

ACT 157

H.B. NO. 1405

A Bill for an Act Relating to Use of Intoxicants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 39 of Act 189, Session Laws of Hawaii 2000, (Relating to Use of Intoxicants) directed the legislative reference bureau to prepare proposed legislation necessary to conform and consolidate the varying statutory provisions of parts I, II, and III of Act 189 and to make necessary amendments to statutes affected by the repeal, effective January 1, 2002, of part VII of chapter 200, parts VII and XIV of chapter 286, and sections 291-4, 291-4.3, 291-4.4, 291-4.5, 291-5, 291-6, and 291-7, Hawaii Revised Statutes.

Part III of Act 189 consolidates all existing provisions relating to driving under the influence of intoxicating liquor or drugs and boating under the influence of intoxicating liquor into a new chapter (codified as chapter 291E, Hawaii Revised Statutes) that provides for both administrative license revocation proceedings and penal sanctions for a single offense relating to operating a vehicle under the influence of an intoxicant. The legislature intends this to ensure that uniform provisions and sanctions apply to impairment involving intoxicating liquor, drugs, and boating. Part III of Act 189 also repeals, effective January 1, 2002, all existing impairment provisions.

The legislature finds that the provisions of part I (relating to penalties for driving under the influence of drugs) are already mirrored in part III of Act 189.¹ However, the failure to insert the provisions of part II (relating to revocation of motor vehicle registration for repeat intoxicated drivers), which took effect September 30, 2000, into part III prior to January 1, 2002, will effectively repeal the amendments made to those provisions by the legislature in Act 189. The legislature also finds that it is necessary to include in this Act related amendments adopted by the legislature in Act 296,² Session Laws of Hawaii 2000, (relating to habitual DUI driver and preliminary alcohol screening devices) to avoid their automatic repeal on January 1, 2002, when part III takes effect.

The legislature further finds that the bureau's proposed legislation prepared in response to the directive of Act 189 is primarily a housekeeping measure. The amendments are of a technical nature, and any that might be characterized as substantive are the result of changes necessitated by the conforming and consolidation of differing provisions adopted by the legislature in Act 189 or Act 296.²

Accordingly, the purpose of this Act is to conform and consolidate the provisions previously adopted by the legislature in Act 189 and Act 296,² Session Laws of Hawaii 2000, relating to operating a vehicle under the influence of an intoxicant, as codified in chapter 291E, Hawaii Revised Statutes.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§200- Records of suspensions and revocations of operating privileges to be maintained. (a) The department shall maintain a record of all persons adjudicated of violations under part III of chapter 291E and the period of suspension or revocation of operator privileges ordered by the director under that part.

(b) The department shall maintain a record of all persons convicted of offenses or violations under part IV of chapter 291E and the period of suspension or revocation of operator privileges ordered by the court under that part.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding four new sections to part III to be appropriately designated and to read as follows:

“§291E-A Failure to surrender number plates. Any person who has had the person's motor vehicle registration revoked pursuant to this part and subsequently fails to comply with an order to surrender all motor vehicle number plates issued to the person, pursuant to chapter 249, shall be guilty of a misdemeanor.

§291E-B Special motor vehicle registration. (a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(j), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; and
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle.

A person to whom a special motor vehicle registration has been granted shall apply to the appropriate county director of finance for special series number plates, as provided in section 249-9.4.

(b) The director shall revoke the special motor vehicle registration if any one of the conditions set forth in the application no longer exist.

(c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.

(d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

§291E-C Transferring title to, or ownership interest in, vehicle prohibited; exceptions. (a) A registered owner shall not sell or transfer title to, or ownership interest in, a motor vehicle during the time period the motor vehicle's registration has been ordered revoked and number plates surrendered or during the time the motor vehicle bears the special series number plates pursuant to section 249-9.4, unless the registered owner applies to the administrative director of the courts, or the administrative director's appointee pursuant to section 291E-1, for consent to transfer title to the motor vehicle. If the director is satisfied that:

- (1) The proposed sale is in good faith and for valid consideration;
- (2) The registered owner will be deprived of the custody and control of the motor vehicle; and
- (3) The sale is not for the purpose of circumventing this part,

the director may consent to the sale or transfer. If the director consents, the director shall issue a certified copy of the written consent to the registered owner and forward a copy to the appropriate county director of finance.

