

JAN 23 2015

A BILL FOR AN ACT

RELATING TO USE OF INTOXICANTS WHILE OPERATING A VEHICLE.

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

1 SECTION 1. 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[-] or pursuant to a search warrant. Upon the law
8 enforcement officer's determination that the person under arrest
9 has refused to submit to a breath, blood, or urine test, if
10 applicable, then a law enforcement officer shall:

- 11 (1) Inform the person under arrest of the sanctions under
12 section 291E-41, 291E-65, 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;



1 provided that if the law enforcement officer fails to comply
2 with paragraphs (1) and (2), the person shall not be subject to
3 the refusal sanctions under part III or IV."

4 SECTION 2. Section 291E-37, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§291E-37 Administrative review; procedures; decision.**

7 (a) The director automatically shall review the issuance of a
8 notice of administrative revocation and shall issue a written
9 decision administratively revoking the license and privilege to
10 operate a vehicle or rescinding the notice of administrative
11 revocation. The written review decision shall be mailed to the
12 respondent, or to the parent or guardian of the respondent if
13 the respondent is under the age of eighteen, no later than:

14 (1) Eight days after the date the notice was issued in a
15 case involving an alcohol related offense; or

16 (2) Twenty-two days after the date the notice was issued
17 in a case involving a drug related offense.

18 (b) The respondent shall have the opportunity to
19 demonstrate in writing why the respondent's license and
20 privilege to operate a vehicle should not be administratively
21 revoked and, within three days of receiving the notice of



1 administrative revocation, as provided in section 291E-33, shall
2 submit any written information, either by mail or in person, to
3 the director's office or to any office or address designated by
4 the director for that purpose.

5 (c) In conducting the administrative review, the director
6 shall consider:

- 7 (1) Any sworn or unsworn written statement or other
8 written evidence provided by the respondent;
- 9 (2) The breath, blood, or urine test results, if any; and
- 10 (3) The sworn statement of any law enforcement officer or
11 other person or other evidence or information required
12 by section 291E-36.

13 (d) The director shall administratively revoke the
14 respondent's license and privilege to operate a vehicle if the
15 director determines that:

- 16 (1) There existed reasonable suspicion to stop the
17 vehicle, the vehicle was stopped at an intoxicant
18 control roadblock established and operated in
19 compliance with sections 291E-19 and 291E-20, or the
20 person was tested pursuant to section 291E-21;



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- 1 (2) There existed probable cause to believe that the
- 2 respondent operated the vehicle while under the
- 3 influence of an intoxicant; and
- 4 (3) The evidence proves by a preponderance that:
- 5 (A) The respondent operated the vehicle while under
- 6 the influence of an intoxicant; or
- 7 (B) The respondent operated the vehicle and refused
- 8 to submit to a breath, blood, or urine test after
- 9 being informed:
- 10 (i) That the person may refuse to submit to
- 11 testing in compliance with section 291E-11;
- 12 and
- 13 (ii) Of the sanctions of this part and then asked
- 14 if the person still refuses to submit to a
- 15 breath, blood, or urine test, in compliance
- 16 with the requirements of section 291E-15.
- 17 (e) If the evidence does not support administrative
- 18 revocation, the director shall rescind the notice of
- 19 administrative revocation and return the respondent's license
- 20 along with a certified statement that administrative revocation
- 21 proceedings have been terminated.



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1 (f) If the director administratively revokes the
2 respondent's license and privilege to operate a vehicle, the
3 director shall mail a written review decision to the respondent,
4 or to the parent or guardian of the respondent if the respondent
5 is under the age of eighteen. The written review decision
6 shall:

7 (1) State the reasons for the administrative revocation;

8 (2) Indicate that the respondent has six days from the
9 date the decision is mailed to request an
10 administrative hearing to review the director's
11 decision;

12 (3) Explain the procedure by which to request an
13 administrative hearing;

14 (4) Be accompanied by a form, postage prepaid, that the
15 respondent may fill out and mail in order to request
16 an administrative hearing;

17 (5) Inform the respondent of the right to review and copy
18 all documents considered at the review, including the
19 arrest report and the sworn statements of law
20 enforcement officers or other persons, prior to the
21 hearing; and



1 (6) State that the respondent may be represented by
2 counsel at the hearing, submit evidence, give
3 testimony, and present and cross-examine witnesses,
4 including the arresting law enforcement officer.

5 (g) Failure of the respondent to request a hearing within
6 the time provided in section 291E-38(a) shall cause the
7 administrative revocation to take effect for the period and
8 under the conditions provided in the administrative review
9 decision issued by the director under this section. The
10 respondent may regain the right to an administrative hearing by
11 requesting the director, within sixty days of the issuance of
12 the notice of administrative revocation as provided in section
13 291E-33, to schedule an administrative hearing. The
14 administrative hearing shall be scheduled to commence no later
15 than thirty days after the request is received by the director.
16 The administrative review decision issued by the director under
17 this section shall explain clearly the consequences of failure
18 to request an administrative hearing and the procedure by which
19 the respondent may regain the right to a hearing.

20 (h) The mailing of a written decision or a written review
21 decision shall be deemed complete upon depositing the written



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1 decision or written review decision in the United States mail,
2 postage prepaid, addressed to the address of the respondent as
3 listed on the respondent's license and as listed in any police
4 report transmitted to the director."

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

INTRODUCED BY: ~~AC. Sid. Agana~~



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Report Title:

Administrative Revocation of Driver's License

Description:

Clarifies implied consent law to make an exception for giving breath, blood, or urine test pursuant to a search warrant. Clarifies that the mailing of a written decision or a written review decision shall be deemed complete upon depositing the written decision or written review decision in the United States mail, postage prepaid, addressed to the address of the respondent as listed on the respondent's license and as listed in any police report transmitted to the administrative director of the courts or appointee.

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