S.B. NO. <sup>3165</sup> S.D. 2 H.D. 1

C.D. 1

## A BILL FOR AN ACT

### RELATING TO OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT.

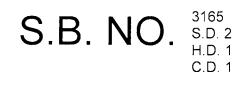
#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	1 SECTION 1. Section 291E-61, Hawaii Revis	sed Statutes, is
2	2 amended by amending subsection (b) to read as	follows:
3	3 "(b) A person committing the offense of	operating a
4	4 vehicle under the influence of an intoxicant a	shall be sentenced
5	5 without possibility of probation or suspension	n of sentence as
6	6 follows:	
7	7 (1) Except as provided in paragraph (4)	, for the first
8	8 offense, or any offense not preceded	d within a ten-year
9	9 period by a conviction for an offen	se under this
10	section or section 291E-4(a):	
11	(A) A fourteen-hour minimum substan	nce abuse
12	12 rehabilitation program, includ	ing education and
13	counseling, or other comparable	e [ <del>progra</del> m]
14	14 programs deemed appropriate by	the court;
15	(B) [ <del>One-year revocation</del> ] <u>Revocation</u> ]	on of license to
16	operate a vehicle[;] for no le	ss than one year
17	and no more than eighteen mont	hs;

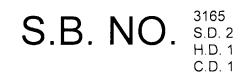




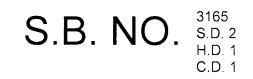
1		(C) Installation during the revocation period of an
2		ignition interlock device on all vehicles
3		operated by the person;
4		(D) Any one or more of the following:
5		(i) Seventy-two hours of community service work;
6		(ii) No less than forty-eight hours and no more
7		than five days of imprisonment; or
8		(iii) A fine of no less than \$250 [ <del>but</del> ] <u>and</u> no
9		more than \$1,000;
10		(E) A surcharge of \$25 to be deposited into the
11		neurotrauma special fund; and
12		(F) A surcharge, if the court so orders, of up to \$25
13		to be deposited into the trauma system special
14		fund;
15	(2)	For an offense that occurs within ten years of a prior
16		conviction for an offense under this section:
17		(A) A substance abuse program of at least thirty-six
18		hours, including education and counseling, or
19		other comparable programs deemed appropriate by
20		the court;



1	(B)	Revocation of license to operate a vehicle for no
2		less than two years [ <del>but</del> ] <u>and</u> no more than three
3		years;
4	(C)	Installation during the revocation period of an
5		ignition interlock device on all vehicles
6		operated by the person;
7	(D)	Either one of the following:
8		(i) No less than two hundred forty hours of
9		community service work; or
10		(ii) No less than five days [ <del>but</del> ] <u>and</u> no more
11		than thirty days of imprisonment, of which
12		at least forty-eight hours shall be served
13		consecutively;
14	(E)	A fine of no less than \$1,000 [ <del>but</del> ] <u>and</u> no more
15		than \$3,000, to be deposited into the state drug
16		and alcohol toxicology testing laboratory special
17		fund;
18	(F)	A surcharge of \$25 to be deposited into the
19		neurotrauma special fund; and



1		(G) A surcharge of up to \$50, if the court so orders,
2		to be deposited into the trauma system special
3		fund;
4	(3)	In addition to a sentence imposed under paragraphs (1)
5		and (2), any person eighteen years of age or older who
6		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) or (2), as
15		applicable. Notwithstanding paragraphs (1) and (2),
16		the revocation period for a person sentenced under
17		this paragraph shall be no less than two years;
18	(4)	In addition to a sentence imposed under paragraph (1),
19		for a first offense under this section, or an offense
20		not preceded within a ten-year period by a conviction
21		for an offense, any person who is convicted under this



1 section and was a highly intoxicated driver at the 2 time of the subject incident shall be sentenced to an 3 additional mandatory term of imprisonment for forty-4 eight consecutive hours and an additional mandatory 5 revocation period of six months; provided that the 6 total term of imprisonment for a person convicted 7 under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1). 8 9 Notwithstanding paragraph (1), the revocation period 10 for a person sentenced under this paragraph shall be 11 no less than eighteen months; 12 (5) In addition to a sentence under paragraph (2), for an 13 offense that occurs within ten years of a prior 14 conviction for an offense under this section, any 15 person who is convicted under this section and was a 16 highly intoxicated driver at the time of the subject 17 incident shall be sentenced to an additional mandatory 18 term of imprisonment of ten consecutive days and an

