

A Bill for an Act Relating to the Drug and Alcohol Toxicology Testing Laboratory.

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

SECTION 1. Act 196, Session Laws of Hawaii 2021, established the state drug and alcohol toxicology testing laboratory special fund to support a state drug and alcohol toxicology testing laboratory; specified that moneys in the state highway fund may be expended for the cost of establishing a state drug and alcohol toxicology testing laboratory; required that fines imposed on offenders convicted of certain offenses involving operating a vehicle under the influence of an intoxicant be deposited into the state drug and alcohol toxicology testing laboratory special fund; and required the department of health to submit reports to the legislature on expenditures from the state drug and alcohol toxicology testing laboratory special fund.

Act 119, Session Laws of Hawaii 2022, appropriated moneys from the state highway fund to the state drug and alcohol toxicology testing laboratory special fund for fiscal year 2022-2023; and authorized the department of health to expend funds from the state drug and alcohol toxicology testing laboratory special fund for the establishment of the state drug and alcohol toxicology testing laboratory.

Act 120, Session Laws of Hawaii 2022, appropriated moneys from the state highway fund to the state drug and alcohol toxicology testing laboratory special fund for fiscal year 2021-2022; and authorized the department of health to expend these funds from the state drug and alcohol toxicology testing laboratory special fund for the establishment of the state drug and alcohol toxicology testing laboratory.

However, there is an immediate and urgent need for blood alcohol testing and the department of health cannot fulfill these services at this time. The city and county of Honolulu emergency services department is currently able to conduct blood alcohol testing for all counties and will be able to conduct drug testing for impaired driving cases in the future if provided the funding.

The purpose of this Act is to:

- (1) Allow moneys in the state highway fund to be expended for the cost of maintaining a drug and alcohol toxicology testing laboratory;
- (2) Require moneys in the drug and alcohol toxicology testing laboratory special fund to be administered and expended by the department of transportation or appropriated as a grant-in-aid to the emergency services department of a county with a population of five hundred thousand or more to support a drug and alcohol toxicology testing laboratory;
- (3) Change the name of the state drug and alcohol toxicology testing laboratory, and its special fund, to repeal reference to the "state" to reflect its expanded scope;
- (4) Appropriate funds from the state highway fund to the drug and alcohol toxicology testing laboratory special fund;
- (5) Appropriate funds out of the drug and alcohol toxicology testing laboratory special fund for the establishment and maintenance of a drug and alcohol toxicology testing laboratory; and
- (6) Require reports to the legislature on expenditures made from the drug and alcohol toxicology testing laboratory special fund.

SECTION 2. Section 248-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of operation, maintenance, and repair of the state highway system, including without limitation, the cost of equipment and general administrative overhead;
- (2) To pay the costs of acquisition, including real property and interests therein; planning; designing; construction; and reconstruction of the state highway system and bikeways, including without limitation, the cost of equipment and general administrative overhead;
- (3) To reimburse the general fund for interest on and principal of general obligation<sup>1</sup> bonds issued to finance highway projects where the bonds are designated to be reimbursable out of the state highway fund;
- (4) To pay the costs of construction, maintenance, and repair of county roads; provided that none of the funds expended on a county road or program shall be federal funds when expenditure would cause a violation of federal law or a federal grant agreement; and
- (5) To pay the ~~cost~~ costs of establishing and maintaining a [state] drug and alcohol toxicology testing laboratory that is intended to support the prosecution of offenses relating to operation of a motor vehicle while under the influence of an intoxicant.”

SECTION 3. Section 291E-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291E-8~~ ~~]]-State drug~~ **Drug and alcohol toxicology testing laboratory special fund; established.** (a) There is established in the state treasury a [state] drug and alcohol toxicology testing laboratory special fund, into which shall be deposited:

- (1) All fines collected pursuant to sections ~~[[291E-61(b)(2)(E)]]~~, 291E-61.5(c)(2)(C), and 291E-62(c);
- (2) Moneys appropriated by the legislature to the fund;
- (3) Other grants and gifts made to the fund; and
- (4) Any income and interest earned on the balance of the fund.