(b) The county director of finance, upon proper application and the presentation to the director of finance of a certified copy of the director's written consent to the sale or transfer of a motor vehicle, shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

(c) Notwithstanding subsections (a) and (b), if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the motor vehicle registration has been revoked under this part, the county director of finance shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

§291E-D Notice to the department of land and natural resources of suspensions and revocations of operating privileges. The director shall notify the department of land and natural resources of all persons adjudicated of violations under this part and the period of suspension or revocation of operator privileges ordered by the director under this part."

SECTION 4. Section 249-9.4, Hawaii Revised Statutes, is amended to read as follows:

“[§249-9.4] Special series number plates. A qualified household member, as defined in section [286-251,] 291E-1, or a co-owner of a motor vehicle owned by [an arrestee] a respondent under part [XIV] III of [this] chapter[.] 291E, who has been granted a special motor vehicle registration under section [286-263.6,] 291E-B, shall apply to the appropriate county director of finance for special [license] number plates that shall bear a special series of numbers or letter so as to be readily identifiable by law enforcement officers[.] and readily distinguishable from number

plates or special number plates issued under sections 249-9.1, 249-9.2, and 249-9.3. The director of finance may issue the special series number plates only if:

- (1) The director of finance receives written approval for the issuance of special series number plates from the administrative director of the courts, or the administrative director's appointee ~~[under]~~ pursuant to section ~~[286-251;]~~ 291E-1;
- (2) The qualified household member or a co-owner of the motor vehicle has a ~~[driver's]~~ license that has not expired or been suspended or revoked; and
- (3) The applicant pays a fee for the special ~~[license]~~ series number plates that is equal to the ~~[cost]~~ costs of the ~~[license]~~ plates and tag or emblem, plus the administrative ~~[cost]~~ costs of furnishing the plates and tag or emblem and effecting the registration for each motor vehicle for which special series number plates are issued."

SECTION 5. Section 281-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All licensed premises shall post a sign in or about the premises containing and notifying all customers and other persons of the ~~[penalties of driving]~~ possible sanctions that may be imposed for operating a vehicle under the influence of [intoxicating liquor] an intoxicant under ~~[section 291-4.]~~ sections 291E-41 and 291E-61. The sign shall be conspicuously positioned in order to be seen by an ordinarily observant person."

SECTION 6. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

"§286-104 What persons shall not be licensed. The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2001, of driving under the influence of alcohol or drugs;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or
- (5) To any person who is under eighteen years of age; provided that a person who is fifteen years and six months of age may be granted an instruction permit; and provided further that a person who is sixteen to seventeen years of age may be granted a license upon satisfying the requirements of sections 286-108 and 286-109, which license shall be valid for four years and may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on

the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129.”

SECTION 7. Section 286-132, Hawaii Revised Statutes, is amended to read as follows:

“**§286-132 Driving while license suspended or revoked.** Except as provided in section [291-4.5,] 291E-62, no resident or nonresident whose driver’s license, right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked may drive any motor vehicle upon the highways of this State while the license, right, or privilege remains canceled, suspended, or revoked.”

SECTION 8. Section 286G-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A driver education assessment of \$7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

- (1) Offenses relating to stopping (when prohibited), standing, or parking;
- (2) Offenses relating to registration; and
- (3) Offenses by pedestrians.

In addition, a driver education assessment of \$100 shall be levied on persons convicted under section [291-4] 291E-61 to defray costs of services provided by the driver education and training program; and \$50 shall be levied on persons required to attend a child passenger restraint system safety class under section 291-11.5.

(b) The driver education assessments levied by subsection (a) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the driver education assessment of \$100 levied on a person convicted under section [291-4] 291E-61 may be waived by the court if the court determines that the person is unable to pay the driver education assessment.”

SECTION 9. Section 287-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus’ record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV[-], as it was in effect on or before December 31, 2001. The traffic violations bureaus may collect a fee, not to exceed \$7, of which \$5 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special fund.”