19 additional mandatory revocation period of one year; 20 provided that the total term of imprisonment for a 21 person convicted under this paragraph shall not exceed

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1		the	maximum term of imprisonment provided in paragraph
2		(2),	as applicable. Notwithstanding paragraph (2),
3		the	revocation period for a person sentenced under
4		this	paragraph shall be no less than three years;
5		[ <del>and</del>	.]
6	(6)	A pe	rson sentenced pursuant to paragraph (1)(B) may
7		file	a motion for early termination of the applicable
8		revo	cation period if the person:
9		(A)	Was not sentenced to any additional mandatory
10			revocation period pursuant to paragraph (3) or
11			(4);
12		<u>(B)</u>	Actually installed and maintained an ignition
13			interlock device on all vehicles operated by the
14			person for a continuous period of six months,
15			after which the person maintained the ignition
16			interlock device on all vehicles operated by the
17			person for a continuous period of three months
18			without violation;
19		(C)	Includes with their motion for early termination
20			a certified court abstract establishing that they
21			were not sentenced to any additional mandatory



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1	revocation period pursuant to paragraph (3) or
2	(4);
3	(D) Includes with their motion for early termination
4	a certified statement from the director of
5	transportation establishing that:
6	(i) The person installed and maintained an
7	ignition interlock device on all vehicles
8	operated by the person for a continuous
9	period of six months; and
10	(ii) After the six-month period, the person
11	maintained the ignition interlock device on
12	all vehicles operated by the person for a
13	continuous period of three months without
14	violation; and
15	(E) Has complied with all other sentencing
16	requirements.
17	Nothing in this paragraph shall require a court to
18	grant early termination of the revocation period if
19	the court finds that continued use of the ignition
20	interlock device will further the person's
21	rehabilitation or compliance with this section;

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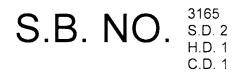
1	[ <del>(6)</del> ]	(7) If the person demonstrates to the court that the
2		person:
3		(A) Does not own or have the use of a vehicle in
4		which the person can install an ignition
5		interlock device during the revocation period; or
6		(B) Is otherwise unable to drive during the
7		revocation period,
8		the person shall be [ <del>absolutely</del> ] prohibited from
9		driving during the period of applicable revocation
10		provided in paragraphs (1) to [ <del>(3);</del> ] <u>(5);</u> provided
11		that the person shall be sentenced to the maximum
12		license revocation period, the court shall not issue
13		an ignition interlock permit pursuant to subsection
14		(i), and the person shall be subject to the penalties
15		provided by section 291E-62 if the person drives
16		during the applicable revocation period[-]; and
17	(8)	For purposes of this subsection, "violation" means:
18		(A) Providing a sample of .04 or more grams of
19		alcohol per two hundred ten liters of breath when
20		starting the vehicle, unless a subsequent test
21		performed within ten minutes registers a breath



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1		alcohol concentration lower than .02 and the
2		digital image confirmed the same person provided
3		both samples;
4	<u>(B)</u>	Providing a sample of .04 or more grams of
5		alcohol per two hundred ten liters of breath on a
6		rolling retest, unless a subsequent test
7		performed within ten minutes registers a breath
8		alcohol concentration lower than .02 and the
9		digital image confirms the same person provided
10		both samples;
11	<u>(C)</u>	Failing to provide a rolling retest, unless an
12		acceptable test is performed within ten minutes;
13	<u>(D)</u>	Violating section 291E-66; or
14	<u>(E)</u>	Failing to provide a clear photo of the person
15		when the person blows into the ignition interlock
16		device."
17	SECTION 2	. Section 291E-62, Hawaii Revised Statutes, is
18	amended as fol	lows:
19	l. By am	ending subsection (a) to read:
20	"(a) No	person whose license and privilege to operate a
21	vehicle have b	een revoked, suspended, or otherwise restricted

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1	pursuant	to this section [ <del>or to</del> ], part III [ <del>or</del> ], section 291E-61
2	or 291E-6	1.5, or [ <del>to</del> ] part VII or part XIV of chapter 286 or
3	section 2	00-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those
4	provision	s were in effect on December 31, 2001, shall operate or
5	assume ac	tual physical control of any vehicle:
6	(1)	In violation of any restrictions placed on the
7		person's license;
8	(2)	While the person's license or privilege to operate a
9		vehicle remains suspended or revoked;
10	(3)	Without installing an ignition interlock device
11		required by this chapter; or
12	(4)	With an ignition interlock permit unless the person
13		has the ignition interlock permit and government-
14		issued identification in the person's immediate
15		possession. For purposes of this paragraph,
16		"government-issued identification" means:
17		(A) A passport issued by the United States of
18		America; or
19		(B) A photo identification card issued by any
20		federal, state, or local government."
21	2.	By amending subsection (c) to read:

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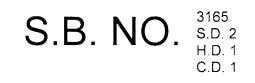
1 "(c) Any person convicted of violating this section shall 2 be sentenced as follows without possibility of probation or 3 suspension of sentence: 4 (1)For a first offense, or any offense not preceded within a [five-year] ten-year period by conviction for 5 an offense under this section, section 291E-66, or 6 7 section 291-4.5 as that section was in effect on 8 December 31, 2001: 9 (A) A term of imprisonment of no less than three 10 consecutive days [but] and no more than thirty 11 days; 12 (B) A fine of no less than \$250 [but] and no more 13 than \$1,000, to be deposited into the state drug 14 and alcohol toxicology testing laboratory special 15 fund; and 16 (C) Revocation of license and privilege to operate a 17 vehicle for an additional year; [and 18 (D) Loss of the privilege to operate a vehicle 19 equipped with an ignition interlock device, if 20 applicable;]

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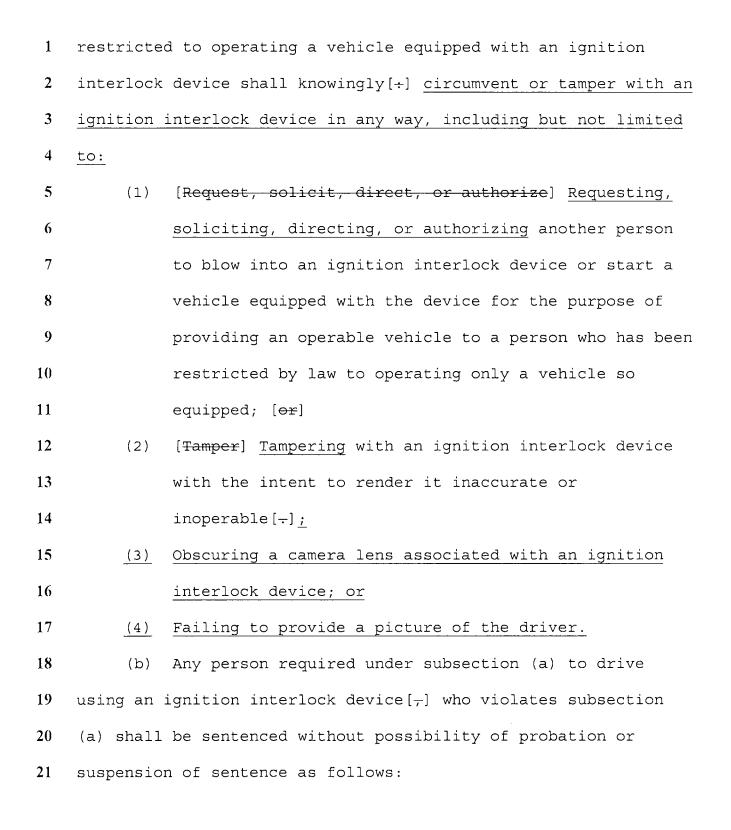
1	(2)	For an offense that occurs within [five] ten years of
2		a prior conviction for an offense under this section,
3		section 291E-66, or section 291-4.5 as that section
4		was in effect on December 31, 2001:
5		(A) Thirty days imprisonment;
6		(B) A \$1,000 fine, to be deposited into the state
7		drug and alcohol toxicology testing laboratory
8		special fund; <u>and</u>
9		(C) Revocation of license and privilege to operate a
10		vehicle for an additional two years; [ <del>and</del>
11		(D) Loss of the privilege to operate a vehicle
12		equipped with an ignition interlock device, if
13		applicable; and]
14	(3)	For an offense that occurs within [ <del>five</del> ] <u>ten</u> years of
15		two or more prior convictions for offenses under this
16		section, section 291E-66, or section 291-4.5 as that
17		section was in effect on December 31, 2001, or any
18		combination thereof:
19		(A) [ <del>One</del> ] <u>No less than six months and no more than</u>
20		<u>one</u> year imprisonment;