(b) Moneys in the [state] drug and alcohol toxicology testing laboratory special fund shall be administered and expended by the department of ~~health~~ transportation, or appropriated as a grant-in-aid to the emergency services department of a county with a population of five hundred thousand or more, to support a [state] drug and alcohol toxicology testing laboratory.”

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 without possibility of probation or suspension of sentence as follows:

- (1) Except as provided in paragraph (4), for the first offense, or any offense not preceded within a 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 programs deemed appropriate by the court;
  - (B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months;

- (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
  - (D) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
    - (iii) A fine of no less than \$250 and no more than \$1,000;
  - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (F) A surcharge, if the court so orders, or<sup>2</sup> up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within ten years of a prior conviction for an offense under this section:
- (A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court;
  - (B) Revocation of license to operate a vehicle for no less than two years and no more than three years;
  - (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person;
  - (D) Either one of the following:
    - (i) No less than two hundred forty hours of community service work; or
    - (ii) No less than five days and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;
  - (E) A fine of no less than \$1,000 and no more than \$3,000, to be deposited into the [state] drug and alcohol toxicology testing laboratory special fund;
  - (F) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (G) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;
- (3) In addition to a sentence imposed under paragraphs (1) 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 (2), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be no less than two years;
- (4) In addition to a sentence imposed under paragraph (1), for a first offense under this section, or an offense not preceded within a ten-year period by a conviction for an offense, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment for forty-eight consecutive hours and an additional mandatory revocation period of six months; 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). Notwithstanding paragraph

- (1), the revocation period for a person sentenced under this paragraph shall be no less than eighteen months;
- (5) In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; 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 (2), as applicable. Notwithstanding paragraph (2), the revocation period for a person sentenced under this paragraph shall be no less than three years;
- (6) A person sentenced pursuant to paragraph (1)(B) may file a motion for early termination of the applicable revocation period if the person:
- (A) Was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);
  - (B) Actually installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months, after which the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation;
  - (C) Includes with ~~[their]~~ the person's motion for early termination a certified court abstract establishing that ~~[they were]~~ the person was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4);
  - (D) Includes with ~~[their]~~ the person's motion for early termination a certified statement from the director of transportation establishing that:
    - (i) The person installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months; and
    - (ii) After the six-month period, the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; and
  - (E) Has complied with all other sentencing requirements. Nothing in this paragraph shall require a court to grant early termination of the revocation period if the court finds that continued use of the ignition interlock device will further the person's rehabilitation or compliance with this section;
- (7) 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 prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (5); provided that the person shall be sentenced to the maximum license revocation period, 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; and

- (8) For purposes of this subsection, “violation” means:
  - (A) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirmed the same person provided both samples;
  - (B) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirms the same person provided both samples;
  - (C) Failing to provide a rolling retest, unless an acceptable test is performed within ten minutes;
  - (D) Violating section 291E-66; or
  - (E) Failing to provide a clear photo of the person when the person blows into the ignition interlock device.”

SECTION 5. Section 291E-61.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) 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 to operate a vehicle for a period no less than three years but no more than five years, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period;
    - (B) 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, to be deposited into the [state] drug and alcohol toxicology testing laboratory special fund;
    - (D) Referral to a certified substance abuse counselor as provided in subsection (e);
    - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
    - (F) 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.”

SECTION 6. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) Any person convicted of violating this section shall be sentenced as follows without possibility of probation or suspension of sentence:
  - (1) For a first offense, or any offense not preceded within a ten-year period by conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
    - (A) A term of imprisonment of no less than three consecutive days and no more than thirty days;
    - (B) A fine of no less than \$250 and no more than \$1,000, to be deposited into the [state] drug and alcohol toxicology testing laboratory special fund; and

- (C) Revocation of license and privilege to operate a vehicle for an additional year;
- (2) For an offense that occurs within ten years of a prior conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
  - (A) Thirty days imprisonment;
  - (B) A \$1,000 fine, to be deposited into the [state] drug and alcohol toxicology testing laboratory special fund; and
  - (C) Revocation of license and privilege to operate a vehicle for an additional two years;
- (3) For an offense that occurs within ten years of two or more prior convictions for offenses under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001, or any combination thereof:
  - (A) No less than six months and no more than one year imprisonment;
  - (B) A \$2,000 fine, to be deposited into the [state] drug and alcohol toxicology testing laboratory special fund; and
  - (C) Permanent revocation of the person's license and privilege to operate a vehicle; and
- (4) In addition to a sentence imposed under paragraphs (1) through (3), any person who is convicted under this section and also convicted under section 291E-61 or 291E-61.5, for an offense based on the same incident or arising from the same episode, shall be sentenced to terms of imprisonment for both offenses, which shall be served consecutively.”