SECTION 10. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

1. By adding eight new definitions to be appropriately inserted and to read:
 - ““Household member” means:
 - (1) Persons who reside in the same dwelling unit as the respondent; or
 - (2) Persons under twenty-one years of age who are related to the respondent by marriage, blood, or adoption, regardless of whether they reside in the same dwelling unit with the respondent.

“Number plates” refer to the number plates or special number plates, which are commonly known as license plates, that are issued under sections 249-9, 249-9.1,

249-9.2, and 249-9.3 and that are required to be attached on a motor vehicle pursuant to sections 249-1 to 249-13.

“Preliminary alcohol screening device” means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration.

“Privilege” refers to the authority to operate a vessel underway on or in the waters of the State.

“Qualified household member” means a household member of the respondent who has a license that has not expired or been suspended or revoked.

“Repeat intoxicated driver” means a person who previously:

- (1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under:
 - (A) Section 291E-61, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;
- (2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under:
 - (A) Section 291E-61, as a result of having consumed alcohol; or
 - (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or
- (3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest.

“Temporary number plates” refers to the temporary number plates given, along with the temporary vehicle registration, to a respondent pursuant to section 291E-33, but does not include a temporary number plate attached to a new vehicle pursuant to sections 249-7.5 and 286-53.

“Temporary vehicle registration” means the portion of the notice of administrative revocation that, when completed by the arresting law enforcement officer, permits the respondent to drive a vehicle registered in the name of the respondent for thirty days or until the time established by the director under part III.”

2. By amending the definition of “administrative revocation” to read:

““Administrative revocation” means termination of the respondent’s [driver’s vehicle license or]:

- (1) License and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III[7]; and
- (2) Registration of any motor vehicle registered to a respondent found to be a repeat intoxicated driver,

but does not include any revocation imposed under section 291E-61.”

3. By amending the definition of “alcohol enforcement contact” to read:

““Alcohol enforcement contact” means: [any]

- (1) Any administrative revocation ordered pursuant to part III; [any]
- (2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001; [any]
- (3) Any [driver’s license] suspension or revocation of any license or motor vehicle registration, or both, or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration; [any]
- (4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or [a]

(5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.”

4. By amending the definition of “drug” to read:

““Drug” means any controlled substance, as defined and enumerated [en] in schedules I through IV of chapter 329, or its metabolites.”

5. By amending the definition of “drug enforcement contact” to read:

““Drug enforcement contact” means: [any]

(1) Any administrative revocation ordered pursuant to part III; [any]

(2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001; [any]

(3) Any [driver’s license] suspension or revocation of license or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug [eonecentration] content in the person’s blood or urine; [any]

(4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or [a]

(5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs.”

6. By amending the definition of “law enforcement officer” to read:

““Law enforcement officer” means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as [defined] specified in section 199-3.”

7. By amending the definition of “public way, street, road, or highway” to read:

““Public way, street, road, or highway” includes:

(1) The entire width, including [~~beam and~~] berm or shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;

(2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;

(3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or

(4) Any public highway, as defined in section 264-1.”

SECTION 11. Section 291E-11, Hawaii Revised Statutes, is amended to read as follows:

“[E]§291E-11[] Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content. (a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person’s breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person’s breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public

way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol [~~concentration~~], only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer of the sanctions under part III and section 291E-65.

(c) If there is probable cause to believe that a person is in violation of section 291E-64, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section 291E-61, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291E-61, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products, or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the law enforcement officer has probable cause to believe that the person was operating a vehicle while under the influence of any drug under section 291E-61 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The law enforcement officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) The use of a preliminary alcohol screening device by a law enforcement officer shall not replace a breath, blood, or urine test required under this section. The analysis from the use of a preliminary alcohol screening device shall only be used in determining probable cause for the arrest.

~~[(f)]~~ (g) Any person tested pursuant to this section who is convicted or has the person's license or privilege suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test, or both."

