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# A BILL FOR AN ACT

RELATING TO THE USE OF INTOXICANTS WHILE OPERATING A VEHICLE.

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

1           SECTION 1. The legislature finds that impaired driving is  
2 a significant problem in Hawai'i, as intoxicated driving is the  
3 leading cause of traffic fatalities and impacts the lives of  
4 innocent people. In recent years, traffic fatalities have  
5 increased across the State, with intoxicants such as alcohol  
6 becoming one of the most significant factors. As blood alcohol  
7 concentration levels also change the behavior of those driving  
8 after drinking, the magnitude of impairment increases with  
9 increased blood alcohol concentration. Lowering the threshold  
10 for impaired driving brings the State closer to making Hawai'i's  
11 roads safer for all users.

12           The legislature further finds that in 2013, the National  
13 Transportation Safety Board (NTSB) recommended that all fifty  
14 states adopt a blood alcohol concentration (BAC) limit of 0.05  
15 compared to the 0.08 standard. According to NTSB, lowering the  
16 limit to 0.05 would save approximately five hundred to eight  
17 hundred lives annually. Lowering the threshold to 0.05 BAC



1 would save lives, prevent catastrophic injuries, and decrease  
2 medical costs. Evaluations of lowering the BAC limit to 0.05 in  
3 other industrialized countries and one U.S. state (Utah) show  
4 strong associations with reductions in alcohol-impaired driving  
5 crashes and fatalities. A 0.05 BAC is not typically reached  
6 with a couple of drinks. It takes at least four drinks for the  
7 average 170 pound male to exceed 0.05 BAC in two hours on an  
8 empty stomach (3 drinks for the average 137 pound female).

9 The legislature additionally finds that over one hundred  
10 countries have adopted a BAC limit of 0.05 or lower, including  
11 nearly all European countries, Australia, New Zealand, Canada,  
12 Japan, and most other industrialized Asian countries. In total,  
13 over eighty-five per cent of the world's population lives under  
14 a 0.05 or lower BAC limit. For more than a decade, NTSB has  
15 recommended that all states adopt a 0.05 BAC. The National  
16 Safety Council, American Medical Association, and World Health  
17 Organization have all also recommended a 0.05 BAC limit to  
18 prevent and reduce traffic crashes and fatalities.

19 The legislature further finds impaired driving fatalities  
20 have been increasing over the past few years in Hawai'i. In  
21 2020, there were one hundred fourteen drivers involved in fatal



1 crashes in Hawai'i. In 2021, there were one hundred twenty-seven  
2 drivers involved in deadly crashes. In 2022, there were one  
3 hundred sixty-five drivers involved in fatal crashes. According  
4 to the Centers for Disease Control and Prevention (CDC), four  
5 hundred people were killed in crashes involving an alcohol-  
6 impaired driver in Hawai'i between 2009 and 2018. Lowering the  
7 BAC limit to 0.05 will serve as a general deterrent to impaired  
8 driving and has the potential to save lives in states that adopt  
9 such a limit. The CDC reported that 2.1 per cent of drivers in  
10 Hawai'i said that they drove after drinking too much, which is  
11 more than the national average of 1.7 per cent. Evidence shows  
12 that lowering the BAC limit to 0.05 deters drivers at all BAC  
13 levels above and below 0.05. One study estimates that  
14 nationwide adoption of a 0.05 BAC limit would save 1,790 lives  
15 annually.

16 The legislature also finds that there is strong public  
17 support for lowering the BAC to 0.05. A recent statewide poll  
18 of Hawai'i voters showed a substantial majority, sixty-two per  
19 cent, expressed support for the reduction of the BAC threshold  
20 from 0.08 to 0.05.



1           The purpose of this Act is to lower the blood alcohol  
2 concentration threshold for driving while under the influence of  
3 alcohol from 0.08 to 0.05.

4           SECTION 2. Section 291E-1, Hawaii Revised Statutes, is  
5 amended as follows:

6           1. By amending the definition of "measurable amount of  
7 alcohol" to read:

8           "Measurable amount of alcohol" means a test result equal  
9 to or greater than .02 but less than [~~-.08~~] .05 grams of alcohol  
10 per one hundred milliliters or cubic centimeters of blood or  
11 equal to or greater than .02 but less than [~~-.08~~] .05 grams of  
12 alcohol per two hundred ten liters of breath."

13           2. By amending the definition of "under the influence" to  
14 read:

15           "Under the influence" means that a person:

16           (1) Is under the influence of alcohol in an amount  
17               sufficient to impair the person's normal mental  
18               faculties or ability to care for the person and guard  
19               against casualty;



1           (2) Is under the influence of any drug that impairs the  
2                    person's ability to operate the vehicle in a careful  
3                    and prudent manner;

4           (3) Has [~~-.08~~] .05 or more grams of alcohol per two hundred  
5                    ten liters of the person's breath; or

6           (4) Has [~~-.08~~] .05 or more grams of alcohol per one hundred  
7                    milliliters or cubic centimeters of the person's  
8                    blood."