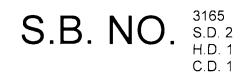
1	(В	) A \$2,000 fine, to be deposited into the state
2		drug and alcohol toxicology testing laboratory
3		special fund; and
4	(C	) Permanent revocation of the person's license and
5		privilege to operate a vehicle; and
6	[ <del>(</del> Ð	) Loss of the privilege to operate a vehicle
7		equipped with an ignition interlock device, if
8		applicable.]
9	<u>(4)</u> <u>In</u>	addition to a sentence imposed under paragraphs (1)
10	th	rough (3), any person who is convicted under this
11	se	ction and also convicted under section 291E-61 or
12	29	1E-61.5, for an offense based on the same incident
13	or	arising from the same episode, shall be sentenced
14	to	terms of imprisonment for both offenses, which
15	sh	all be served consecutively."
16	SECTION	3. Section 291E-66, Hawaii Revised Statutes, is
17	amended to r	ead as follows:
18	"[ <del>{</del> ]§29	1E-66[ <del>]</del> ] Circumvention of, or tampering with, an
19	ignition int	erlock device by a person who has been restricted to
20	operating a	vehicle equipped with an ignition interlock device;
21	penalties.	(a) No person whose driving privileges have been



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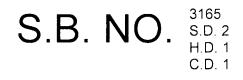


1	(1)	For a first offense, or any offense not preceded
2		within a [ <del>five-year</del> ] <u>ten-year</u> period by conviction
3		under this section or section 291E-62(a)(3):
4		(A) A term of imprisonment of [ <del>not</del> ] <u>no</u> less than
5		three consecutive days [ <del>but not</del> ] <u>and no</u> more than
6		thirty days;
7		(B) A fine of [ <del>not</del> ] <u>no</u> less than \$250 [ <del>but not</del> ] <u>and</u>
8		no more than \$1,000; and
9		(C) Loss of the privilege to operate a vehicle
10		equipped with an ignition interlock device;
11	(2)	For an offense that occurs within [ <del>five</del> ] <u>ten</u> years of
12		a prior conviction for an offense under this section
13		or section 291E-62(a)(3):
14		(A) Thirty days imprisonment;
15		(B) A \$1,000 fine; and
16		(C) Loss of the privilege to operate a vehicle
17		equipped with an ignition interlock device; and
18	(3)	For an offense that occurs within [ <del>five</del> ] <u>ten</u> years of
19		two or more prior convictions for offenses under this
20		section or section 291E-62(a)(3), or any combination
21		thereof:

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1	(A) One year imprisonment;
2	(B) A \$2,000 fine; and
3	(C) Loss of the privilege to operate a vehicle
4	equipped with an ignition interlock device."
5	SECTION 4. Act 216, Session Laws of Hawaii 2021, is
6	amended by amending section 10 to read as follows:
7	"SECTION 10. This Act shall take effect on July 1,
8	2021[-]; provided that the amendments made to sections 291E-61
9	and 291E-61.5, Hawaii Revised Statutes, by sections 5 and 6,
10	respectively, of this Act shall not be repealed when those
11	sections are reenacted on June 30, 2026, pursuant to section 11
12	of Act 196, Session Laws of Hawaii 2021."
13	SECTION 5. This Act does not affect rights and duties that
14	matured, penalties that were incurred, and proceedings that were
15	begun before its effective date.
16	SECTION 6. Statutory material to be repealed is bracketed
17	and stricken. New statutory material is underscored.
18	SECTION 7. This Act shall take effect on January 1, 2023;
19	provided that the amendments made to sections 291E-61 and
20	291E-62, Hawaii Revised Statutes, by sections 1 and 2,
21	respectively, of this Act shall not be repealed when those

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- 1 sections are reenacted on June 30, 2026, pursuant to section 11
- 2 of Act 196, Session Laws of Hawaii 2021.



Report Title:

Operating a Vehicle Under the Influence of an Intoxicant; Ignition Interlock Device; Driver's License Revocation

#### Description:

Amends the driver's license revocation period for first-time offenders convicted of operating a vehicle under the influence of an intoxicant and people who do not install an ignition interlock device. Allows early termination of driver's license revocation. Requires any person operating a vehicle with an ignition interlock device to have government-issued identification in their immediate possession. Amends the lookback period and sentencing requirements for violations of operating a vehicle after license and privilege have been suspended or revoked. Amends the offense of circumventing or tampering with an ignition interlock device to include obscuring the camera lens or failing to provide a picture of the driver and extend the lookback period. Effective 1/1/2023. (CD1)

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

