

JAN 24 2024

S.B. NO. 2929

A BILL FOR AN ACT

RELATING TO THE USE OF INTOXICANTS WHILE OPERATING A VEHICLE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that impaired driving is
2 a significant problem in Hawai'i, as intoxicated driving is the
3 leading cause of traffic fatalities and impacts the lives of
4 innocent people. In recent years, traffic fatalities have
5 increased across the State, with intoxicants such as alcohol
6 becoming one of the most significant factors. As blood alcohol
7 concentration levels also change the behavior of those driving
8 after drinking, the magnitude of impairment increases with
9 increased blood alcohol concentration. Lowering the threshold
10 for impaired driving brings the State closer to making Hawai'i's
11 roads safer for all users.

12 The legislature further finds that in 2013, the National
13 Transportation Safety Board (NTSB) recommended that all fifty
14 states adopt a blood alcohol concentration (BAC) limit of 0.05
15 compared to the 0.08 standard. According to NTSB, lowering the
16 limit to 0.05 would save approximately five hundred to eight
17 hundred lives annually. Lowering the threshold to 0.05 BAC



1 would save lives, prevent catastrophic injuries, and decrease
2 medical costs. Evaluations of lowering the BAC limit to 0.05 in
3 other industrialized countries and one U.S. state (Utah) show
4 strong associations with reductions in alcohol-impaired driving
5 crashes and fatalities. A 0.05 BAC is not typically reached
6 with a couple of drinks. It takes at least four drinks for the
7 average 170 pound male to exceed 0.05 BAC in two hours on an
8 empty stomach (3 drinks for the average 137 pound female).

9 The legislature additionally finds that over one hundred
10 countries have adopted a BAC limit of 0.05 or lower, including
11 nearly all European countries, Australia, New Zealand, Canada,
12 Japan, and most other industrialized Asian countries. In total,
13 over eighty-five per cent of the world's population lives under
14 a 0.05 or lower BAC limit. For more than a decade, NTSB has
15 recommended that all states adopt a 0.05 BAC. The National
16 Safety Council, American Medical Association, and World Health
17 Organization have all also recommended a 0.05 BAC limit to
18 prevent and reduce traffic crashes and fatalities.

19 The legislature further finds impaired driving fatalities
20 have been increasing over the past few years in Hawai'i. In
21 2020, there were one hundred fourteen drivers involved in fatal



1 crashes in Hawai'i. In 2021, there were one hundred twenty-seven
2 drivers involved in deadly crashes. In 2022, there were one
3 hundred sixty-five drivers involved in fatal crashes. According
4 to the Centers for Disease Control and Prevention (CDC), four
5 hundred people were killed in crashes involving an alcohol-
6 impaired driver in Hawai'i between 2009 and 2018. Lowering the
7 BAC limit to 0.05 will serve as a general deterrent to impaired
8 driving and has the potential to save lives in states that adopt
9 such a limit. The CDC reported that 2.1 per cent of drivers in
10 Hawai'i said that they drove after drinking too much, which is
11 more than the national average of 1.7 per cent. Evidence shows
12 that lowering the BAC limit to 0.05 deters drivers at all BAC
13 levels above and below 0.05. One study estimates that
14 nationwide adoption of a 0.05 BAC limit would save 1,790 lives
15 annually.

16 The legislature also finds that there is strong public
17 support for lowering the BAC to 0.05. A recent statewide poll
18 of Hawai'i voters showed a substantial majority, sixty-two per
19 cent, expressed support for the reduction of the BAC threshold
20 from 0.08 to 0.05.



1 The purpose of this Act is to lower the blood alcohol
2 concentration threshold for driving while under the influence of
3 alcohol from 0.08 to 0.05.

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

6 1. By amending the definition of "measurable amount of
7 alcohol" to read:

8 "Measurable amount of alcohol" means a test result equal
9 to or greater than .02 but less than [~~-.08~~] .05 grams of alcohol
10 per one hundred milliliters or cubic centimeters of blood or
11 equal to or greater than .02 but less than [~~-.08~~] .05 grams of
12 alcohol per two hundred ten liters of breath."