SECTION 12. Section 291E-21, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person [~~represents~~] presents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall:

- (1) [~~Provide the law enforcement officer with the blood or urine sample requested;~~] Assign a person authorized under section 291E-12 to withdraw the blood sample or to obtain the urine;
- (2) Recover the sample in compliance with section 321-161; and

- (3) ~~[Assign a person authorized under section 291E-12 to withdraw the blood sample or obtain the urine.] Provide the law enforcement officer with the blood or urine sample requested.’’~~

SECTION 13. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~ **§291E-31** ~~(1)~~ **Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent’s license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
- (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
 - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
 - (C) Such later date as is established by the director under section 291E-38,
- if the director administratively revokes the respondent’s license~~;~~ and privilege;
- (2) Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);
- ~~(2)~~ (3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
- ~~(3)~~ (4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33.’’

SECTION 14. Section 291E-33, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~ **§291E-33** ~~(1)~~ **Probable cause determination; issuance of notice of administrative revocation; procedures.** (a) Whenever a person is arrested for a violation of section 291E-61 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration ~~[of alcohol in the blood]~~, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test or a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test or a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was

unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section ~~[291E-21(b) or (e)]~~ 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(c) Whenever a respondent under this section is a repeat intoxicated driver, the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent's registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part."

SECTION 15. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsections (b) to (h) to read as follows:

“(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- (4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration ~~[of the blood]~~ or drug content in the blood or urine and whether the respondent consented to be tested;
- (5) The expiration date of the temporary permit[;], and the temporary motor vehicle registration and temporary number plates if applicable; and
- (6) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

- (1) That the review is automatic;
- (2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked;
- (3) The address or location where the respondent may submit the information;

- (4) That the respondent is not entitled to be present or represented at the administrative review; and
- (5) That the administrative review decision shall be mailed to the respondent:
 - (A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle [is], and motor vehicle registration if applicable, are not administratively revoked after the review, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, unless a subsequent alcohol or drug enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The reasons why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked;
- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
 - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and
 - (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section [291E-38(j),] 291E-38(k), the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;

- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; ~~and~~
- (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for ~~alcohol counseling, or~~ an assessment of the respondent's substance abuse [counseling] or dependence and the need for treatment[, or both.]; and
- (10) That, pursuant to section 291E-B, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent.
- (f) The notice shall provide, at a minimum, the following information relating to administrative hearings:
- (1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;
 - (2) That a request for an administrative hearing and payment of a \$30 fee, unless waived[,], pursuant to section 291E-39, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;
 - (3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;
 - (4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and
 - (5) That a written decision shall be mailed no later than five days after completion of the hearing.
- (g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.
- (h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:
- (1) The effective date of the administrative revocation;
 - (2) The duration of the administrative revocation;
 - (3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;
 - (4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;
 - ~~(3)~~ (5) Other conditions that may be imposed by law; and
 - ~~(4)~~ (6) The right to obtain judicial review."

SECTION 16. Section 291E-35, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]§291E-35~~(1) Immediate restoration of license[,], and motor vehicle registration. (a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows

that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated with prejudice."

SECTION 17. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

“~~[§291E-36]~~ Documents required to be submitted for administrative review; sworn statements ~~[of law enforcement officials]~~. (a) Whenever a respondent has been arrested for a violation of section 291E-61 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - (C) The respondent was informed of: ~~[the]~~
 - (i) The sanctions of this part; ~~[that]~~
 - (ii) The possibility that criminal charges may be filed; and ~~[the]~~
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and
 - (D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;

- (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
 - (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
 - (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
 - (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
 - (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
 - (7) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and
 - (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
- (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;

- (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
- (C) The respondent was informed of:
 - (i) The sanctions of this part;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
- (D) The respondent refused to be tested;
- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 18. Section 291E-37, Hawaii Revised Statutes, is amended to read as follows:

“[H]§291E-37[H] Administrative review; procedures; decision. (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle, and motor vehicle registration if applicable, or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

- (1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or
- (2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section 291E-33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

- (c) In conducting the administrative review, the director shall consider:
 - (1) Any sworn or unsworn written statement or other written evidence provided by the respondent;
 - (2) The breath, blood, or urine test results, if any; and
 - (3) The sworn statement of any law enforcement [official] officer or other person or other evidence or information required by section 291E-36.

