

ACT 201

H.B. NO. 2639

A Bill for an Act Relating to Use of Intoxicants While Operating a Motor Vehicle.

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

SECTION 1. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Highly intoxicated driver’ means a person whose measurable amount of alcohol is 0.15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood, or 0.15 or more grams of alcohol per two hundred ten liters of the person’s breath, as measured at the time of the offense, or within three hours of the time of the offense.”

SECTION 2. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-31 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 or a highly intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);
- (3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
- (4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33.”

ACT 201

SECTION 3. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever a respondent under this section is a repeat intoxicated driver[;] or highly 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[;] or highly 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 4. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(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;
 - (5) Regulate the course and conduct of the hearing; [and]
 - (6) Impose up to the maximum license revocation period as specified under section 291E-41(b); and
- [~~(6)~~] (7) Make a final ruling.”

SECTION 5. Section 291E-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(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 enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
 - (2) For a respondent who is a highly intoxicated driver, a mandatory six-month revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the highly intoxicated driver; provided that the highly intoxicated driver shall not qualify for a conditional license permit under section 291E-44;
- [~~(2)~~] (3) 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 enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- [~~(3)~~] (4) 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 enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;

[(4)] (5) 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 enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or

[(5)] (6) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, 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)] (5) or in subsection (d), whichever is longer and such respondents shall not qualify for a conditional permit;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later."

2. By amending subsection (d) to read:

"(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)], (3), [and] (4), and (5) shall be for a period of one year, two years, four years, and a lifetime, respectively."

SECTION 6. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a)(1) 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:

- (A) 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
 - (B) 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; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (A) 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 respondent is requesting a conditional license permit under this section;
 - (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable; [or]

- (C) A respondent who is a highly intoxicated driver; and
~~[(C)]~~ (D) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).''

SECTION 7. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) 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;
 - (B) Ninety-day prompt suspension of license and privilege to operate 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;
 - (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; and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense committed by a highly intoxicated driver, prompt suspension of license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;
- ~~[(2)]~~ (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
 - (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 two hundred forty hours of community service work; or
 - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
 - (C) A fine of not less than \$500 but not more than \$1,500; and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- ~~[(3)]~~ (4) 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;
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively; [and]
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (E) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense[-]; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- [(4)] (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 that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in [paragraphs] paragraph (1), (2), or (3).''

SECTION 8. Section 291E-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(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) 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 committed by a highly intoxicated driver or 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

ACT 201

- (ii) A fine of not less than \$300 but not more than \$1,000[-]; and
- (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.’’

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

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2007.

(Approved June 19, 2006.)