

ACT 42

H.B. NO. 2337

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. The legislature finds that there is a need to amend the definition of “drug” for offenses under chapter 291E, Hawaii Revised Statutes, involving the use of intoxicants while operating a vehicle. For example, in order to convict an offender of the offense of operating a vehicle under the influence of an intoxicant when the intoxicant is a drug under section 291E-61(a)(2), Hawaii Revised Statutes, the prosecution must prove beyond a reasonable doubt that:

- (1) The person was operating the vehicle; and
- (2) The person was under the influence of any drug that impaired the person’s ability to operate the vehicle in a careful and prudent manner.

However, because the term “drug” is defined for purposes of chapter 291E, Hawaii Revised Statutes, as any controlled substance listed in schedules I through IV of chapter 329, Hawaii Revised Statutes, it can be difficult for the prosecution to prove the second prong of the foregoing offense because many drugs, like kava and certain muscle relaxants, can cause serious impairment of drivers but are not scheduled as controlled substances. In addition, there have been recent attempts at the federal and state levels to remove cannabis and tetrahydrocannabinols from the schedule of controlled substances. If these were to succeed, persons found to be driving while impaired by cannabis could not be persecuted under Hawai‘i’s current operating a vehicle under the influence of an intoxicant statute.

The legislature further finds that the process of placing a drug or substance on the schedule of controlled substances does not respond quickly enough to emerging drugs. Synthetic drugs can be manufactured very rapidly and can avoid law enforcement when they are created by changing the chemical composition of an existing drug; in this manner, synthetic drugs like “spice” and “bath salts” evade the scheduling process. In order to quickly adapt and prosecute offenders using new emerging drugs, law enforcement should not be forced to rely solely on the controlled substance schedules for certain offenses.

The purpose of this Act is to clarify the definitions of “drug”, “substance”, and “substance abuse” for purposes of operating a vehicle under the influence of an intoxicant violations.

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

1. By adding a new definition to be appropriately inserted and to read:
““Substance abuse” means the use or misuse of alcohol, any drug on schedules I through IV of chapter 329, or any substance as defined in this section, to any extent deemed deleterious or detrimental to the user, to others, or to society.”

2. By amending the definition of “drug” to read:
““Drug” means any controlled substance, as defined and enumerated in schedules I through IV of chapter 329, or its metabolites[-], or any substance that, when taken into the human body, can impair the ability of a person to operate a vehicle safely.”

3. By amending the definition of “substance” to read:
““Substance” [~~and “substance abuse” have the same meanings as provided in section 321-191.~~] means any plant, medication, poison, natural or synthetic chemical, or any compound or combination of these, and includes but is not limited to central nervous system depressants, central nervous systems stimulants, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 2022.)