

## ACT 198

H.B. NO. 154

A Bill for an Act Relating to Motor Vehicle Safety.

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

SECTION 1. Section 291E-1, Hawaii Revised Statutes, is amended by amending the definition of “highly intoxicated driver” 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-3, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-3 Evidence of intoxication.** (a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

- (1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood;
- (2) .08 or more grams of alcohol per two hundred ten liters of the person’s breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person’s ability to operate a vehicle in a careful and prudent manner,

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

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

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant’s blood or .05 or less grams of alcohol per two hundred ten liters of defendant’s breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant’s blood or .05 grams of alcohol per two hundred ten liters of defendant’s breath, but less than

.08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) In any criminal prosecution for a violation of section 291E-61 or in any proceeding under part III:

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person's breath,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation.

[(e)] (d) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 3. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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, 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, a [mandatory six-month] minimum of six months up to a maximum of one year 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;
- (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;
- (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;

- (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
- (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 (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."

SECTION 4. 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~~ Except as provided in section 291E-61(b)(2), 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;] For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated~~

driver 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) Prompt suspension of a 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;
  - (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;
- (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;
- (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;
  - (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
- (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 paragraph (1), [(3)][], or [(4)][]."

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2007.

(Approved June 19, 2007.)