

ACT 169

H.B. NO. 703

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. 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 without possibility of probation or suspension of sentence as follows:

- (1) For the first offense, or any offense not preceded within a [~~five-year~~] ten-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) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) [~~Not~~] No less than forty-eight hours and [~~not~~] no more than five days of imprisonment; or
    - (iii) A fine of [~~not~~] no less than [~~\$150~~] \$250 but [~~not~~] no more than \$1,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within [~~five~~] ten years of a prior conviction for an offense under this section or section 291E-4(a):
  - (A) Revocation for [~~not~~] no less than [~~eighteen~~] twenty-four months nor more than [~~two~~] three years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) [~~Not~~] No less than two hundred forty hours of community service work; or
    - (ii) [~~Not~~] No less than five days but [~~not~~] no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;

- (C) A fine of [~~not~~] no less than [\$500] \$1,000 but [~~not~~] no more than [\$1,500;] \$3,000;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;
- [(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 for two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (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) A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund;
- (4) (3) In addition to a sentence imposed under paragraphs (1) [~~through (3);~~] and (2), 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)[;] or<sup>1</sup> (2), [~~or (3);~~] as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be [~~not~~] no less than two years; and
- [(5)] (4) If the person demonstrates to the court that the person:
- (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or
  - (B) Is otherwise unable to drive during the revocation period,
- the person shall be absolutely prohibited from driving during the period of applicable revocation provided in paragraphs (1) to [(4);] (3); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period.”

SECTION 2. Section 291E-61.5, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsection (b) to read:
  - “(b) For the purposes of this section:
    - (1) “Convicted [~~three~~] two or more times for offenses of operating a vehicle under the influence” means that, at the time of the behavior for which the person is charged under this section, the person had [~~three~~] two or more times within ten years of the instant offense:
      - (A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of section 291-4, 291-

- 4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;
- (B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
  - (C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside ~~[prior to]~~ before the instant offense shall not be deemed prior convictions for the purposes of proving that the person is a habitual operator of a vehicle while under the influence of an intoxicant.
- (2) “Convicted one or more times for offenses of habitually operating a vehicle under the influence” means that, at the time of the behavior for which the person is charged under this section, the person had one or more times within ten years of the instant offense:
- (A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001;
  - (B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4.4 as that section was in effect on December 31, 2001; or
  - (C) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001,
- that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside ~~[prior to]~~ before the instant offense shall not be deemed prior convictions for the purposes of proving the person’s status as a habitual operator of a vehicle while under the influence of an intoxicant.
- (3) “Habitual operator of a vehicle while under the influence of an intoxicant” means that the person:
- (A) Was convicted ~~[three]~~ two or more times for offenses of operating a vehicle under the influence; or
  - (B) Was convicted one or more times for offenses of habitually operating a vehicle under the influence.”
2. By amending subsection (d) to read:
- “(d) For a conviction under this section, the sentence shall be either:
- (1) An indeterminate term of imprisonment of five years; or
  - (2) A term of probation of five years, with conditions to include:
    - (A) Mandatory revocation of license and privilege to operate a vehicle for a period ~~[not]~~ no less than ~~[one year]~~ three years but ~~[not]~~ no more than five years;
    - (B) ~~[Not]~~ No less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
    - (C) A fine of no less than \$2,000 but no more than \$5,000;

~~[(C)]~~ (D) Referral to a certified substance abuse counselor as provided in section 291E-61(d);

~~[(D)]~~ (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

~~[(E)]~~ (F) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders.

In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A[.]; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection.”

SECTION 3. 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 have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, 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;
- (2) While the person’s license or privilege to operate a vehicle remains suspended or revoked;
- (3) Without installing an ignition interlock device required by this chapter; or
- (4) With an ignition interlock permit unless the person has the ignition interlock permit ~~[and a valid State of Hawaii identification card]~~ in the person’s immediate possession.”

SECTION 4. (a) The president of the senate and the speaker of the house of representatives shall convene a task force to examine and propose legislation that would allow the courts, under certain circumstances, to prohibit a person convicted of operating a vehicle under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant from purchasing or publicly consuming alcohol for a probation period.

- (b) The task force shall include:
  - (1) Two members to be appointed by the president of the senate;
  - (2) Two members to be appointed by the speaker of the house of representatives;
  - (3) Two district court judges appointed by the chief justice; and
  - (4) The director of transportation who shall serve as an ex-officio member.

The task force may add additional members as it deems necessary.

(c) The task force shall submit a report of its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2020.

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

SECTION 6. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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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, 2019.

(Approved June 27, 2019.)

**Note**

1. Should be underscored.