification of the ignition interlock. To further the rules, we are recommending that it includes the monitoring, and operation and compliance of the ignition interlock.

The impact of federal funding on Hawaii will be the lack of resources to employ alcohol countermeasures on the drinking driver. Hawaii's alcohol related fatalities each year have been nearly 50 percent which is higher than the national average of 43 percent. This money is necessary to change the behavior of the drinking public who continues to drink and drive through enforcement, education, and engineering. This bill for an act will enable Hawaii to qualify for additional funding in the area of impaired driving by not only strengthening the laws but to bring it in line with national policy.

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Impact on the public: The transfer of highway construction funds to other transportation areas would mean a reduction of highway construction projects on roadways. The public will lose the benefit of needed repairs on the highway.

Impact on the department and other agencies: Grant money for the enforcement of detecting drivers operating under the influence of an intoxicant will result in more highway deaths due to the lack of enforcement.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESTINATION: TRN 595.

OTHER AFFECTED
AGENCIES: County police departments.

EFFECTIVE DATE: January 1, 2015.