SECTION 7. Section 706-643, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures that are proceeds of the wildlife revolving fund under section 183D-10.5; fines that are proceeds of the [state] drug and alcohol toxicology testing laboratory special fund under sections ~~[291E-61(b)(2)(C),]~~ 291E-61(b)(2)(E), 291E-61.5(c)(2)(C), and 291E-62(c); and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-410, the director of finance shall transmit the fines and forfeitures to the respective funds.”

SECTION 8. Act 196, Session Laws of Hawaii 2021, is amended as follows:

1. By amending section 9 to read:

“SECTION 9. The [state] drug and alcohol toxicology testing laboratory special fund established in section ~~[291E-]~~ 291E-8, Hawaii Revised Statutes, shall be abolished and repealed on June 30, ~~[2026,]~~ 2028, and any unencumbered remaining balances shall lapse to the ~~[general fund.]~~ credit of the state highway fund.”

2. By amending section 11 to read:

“SECTION 11. This Act shall take effect on July 1, 2021; provided that on June 30, ~~[2026,]~~ 2028, sections 4, 5, 6, and 7 of this Act shall be repealed and ~~[section]~~ sections 291E-61, 291E-61.5, 291E-62, and 706-643, Hawaii Revised

Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 9. Act 216, Session Laws of Hawaii 2021, as amended by section 4 of Act 94, Session Laws of Hawaii 2022, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 2021; provided that the amendments made to sections 291E-61 and 291E-61.5, Hawaii Revised Statutes, by sections 5 and 6, respectively, of this Act shall not be repealed when those sections are reenacted on June 30, [2026,] 2028, pursuant to section 11 of Act 196, Session Laws of Hawaii 2021[-], as amended by section 8 of Act     , Session Laws of Hawaii 2023.”

SECTION 10. Act 94, Session Laws of Hawaii 2022, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on January 1, 2023; provided that the amendments made to sections 291E-61 and 291E-62, Hawaii Revised Statutes, by sections 1 and 2, respectively, of this Act shall not be repealed when those sections are reenacted on June 30, [2026,] 2028, pursuant to section 11 of Act 196, Session Laws of Hawaii 2021[-], as amended by section 8 of Act     , Session Laws of Hawaii 2023.”

SECTION 11. There is appropriated out of the state highway fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 and \$400,000 or so much as necessary for fiscal year 2024-2025 for deposit into the drug and alcohol toxicology testing laboratory special fund established by section 291E-8, Hawaii Revised Statutes.

SECTION 12. There is appropriated out of the drug and alcohol toxicology testing laboratory special fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2023-2024 and \$400,000 or so much as necessary for fiscal year 2024-2025 for the establishment and maintenance of a drug and alcohol toxicology testing laboratory, including the costs of laboratory instrumentation, facility renovation and security upgrades, office furniture and supplies, laboratory equipment, and other purposes that support a drug and alcohol toxicology testing laboratory.

The sums appropriated shall be expended by the department of transportation or appropriated as a grant-in-aid to the city and county of Honolulu emergency services department for the purposes of this Act.

SECTION 13. Any provision of this Act to the contrary notwithstanding, the appropriation for fiscal year 2023-2024 authorized under section 12 of this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation that are unencumbered as of June 30, 2025, shall lapse to the credit of the state highway fund as of that date.

SECTION 14. No later than thirty days prior to the convening of the regular sessions of 2025 and 2026, the department of transportation or city and county of Honolulu emergency services department shall submit a report to the legislature on the expenditures made from the drug and alcohol toxicology testing laboratory special fund, including the amounts expended and the purpose of each expenditure as it relates to supporting the drug and alcohol toxicology testing laboratory.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 2023.

(Approved June 29, 2023.)

**Notes**

1. So in original.
2. Prior to amendment “of” appeared here.