9           SECTION 3. Section 291E-3, Hawaii Revised Statutes, is  
10           amended by amending subsections (a) and (b) to read as follows:

11           "(a) In any criminal prosecution for a violation of  
12           section 291E-61 or 291E-61.5 or in any proceeding under part  
13           III:

14           (1) [~~-.08~~] .05 or more grams of alcohol per one hundred  
15                    milliliters or cubic centimeters of the person's  
16                    blood;

17           (2) [~~-.08~~] .05 or more grams of alcohol per two hundred ten  
18                    liters of the person's breath; or

19           (3) The presence of one or more drugs in an amount  
20                    sufficient to impair the person's ability to operate a  
21                    vehicle in a careful and prudent manner,



1 within three hours after the time of the alleged violation as  
2 shown by chemical analysis or other approved analytical  
3 techniques of the person's blood, breath, or urine shall be  
4 competent evidence that the person was under the influence of an  
5 intoxicant at the time of the alleged violation.

6 (b) In any criminal prosecution for a violation of section  
7 291E-61 or 291E-61.5, the amount of alcohol found in the  
8 defendant's blood or breath within three hours after the time of  
9 the alleged violation as shown by chemical analysis or other  
10 approved analytical techniques of the defendant's blood or  
11 breath shall be competent evidence concerning whether the  
12 defendant was under the influence of an intoxicant at the time  
13 of the alleged violation and shall give rise to the following  
14 presumptions:

15 (1) If there were [~~05~~] .02 or less grams of alcohol per  
16 one hundred milliliters or cubic centimeters of  
17 defendant's blood or [~~05~~] .02 or less grams of  
18 alcohol per two hundred ten liters of defendant's  
19 breath, it shall be presumed that the defendant was  
20 not under the influence of alcohol at the time of the  
21 alleged violation; and



1           (2) If there were in excess of [~~-.05~~] .02 grams of alcohol  
2           per one hundred milliliters or cubic centimeters of  
3           defendant's blood or [~~-.05~~] .02 grams of alcohol per  
4           two hundred ten liters of defendant's breath, but less  
5           than [~~-.08~~] .05 grams of alcohol per one hundred  
6           milliliters or cubic centimeters of defendant's blood  
7           or [~~-.08~~] .05 grams of alcohol per two hundred ten  
8           liters of defendant's breath, that fact may be  
9           considered with other competent evidence in  
10          determining whether the defendant was under the  
11          influence of alcohol at the time of the alleged  
12          violation, but shall not of itself give rise to any  
13          presumption."

14          SECTION 4. Section 291E-35, Hawaii Revised Statutes, is  
15          amended by amending subsection (a) to read as follows:

16          "(a) In cases involving an alcohol related offense, if a  
17          test conducted in accordance with part II and section 321-161  
18          and the rules adopted thereunder shows that a respondent had an  
19          alcohol concentration less than [~~-.087~~] .05, the director or the  
20          arresting law enforcement agency immediately shall return the  
21          respondent's license along with a certified statement that



1 administrative revocation proceedings have been terminated with  
2 prejudice."

3 SECTION 5. Section 291E-36, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Whenever a respondent has been arrested for a  
6 violation of section 291E-61 or 291E-61.5 and submits to a test  
7 that establishes: the respondent's alcohol concentration was  
8 [~~-.08~~] .05 or more; the presence, in the respondent's blood or  
9 urine, of any drug that is capable of impairing the respondent's  
10 ability to operate a vehicle in a careful and prudent manner; or  
11 whenever a respondent has been involved in a collision resulting  
12 in injury or death and a blood or urine test performed pursuant  
13 to section 291E-21 establishes that the respondent's alcohol  
14 concentration was [~~-.08~~] .05 or more or establishes the presence  
15 in the respondent's blood or urine of any drug that is capable  
16 of impairing the respondent's ability to operate a vehicle in a  
17 careful and prudent manner, the following shall be forwarded  
18 immediately to the director:

19 (1) A copy of the arrest report or the report of the law  
20 enforcement officer who issued the notice of  
21 administrative revocation to the person involved in a





1 collision resulting in injury or death and the sworn  
2 statement of the arresting law enforcement officer or  
3 the officer who issued the notice of administrative  
4 revocation, stating facts that establish that:

5 (A) There was reasonable suspicion to stop the  
6 vehicle, the vehicle was stopped at an intoxicant  
7 control roadblock established and operated in  
8 compliance with sections 291E-19 and 291E-20, or  
9 the respondent was tested pursuant to section  
10 291E-21;

11 (B) There was probable cause to believe that the  
12 respondent had been operating the vehicle while  
13 under the influence of an intoxicant; and

14 (C) The respondent agreed to be tested or the person  
15 was tested pursuant to section 291E-21;