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

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or

- (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

~~[(e)]~~ (f) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated.

~~[(f)]~~ (g) If the director administratively revokes the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

- (1) State the reasons for the administrative revocation;
- (2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;
- (3) Explain the procedure by which to request an administrative hearing;
- (4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;
- (5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of ~~[the]~~ law enforcement ~~[officials,]~~ officers or other persons, prior to the hearing; and
- (6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting law enforcement officer.

~~[(g)]~~ (h) Failure of the respondent to request a hearing within the time provided in section 291E-38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section 291E-33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing."

SECTION 19. Section 291E-38, Hawaii Revised Statutes, is amended to read as follows:

“~~[(j)]~~ **§291E-38 Administrative hearing; procedure; decision.** (a) If the director administratively revokes the respondent’s license and privilege to operate a vehicle, ~~and motor vehicle registration if applicable~~, after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

- (1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or
- (2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection ~~[(j)]~~ (k).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and, after being informed of the sanctions of this part, refused to submit to a breath, blood, or urine test.

(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of any motor vehicle owned by or registered to the respondent only if the director determines that the respondent is a repeat intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the respondent to surrender the number plates and motor vehicle registration of any motor vehicle owned by or registered to the respondent. The director may destroy any number plates taken into custody.

~~[(f)]~~ (g) The respondent’s prior alcohol and drug enforcement contacts shall be entered into evidence.

~~[(g)]~~ (h) The sworn statements provided in section 291E-36 shall be admitted into evidence. Upon notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement ~~[official]~~ officer or other person who made a sworn statement, the director shall issue a subpoena for

the [official] officer or other person to appear at the hearing. If the [official] officer or other person cannot appear, the [official,] officer or other person at the discretion of the director, may testify by telephone.

[(h)] (i) The hearing shall be recorded in a manner to be determined by the director.

[(4)] (j) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, and if applicable, motor vehicle registration and any number plates taken into custody, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 291E-41.

[(j)] (k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit[-], or temporary motor vehicle registration and temporary number plates, if applicable. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week.

(l) The director may grant a special motor vehicle registration, pursuant to section 291E-B, to a qualified household member or a co-owner of any motor vehicle upon determination that the person is completely dependent on the motor vehicle for the necessities of life. The special motor vehicle registration shall not be valid for use by the respondent.

[(k)] (m) If the respondent fails to appear at the hearing, or if a respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 291E-37."

SECTION 20. Section 291E-39, Hawaii Revised Statutes, is amended to read as follows:

“**[§291E-39] Fees and costs.** The director may assess and collect a \$30 fee from the respondent to cover the costs of processing the respondent's request for an administrative hearing. These costs include but should not be limited to: the cost of photocopying documents; ~~the issuance of subpoenas;~~ conditional license permits, temporary permits, temporary motor vehicle registrations, temporary number plates, and relicensing forms; interpreter services; law enforcement [official] mileage fees; and other similar costs[-]; provided that the costs of issuing subpoenas for witnesses, including mileage fees, shall be borne by the party requesting the subpoena. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee.”

SECTION 21. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

“~~[(E)]~~§291E-41~~[(H)]~~ **Effective date and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit ~~[is], and temporary motor vehicle registration and temporary number plates if applicable, are~~ extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44, no license and privilege to operate a vehicle, ~~nor motor vehicle registration and number plates if applicable,~~ shall be restored under any circumstances, and no conditional license permit shall be issued during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) ~~The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:~~

- (1) ~~A minimum of three months up to a maximum of one year~~~~;~~ revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) ~~A minimum of one year up to a maximum of two years~~~~;~~ revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) ~~A minimum of two years up to a maximum of four years~~~~;~~ revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;
- (4) ~~[For life,]~~ Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) ~~For respondents under the age of eighteen years who were arrested for a violation of section 291E-61, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection [(e), if applicable,] (d), whichever is longer.~~

~~(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.~~

~~[(e)]~~ (d) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), (2), [and] (3), and (4) shall be for a period of one year, two years, [and] four years, and a lifetime, respectively.