13 2. By amending the definition of "under the influence" to
14 read:

15 "Under the influence" means that a person:

16 (1) Is under the influence of alcohol in an amount
17 sufficient to impair the person's normal mental
18 faculties or ability to care for the person and guard
19 against casualty;



1 (2) Is under the influence of any drug that impairs the
2 person's ability to operate the vehicle in a careful
3 and prudent manner;

4 (3) Has [~~-.08~~] .05 or more grams of alcohol per two hundred
5 ten liters of the person's breath; or

6 (4) Has [~~-.08~~] .05 or more grams of alcohol per one hundred
7 milliliters or cubic centimeters of the person's
8 blood."

9 SECTION 3. Section 291E-3, Hawaii Revised Statutes, is
10 amended by amending subsections (a) and (b) to read as follows:

11 "(a) In any criminal prosecution for a violation of
12 section 291E-61 or 291E-61.5 or in any proceeding under part
13 III:

14 (1) [~~-.08~~] .05 or more grams of alcohol per one hundred
15 milliliters or cubic centimeters of the person's
16 blood;

17 (2) [~~-.08~~] .05 or more grams of alcohol per two hundred ten
18 liters of the person's breath; or

19 (3) The presence of one or more drugs in an amount
20 sufficient to impair the person's ability to operate a
21 vehicle in a careful and prudent manner,



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

6 (b) In any criminal prosecution for a violation of section
7 291E-61 or 291E-61.5, the amount of alcohol found in the
8 defendant's blood or breath within three hours after the time of
9 the alleged violation as shown by chemical analysis or other
10 approved analytical techniques of the defendant's blood or
11 breath shall be competent evidence concerning whether the
12 defendant was under the influence of an intoxicant at the time
13 of the alleged violation and shall give rise to the following
14 presumptions:

15 (1) If there were [~~05~~] .02 or less grams of alcohol per
16 one hundred milliliters or cubic centimeters of
17 defendant's blood or [~~05~~] .02 or less grams of
18 alcohol per two hundred ten liters of defendant's
19 breath, it shall be presumed that the defendant was
20 not under the influence of alcohol at the time of the
21 alleged violation; and



1 (2) If there were in excess of [~~.05~~] .02 grams of alcohol
2 per one hundred milliliters or cubic centimeters of
3 defendant's blood or [~~.05~~] .02 grams of alcohol per
4 two hundred ten liters of defendant's breath, but less
5 than [~~.08~~] .05 grams of alcohol per one hundred
6 milliliters or cubic centimeters of defendant's blood
7 or [~~.08~~] .05 grams of alcohol per two hundred ten
8 liters of defendant's breath, that fact may be
9 considered with other competent evidence in
10 determining whether the defendant was under the
11 influence of alcohol at the time of the alleged
12 violation, but shall not of itself give rise to any
13 presumption."

14 SECTION 4. Section 291E-35, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) In cases involving an alcohol related offense, if a
17 test conducted in accordance with part II and section 321-161
18 and the rules adopted thereunder shows that a respondent had an
19 alcohol concentration less than [~~.087~~] .05, the director or the
20 arresting law enforcement agency immediately shall return the
21 respondent's license along with a certified statement that



1 administrative revocation proceedings have been terminated with
2 prejudice."

3 SECTION 5. Section 291E-36, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Whenever a respondent has been arrested for a
6 violation of section 291E-61 or 291E-61.5 and submits to a test
7 that establishes: the respondent's alcohol concentration was
8 [~~08~~] .05 or more; the presence, in the respondent's blood or
9 urine, of any drug that is capable of impairing the respondent's
10 ability to operate a vehicle in a careful and prudent manner; or
11 whenever a respondent has been involved in a collision resulting
12 in injury or death and a blood or urine test performed pursuant
13 to section 291E-21 establishes that the respondent's alcohol
14 concentration was [~~08~~] .05 or more or establishes the presence
15 in the respondent's blood or urine of any drug that is capable
16 of impairing the respondent's ability to operate a vehicle in a
17 careful and prudent manner, the following shall be forwarded
18 immediately to the director:

19 (1) A copy of the arrest report or the report of the law
20 enforcement officer who issued the notice of
21 administrative revocation to the person involved in a



1 collision resulting in injury or death and the sworn
2 statement of the arresting law enforcement officer or
3 the officer who issued the notice of administrative
4 revocation, stating facts that establish that:

5 (A) There was reasonable suspicion to stop the
6 vehicle, the vehicle was stopped at an intoxicant
7 control roadblock established and operated in
8 compliance with sections 291E-19 and 291E-20, or
9 the respondent was tested pursuant to section
10 291E-21;