16 (2) In a case involving an alcohol related offense, the  
17 sworn statement of the person responsible for  
18 maintenance of the testing equipment, stating facts  
19 that establish that, pursuant to section 321-161 and  
20 rules adopted thereunder:



- 1           (A) The equipment used to conduct the test was
- 2                   approved for use as an alcohol testing device in
- 3                   this State;
- 4           (B) The person had been trained and at the time the
- 5                   test was conducted was certified and capable of
- 6                   maintaining the testing equipment; and
- 7           (C) The testing equipment used had been properly
- 8                   maintained and was in good working condition when
- 9                   the test was conducted;
- 10       (3) In a case involving an alcohol related offense, the
- 11           sworn statement of the person who conducted the test,
- 12           stating facts that establish that, pursuant to section
- 13           321-161 and rules adopted thereunder:
- 14           (A) The person was trained and at the time the test
- 15                   was conducted was certified and capable of
- 16                   operating the testing equipment;
- 17           (B) The person followed the procedures established
- 18                   for conducting the test;
- 19           (C) The equipment used to conduct the test functioned
- 20                   in accordance with operating procedures and
- 21                   indicated that the respondent's alcohol



1 concentration was at, or above, the prohibited  
2 level; and

3 (D) The person whose breath or blood was tested is  
4 the respondent;

5 (4) In a case involving a drug related offense, the sworn  
6 statement of the person responsible for maintenance of  
7 the testing equipment, stating facts that establish  
8 that, pursuant to section 321-161 and rules adopted  
9 thereunder:

10 (A) The equipment used to conduct the test was  
11 approved for use in drug testing;

12 (B) The person conducting the test had been trained  
13 and, at the time of the test, was certified and  
14 capable of maintaining the testing equipment; and

15 (C) The testing equipment used had been properly  
16 maintained and was in good working condition when  
17 the test was conducted;

18 (5) In a case involving a drug related offense, the sworn  
19 statement of the person who conducted the test,  
20 stating facts that establish that, pursuant to section  
21 321-161 and rules adopted thereunder:



- 1           (A) At the time the test was conducted, the person
- 2                   was trained and capable of operating the testing
- 3                   equipment;
- 4           (B) The person followed the procedures established
- 5                   for conducting the test;
- 6           (C) The equipment used to conduct the test functioned
- 7                   in accordance with operating procedures and
- 8                   indicated the presence of one or more drugs or
- 9                   their metabolites in the respondent's blood or
- 10                  urine; and
- 11           (D) The person whose blood or urine was tested is the
- 12                  respondent;
- 13           (6) A copy of the notice of administrative revocation
- 14                  issued by the law enforcement officer to the
- 15                  respondent;
- 16           (7) Any license taken into possession by the law
- 17                  enforcement officer; and
- 18           (8) A listing of any prior alcohol or drug enforcement
- 19                  contacts involving the respondent."

20           SECTION 6. Section 291E-61, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

1           "(a) A person commits the offense of operating a vehicle  
2 under the influence of an intoxicant if the person operates or  
3 assumes actual physical control of a vehicle:

4           (1) While under the influence of alcohol in an amount  
5           sufficient to impair the person's normal mental  
6           faculties or ability to care for the person and guard  
7           against casualty;

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

11          (3) With [~~.08~~] .05 or more grams of alcohol per two  
12          hundred ten liters of breath; or

13          (4) With [~~.08~~] .05 or more grams of alcohol per one  
14          hundred milliliters or cubic centimeters of blood."

15          SECTION 7. Section 291E-61.5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17          "(a) A person commits the offense of habitually operating  
18 a vehicle under the influence of an intoxicant if:

19          (1) The person is a habitual operator of a vehicle while  
20          under the influence of an intoxicant; and



1           (2) The person operates or assumes actual physical control  
2           of a vehicle:

3           (A) While under the influence of alcohol in an amount  
4           sufficient to impair the person's normal mental  
5           faculties or ability to care for the person and  
6           guard against casualty;

7           (B) While under the influence of any drug that  
8           impairs the person's ability to operate the  
9           vehicle in a careful and prudent manner;

10          (C) With [~~.08~~] .05 or more grams of alcohol per two  
11          hundred ten liters of breath; or

12          (D) With [~~.08~~] .05 or more grams of alcohol per one  
13          hundred milliliters or cubic centimeters of  
14          blood."

15          SECTION 8. This Act does not affect rights and duties that  
16          matured, penalties that were incurred, and proceedings that were  
17          begun before its effective date.

18          SECTION 9. Statutory material to be repealed is bracketed  
19          and stricken. New statutory material is underscored.

20



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

2

INTRODUCED BY:

Paul Hood



# S.B. NO. 2384

**Report Title:**

Blood Alcohol Concentration; Driving Under the Influence; Motor Vehicles; Alcohol

**Description:**

Lowers the blood alcohol concentration threshold for driving while under the influence of alcohol from 0.08 to 0.05.

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