(e) In addition to subsection (d), any motor vehicle registration of an respondent who is a repeat intoxicated driver and who refused to be tested after being informed of the sanctions of this part shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

~~[(d)]~~ (f) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to ~~[a certified substance abuse counselor]~~ the driver's education program for an assessment, ~~by a certified substance abuse counselor,~~ of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director ~~[may]~~ shall so order. All costs for assessment and treatment shall be paid by the respondent.

~~[(e)]~~ (g) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

~~[(f)]~~ (h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 22. Section 291E-42, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§291E-42[.] Notice to other states.~~ When a nonresident's driving and boating privileges, and motor vehicle registration if applicable, are administratively revoked under this part, the director shall:

- (1) Notify, in writing, the officials in charge of traffic control, boating control, or public safety in the nonresident's home state, and in any other state in which the nonresident has driving and boating privileges, licenses, or any motor vehicles registered if applicable, of the action taken in this State; and
- (2) Return to the appropriate issuing authority in the other states any license, and any motor vehicle registration and number plates if applicable, seized under section 291E-33."

SECTION 23. Section 291E-44, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§291E-44[.] Conditional license permits.~~ (a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period~~];~~ provided that one or more of the following conditions are met:

- (1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41.

The director shall not issue a conditional license permit to a respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the ~~[arrestee]~~ respondent is requesting a conditional license permit under this section.

- (b) A request made pursuant to subsection (a)(1) shall be accompanied by:
 - (1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if not allowed to drive; and
 - (2) A sworn statement from the respondent’s employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving.
- (c) A request made pursuant to subsection (a)(2) shall be accompanied by a sworn statement by the respondent attesting to the specific facts upon which the request is based, which statement shall be verified by the director.

(d) A conditional license permit may include restrictions allowing the respondent to drive:

- (1) Only during hours of employment for activities solely within the scope of the employment;
- (2) Only during daylight hours; or
- (3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions.

(e) The duration of the conditional license permit shall be determined on the basis of the criteria set forth in subsections (b) and (c).

(f) If the respondent violates the conditions imposed under this section, the conditional license permit shall be rescinded, and administrative revocation shall be immediate for the appropriate period authorized by law.”

SECTION 24. Section 291E-45, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H) 291E-45(H)] Eligibility for relicensing[;] and reregistration of motor vehicle.~~ (a) To be eligible for relicensing or renewing the privilege to operate a vessel after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director [or by the court];
- (2) Obtain a certified statement from the director indicating eligibility for relicensing[;] and for renewing the privilege to operate a vessel;
- (3) Present the certified statement to the appropriate licensing official[;]or to the department of land and natural resources, as applicable; and
- (4) Successfully complete each requirement, including payment of all applicable fees, for [obtaining]:
 - (A) Obtaining a new license in this State, [including payment of all applicable fees;] pursuant to chapter 286; or
 - (B) Renewing the privilege to operate a vessel, as may be provided in chapter 200 or rules adopted by the department of land and natural resources pursuant to section 200-24.

(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director;
- (2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;
- (3) Present the certified statement to the appropriate county director of finance; and
- (4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees.”

SECTION 25. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

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

- (1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000.
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):
 - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
 - (B) Either one of the following:
 - (i) Not less than ~~one~~ two hundred forty hours of community service work; or
 - (ii) Not less than ~~[forty-eight consecutive hours]~~ five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,500.
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
 - (A) A fine of not less than \$500 but not more than \$2,500;
 - (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
- (4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section 291E-4(a):
 - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
 - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; and
 - (C) Referral to a substance abuse counselor as provided in subsection (d).

An offense under this paragraph is a class C felony.

- (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided~~[, however,]~~ that the total term of imprisonment for a person sentenced under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.
- (c) Notwithstanding any other law to the contrary, any:
 - (1) Conviction under this section or section 291E-4(a); or
 - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be considered a prior conviction for the purposes of imposing sentence under this section. No license and privilege suspension or revocation shall be imposed pursuant to this ~~[subsection]~~ section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this [subsection.] section.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to ~~[a substance abuse counselor who has been certified pursuant to section 321-193]~~ the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All ~~[eost]~~ costs for assessment ~~[or]~~ and treatment ~~[or both]~~ shall be borne by the offender."