11 (B) There was probable cause to believe that the
12 respondent had been operating the vehicle while
13 under the influence of an intoxicant; and

14 (C) The respondent agreed to be tested or the person
15 was tested pursuant to section 291E-21;

16 (2) In a case involving an alcohol related offense, the
17 sworn statement of the person responsible for
18 maintenance of the testing equipment, stating facts
19 that establish that, pursuant to section 321-161 and
20 rules adopted thereunder:



1 (A) The equipment used to conduct the test was
2 approved for use as an alcohol testing device in
3 this State;

4 (B) The person had been trained and at the time the
5 test was conducted was certified and capable of
6 maintaining the testing equipment; and

7 (C) The testing equipment used had been properly
8 maintained and was in good working condition when
9 the test was conducted;

10 (3) In a case involving an alcohol related offense, the
11 sworn statement of the person who conducted the test,
12 stating facts that establish that, pursuant to section
13 321-161 and rules adopted thereunder:

14 (A) The person was trained and at the time the test
15 was conducted was certified and capable of
16 operating the testing equipment;

17 (B) The person followed the procedures established
18 for conducting the test;

19 (C) The equipment used to conduct the test functioned
20 in accordance with operating procedures and
21 indicated that the respondent's alcohol



1 concentration was at, or above, the prohibited
2 level; and

3 (D) The person whose breath or blood was tested is
4 the respondent;

5 (4) In a case involving a drug related offense, the sworn
6 statement of the person responsible for maintenance of
7 the testing equipment, stating facts that establish
8 that, pursuant to section 321-161 and rules adopted
9 thereunder:

10 (A) The equipment used to conduct the test was
11 approved for use in drug testing;

12 (B) The person conducting the test had been trained
13 and, at the time of the test, was certified and
14 capable of maintaining the testing equipment; and

15 (C) The testing equipment used had been properly
16 maintained and was in good working condition when
17 the test was conducted;

18 (5) In a case involving a drug related offense, the sworn
19 statement of the person who conducted the test,
20 stating facts that establish that, pursuant to section
21 321-161 and rules adopted thereunder:



1 (A) At the time the test was conducted, the person
2 was trained and capable of operating the testing
3 equipment;

4 (B) The person followed the procedures established
5 for conducting the test;

6 (C) The equipment used to conduct the test functioned
7 in accordance with operating procedures and
8 indicated the presence of one or more drugs or
9 their metabolites in the respondent's blood or
10 urine; and

11 (D) The person whose blood or urine was tested is the
12 respondent;

13 (6) A copy of the notice of administrative revocation
14 issued by the law enforcement officer to the
15 respondent;

16 (7) Any license taken into possession by the law
17 enforcement officer; and

18 (8) A listing of any prior alcohol or drug enforcement
19 contacts involving the respondent."

20 SECTION 6. Section 291E-61, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:



1 "(a) A person commits the offense of operating a vehicle
2 under the influence of an intoxicant if the person operates or
3 assumes actual physical control of a vehicle:

4 (1) While under the influence of alcohol in an amount
5 sufficient to impair the person's normal mental
6 faculties or ability to care for the person and guard
7 against casualty;

8 (2) While under the influence of any drug that impairs the
9 person's ability to operate the vehicle in a careful
10 and prudent manner;

11 (3) With [~~.08~~] .05 or more grams of alcohol per two
12 hundred ten liters of breath; or

13 (4) With [~~.08~~] .05 or more grams of alcohol per one
14 hundred milliliters or cubic centimeters of blood.

15 (b) [A] Except as provided in paragraph (9), a person
16 committing the offense of operating a vehicle under the
17 influence of an intoxicant shall be sentenced without
18 possibility of probation or suspension of sentence as follows:

19 (1) Except as provided in paragraph (4), for the first
20 offense, or any offense not preceded within a ten-year



1 period by a conviction for an offense under this
2 section or section 291E-4(a):

3 (A) A fourteen-hour minimum substance abuse
4 rehabilitation program, including education and
5 counseling, or other comparable programs deemed
6 appropriate by the court;

7 (B) Revocation of license to operate a vehicle for
8 [~~no~~] not less than one year and [~~no~~] not more
9 than eighteen months;

10 (C) Installation during the revocation period of an
11 ignition interlock device on all vehicles
12 operated by the person;

13 (D) Any one or more of the following:

14 (i) Seventy-two hours of community service work;

15 (ii) [~~no~~] Not less than forty-eight hours and
16 [~~no~~] not more than five days of
17 imprisonment; or

18 (iii) A fine of [~~no~~] not less than \$250 and [~~no~~]
19 not more than \$1,000;

20 (E) A surcharge of \$25 to be deposited into the
21 neurotrauma special fund; and



1 (F) A surcharge, if the court so orders, of up to \$25
2 to be deposited into the trauma system special
3 fund;

4 (2) For an offense that occurs within ten years of a prior
5 conviction for an offense under this section:

6 (A) A substance abuse program of at least thirty-six
7 hours, including education and counseling, or
8 other comparable programs deemed appropriate by
9 the court;

10 (B) Revocation of license to operate a vehicle for
11 [~~ne~~] not less than two years and [~~ne~~] not more
12 than three years;

13 (C) Installation during the revocation period of an
14 ignition interlock device on all vehicles
15 operated by the person;

16 (D) Either one of the following:

17 (i) [~~Ne~~] Not less than two hundred forty hours
18 of community service work; or

19 (ii) [~~Ne~~] Not less than five days and [~~ne~~] not
20 more than thirty days of imprisonment, of



1 which at least forty-eight hours shall be
2 served consecutively;

3 (E) A fine of [~~no~~] not less than \$1,000 and [~~no~~] not
4 more than \$3,000, to be deposited into the drug
5 and alcohol toxicology testing laboratory special
6 fund;

7 (F) A surcharge of \$25 to be deposited into the
8 neurotrauma special fund; and

9 (G) A surcharge of up to \$50, if the court so orders,
10 to be deposited into the trauma system special
11 fund;

12 (3) In addition to a sentence imposed under paragraphs (1)
13 and (2), any person eighteen years of age or older who
14 is convicted under this section and who operated a
15 vehicle with a passenger, in or on the vehicle, who
16 was younger than fifteen years of age, shall be
17 sentenced to an additional mandatory fine of \$500 and
18 an additional mandatory term of imprisonment of forty-
19 eight hours; provided that the total term of
20 imprisonment for a person convicted under this
21 paragraph shall not exceed the maximum term of



1 imprisonment provided in paragraph (1) or (2), as
2 applicable. Notwithstanding paragraphs (1) and (2),
3 the revocation period for a person sentenced under
4 this paragraph shall be no less than two years;

5 (4) In addition to a sentence imposed under paragraph (1),
6 for a first offense under this section, or an offense
7 not preceded within a ten-year period by a conviction
8 for an offense, any person who is convicted under this
9 section and was a highly intoxicated driver at the
10 time of the subject incident shall be sentenced to an
11 additional mandatory term of imprisonment for forty-
12 eight consecutive hours and an additional mandatory
13 revocation period of six months; provided that the
14 total term of imprisonment for a person convicted
15 under this paragraph shall not exceed the maximum term
16 of imprisonment provided in paragraph (1).

17 Notwithstanding paragraph (1), the revocation period
18 for a person sentenced under this paragraph shall be
19 no less than eighteen months;

20 (5) In addition to a sentence under paragraph (2), for an
21 offense that occurs within ten years of a prior



1 conviction for an offense under this section, any
2 person who is convicted under this section and was a
3 highly intoxicated driver at the time of the subject
4 incident shall be sentenced to an additional mandatory
5 term of imprisonment of ten consecutive days and an
6 additional mandatory revocation period of one year;
7 provided that the total term of imprisonment for a
8 person convicted under this paragraph shall not exceed
9 the maximum term of imprisonment provided in paragraph
10 (2), as applicable. Notwithstanding paragraph (2),
11 the revocation period for a person sentenced under
12 this paragraph shall be ~~not~~ not less than three
13 years;

14 (6) A person sentenced pursuant to paragraph (1)(B) may
15 file a motion for early termination of the applicable
16 revocation period if the person:

17 (A) Was not sentenced to any additional mandatory
18 revocation period pursuant to paragraph (3) or
19 (4);

20 (B) Actually installed and maintained an ignition
21 interlock device on all vehicles operated by the