SECTION 26. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle ~~[has]~~ have been revoked, suspended, or otherwise restricted pursuant to part III or section 291E-61, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, or 291-7~~[,]~~ as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person's license; or
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked~~[, or]~~
- (3) ~~While the person's privilege to operate a vehicle has been revoked]."~~

SECTION 27. Section 291E-63, Hawaii Revised Statutes, is amended to read as follows:

“[§291E-63] Records of [convictions and] suspensions and revocations of operating privileges to be maintained. The court shall notify the department of land and natural resources [shall maintain a record of all persons convicted of offenses or violations involving vessels under this part] of any sanctions imposed for offenses or violations under this part and the period of suspension or revocation of operator privileges ordered by the court under this part.”

SECTION 28. Section 291E-64, Hawaii Revised Statutes, is amended by amending subsections (a) to (e) to read as follows:

~~“(a) It shall be unlawful for any person under the age of twenty-one years to operate any vehicle with a measurable amount of alcohol [concentration]. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been operating a [motor] vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol. [For purposes of this section, “measurable amount of alcohol” means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.]~~

(b) A person who violates this section shall be sentenced as follows:

(1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:

(A) The court shall impose:

(i) A requirement that the person and, if the person is under the age of eighteen, the person’s parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and

(ii) ~~[One]~~ A one hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and

(B) In addition, the court may impose any one or more of the following:

(i) Not more than thirty-six hours of community service work; or

(ii) A fine of not less than \$150 but not more than \$500.

(2) For a violation that occurs within five years of a prior alcohol enforcement contact:

(A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and

(B) In addition, the court may impose any of the following:

(i) Not more than fifty hours of community service work; or

(ii) A fine of not less than \$300 but not more than \$1,000.

(3) For a violation that occurs within five years of two prior alcohol enforcement contacts:

(A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and

(B) In addition, the court may impose any of the following:

(i) Not more than one hundred hours of community service work; or

(ii) A fine of not less than \$300 but not more than \$1,000.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall require that the person be referred to ~~[a substance abuse counselor who has been certified pursuant to section 321-193]~~ the driver's education program for an assessment, by a certified substance abuse counselor, of the person's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment ~~[or]~~ and treatment ~~[or both]~~ shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(e) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1), who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or ~~[drug-related]~~ drug related enforcement contacts.”

SECTION 29. Section 291E-65, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol ~~[eonecentration]~~;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol ~~[eonecentration]~~;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.”

2. By amending subsection (e) to read:

“(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part III ~~[of this chapter]~~ and shall not be admissible in any other action or proceeding, whether civil or criminal.”

SECTION 30. Section 321-161, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of health shall establish and administer a statewide program relating to chemical testing of alcohol concentrations or drug content for the purposes of chapters 286, 291, [and] 291C, and 291E, with the consultation of the state director of transportation. Under the program, appropriate procedures shall be established for specifying:

- (1) The qualifications of personnel who administer chemical tests used to determine alcohol concentrations or drug content;
- (2) The procedures for specimen selection, collection, handling, and analysis; and
- (3) The manner of reporting and tabulating the results.’’

SECTION 31. Section 431:10C-306, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) No provision of this article shall be construed to exonerate, or in any manner to limit:

- (1) The liability of any person in the business of manufacturing, retailing, repairing, servicing, or otherwise maintaining motor vehicles, arising from a defect in a motor vehicle caused, or not corrected, by an act or omission in the manufacturing, retailing, repairing, servicing, or other maintenance of a vehicle in the course of [such] the person’s business;
- (2) The criminal or civil liability, including special and general damages, of any person who, in the maintenance, operation, or use of any motor vehicle:
 - (A) Intentionally causes injury or damage to a person or property;
 - (B) Engages in criminal conduct [~~which~~] that causes injury or damage to person or property;
 - (C) Engages in conduct resulting in punitive or exemplary damages; or
 - (D) Causes death or injury to another person in connection with the accident while operating the vehicle in violation of section 291E-61 or section 291-4 or 291-7[-], as those sections were in effect on or before December 31, 2001.’’