1 person for a continuous period of six months,
2 after which the person maintained the ignition
3 interlock device on all vehicles operated by the
4 person for a continuous period of three months
5 without violation;

6 (C) Includes with the person's motion for early
7 termination a certified court abstract
8 establishing that the person was not sentenced to
9 any additional mandatory revocation period
10 pursuant to paragraph (3) or (4);

11 (D) Includes with the person's motion for early
12 termination a certified statement from the
13 director of transportation establishing that:

14 (i) The person installed and maintained an
15 ignition interlock device on all vehicles
16 operated by the person for a continuous
17 period of six months; and

18 (ii) After the six-month period, the person
19 maintained the ignition interlock device on
20 all vehicles operated by the person for a



1 continuous period of three months without
2 violation; and

3 (E) Has complied with all other sentencing
4 requirements.

5 Nothing in this paragraph shall require a court to
6 grant early termination of the revocation period if
7 the court finds that continued use of the ignition
8 interlock device will further the person's
9 rehabilitation or compliance with this section;

10 (7) If the person demonstrates to the court that the
11 person:

12 (A) Does not own or have the use of a vehicle in
13 which the person can install an ignition
14 interlock device during the revocation period; or

15 (B) Is otherwise unable to drive during the
16 revocation period,

17 the person shall be prohibited from driving during the
18 period of applicable revocation provided in paragraphs
19 (1) to (5); provided that the person shall be
20 sentenced to the maximum license revocation period,
21 the court shall not issue an ignition interlock permit



1 pursuant to subsection (i), and the person shall be
2 subject to the penalties provided by section 291E-62
3 if the person drives during the applicable revocation
4 period; [~~and~~]

5 (8) For purposes of this subsection, "violation" means:

6 (A) Providing a sample of .04 or more grams of
7 alcohol per two hundred ten liters of breath when
8 starting the vehicle, unless a subsequent test
9 performed within ten minutes registers a breath
10 alcohol concentration lower than .02 and the
11 digital image confirmed the same person provided
12 both samples;

13 (B) Providing a sample of .04 or more grams of
14 alcohol per two hundred ten liters of breath on a
15 rolling retest, unless a subsequent test
16 performed within ten minutes registers a breath
17 alcohol concentration lower than .02 and the
18 digital image confirms the same person provided
19 both samples;

20 (C) Failing to provide a rolling retest, unless an
21 acceptable test is performed within ten minutes;



- 1 (D) Violating section 291E-66; or
- 2 (E) Failing to provide a clear photo of the person
- 3 when the person blows into the ignition interlock
- 4 device.

5 (9) A person with at least .05 and less than .08 grams of
6 alcohol per two hundred ten liters of breath or with
7 at least .05 and less than .08 grams of alcohol per
8 one hundred milliliters or cubic centimeters of blood
9 may be sentenced without possibility of suspension of
10 sentence of the above when the person:

11 (A) Has not committed any other offense under this
12 section;

13 (B) Has no prior convictions for an offense under
14 this section within a ten-year period;

15 (C) Does not have a commercial driver's license; and

16 (D) Has not received a deferral under section 853-4."

17 SECTION 7. Section 291E-61.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) A person commits the offense of habitually operating
20 a vehicle under the influence of an intoxicant if:



- 1 (1) The person is a habitual operator of a vehicle while
- 2 under the influence of an intoxicant; and
- 3 (2) The person operates or assumes actual physical control
- 4 of a vehicle:
- 5 (A) While under the influence of alcohol in an amount
- 6 sufficient to impair the person's normal mental
- 7 faculties or ability to care for the person and
- 8 guard against casualty;
- 9 (B) While under the influence of any drug that
- 10 impairs the person's ability to operate the
- 11 vehicle in a careful and prudent manner;
- 12 (C) With [~~-.08~~] .05 or more grams of alcohol per two
- 13 hundred ten liters of breath; or
- 14 (D) With [~~-.08~~] .05 or more grams of alcohol per one
- 15 hundred milliliters or cubic centimeters of
- 16 blood."

17 SECTION 8. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 10. This Act shall take effect upon its approval.

2

INTRODUCED BY: Karl Rhoads



S.B. NO. 2929

Report Title:

Blood Alcohol Concentration; Driving Under the Influence; Motor Vehicles; Alcohol

Description:

Lowers the blood alcohol concentration threshold for driving while under the influence of alcohol from 0.08 to 0.05.

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