SECTION 32. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan shall provide all personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this part upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure a personal injury protection and bodily injury and property damage liability policy through the plan:
 - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner’s examination of the motor vehicle insurers’ business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk motor vehicle driver;

- (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving;
 - (ii) Driving while license suspended or revoked;
 - (iii) Leaving the scene of an accident;
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle; [øf]
 - (v) Operating a vehicle under the influence of an intoxicant as provided in section 291E-61; or
 - ~~(v)~~ (vi) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug as provided in section 291-7[;], as those sections were in effect on or before December 31, 2001;
- (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity;
- (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes; and
- (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods;
- (2) The plan shall provide personal injury protection benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
 - (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of direct cash payments, or who received public assistance benefits in the form of medical services prior to July 1, 1994, and are still receiving the benefits, through the department of human services, or benefits from the Supplemental Security Income program under the Social Security Administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes; and
 - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation.

Each category of driver/owner under subparagraphs (A) and (B) may secure motor vehicle insurance coverage through the plan at the individual's option; provided any previous motor vehicle insurance policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid

coverage under any motor vehicle insurance policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of this chapter upon the issuance of a valid motor vehicle insurance identification card pursuant to section 431:10C-107; and

- (3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except the class defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 33. Section 437D-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§437D-13 Notice and posting required concerning seat belt, child passenger restraint, and ~~drunk driving~~ operating a vehicle under the influence laws. (a) Every lessor shall display at all times in a conspicuous place in each rental motor vehicle offered to the public, a decal, written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii's seat belt and child passenger restraint laws and the prohibition against ~~driving while~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, and ~~driving while~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant.

The requirements and penalties of Hawaii's seat belt laws and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and penalties for ~~driving while~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant, as provided in section ~~[291-4;]~~ 291E-61, shall be printed on a card which shall be placed in the glove compartment of every rental motor vehicle offered to the public."

2. By amending subsection (c) to read:

“(c) The notices and signs required by this section shall include symbolic representations ~~[which]~~ that are of common understanding and clearly recognizable to the public as conveying the required use of seat belts and child passenger restraint systems in the operation of a motor vehicle and the prohibition against ~~driving while~~ operating a vehicle under the influence of ~~[intoxicating liquor;]~~ an intoxicant.”

SECTION 34. Section 604-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) District courts shall have jurisdiction of, and their criminal jurisdiction is limited to, criminal offenses punishable by fine, or by imprisonment not exceeding

one year whether with or without fine. They shall not have jurisdiction over any offense for which the accused cannot be held to answer unless on a presentment or indictment of a grand jury.

In any case cognizable by a district court ~~[as aforesaid]~~ under this section in which the accused has the right to a trial by jury in the first instance, the district court, upon demand by the accused[;] for ~~[such]~~ a trial by jury, shall not exercise jurisdiction over ~~[such]~~ the case ~~[except violations under section 291-4]~~, but shall examine and discharge or commit for trial the accused as provided by law[, ~~but~~]; provided that, if in any such case the accused does not demand a trial by jury on the date of arraignment or within ten days thereafter, the district court may exercise jurisdiction over the ~~[same;]~~ case, subject to the right of appeal as provided by law. ~~[Trial by jury for violations under section 291-4 may be heard in the district court.]'~~

SECTION 35. Section 706-603, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

“(7) Blood withdrawn pursuant to this section shall be withdrawn only by a person authorized to withdraw blood under section ~~[286-152;]~~ 291E-12. The results shall be recorded, preserved, and disseminated in a manner consistent with the requirements of chapter 846. A defendant who has already provided the necessary samples of blood pursuant to this section shall be relieved of any further requirement to provide blood for DNA analysis, unless the court orders otherwise.”

SECTION 36. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 37. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 38. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 39. This Act shall take effect on January 1, 2002.

(Approved May 25, 2001.)

Notes

1. “89” changed to “189”.
2. “297” changed to “296”.
3. Edited pursuant to HRS §23G-16.5.