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## 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 in 2013, the  
2 National Transportation Safety Board recommended that all fifty  
3 states adopt a blood alcohol concentration cutoff of 0.05 per  
4 cent compared to the 0.08 per cent standard. According to the  
5 National Transportation Safety Board, lowering the rate to 0.05  
6 would save five hundred to eight hundred lives annually.

7           According to the National Transportation Safety Board, a  
8 driver with a blood alcohol concentration of 0.05 per cent is  
9 affected by exaggerated behavior, loss of small-muscle control  
10 and eye focus, impaired judgement, reduced alertness, and  
11 lowered inhibition, resulting in reduced coordination and  
12 ability to track moving objects, difficulty steering, and  
13 reduced response to emergency driving situations.

14           The legislature further finds that lowering the threshold  
15 of blood alcohol concentration to 0.05 per cent for the offense  
16 of operating a vehicle under the influence of an intoxicant



1 would save lives, prevent catastrophic injuries, and decrease  
2 medical costs.

3 The purposes of this Act is to lower the threshold of blood  
4 alcohol concentration for the offense of operating a vehicle  
5 while under the influence of an intoxicant.

6 SECTION 2. Section 291E-1, Hawaii Revised Statutes, is  
7 amended by amending the definitions of "measurable amount of  
8 alcohol" and "under the influence" to read as follows:

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

14 "Under the influence" means that a person:

- 15 (1) Is under the influence of alcohol in an amount  
16 sufficient to impair the person's normal mental  
17 faculties or ability to care for the person and guard  
18 against casualty;
- 19 (2) Is under the influence of any drug that impairs the  
20 person's ability to operate the vehicle in a careful  
21 and prudent manner;



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

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

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

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

11          (1) [~~-.08~~] .05 or more grams of alcohol per one hundred  
12          milliliters or cubic centimeters of the person's  
13          blood;

14          (2) [~~-.08~~] .05 or more grams of alcohol per two hundred ten  
15          liters of the person's breath; or

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

19          within three hours after the time of the alleged violation as  
20          shown by chemical analysis or other approved analytical  
21          techniques of the person's blood, breath, or urine shall be



1 competent evidence that the person was under the influence of an  
2 intoxicant at the time of the alleged violation.

3 (b) In any criminal prosecution for a violation of section  
4 291E-61 or 291E-61.5, the amount of alcohol found in the  
5 defendant's blood or breath within three hours after the time of  
6 the alleged violation as shown by chemical analysis or other  
7 approved analytical techniques of the defendant's blood or  
8 breath shall be competent evidence concerning whether the  
9 defendant was under the influence of an intoxicant at the time  
10 of the alleged violation and shall give rise to the following  
11 presumptions:

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

19 (2) If there were in excess of [~~-.05~~] .02 grams of alcohol  
20 per one hundred milliliters or cubic centimeters of  
21 defendant's blood or [~~-.05~~] .02 grams of alcohol per



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

11 SECTION 4. Section 291E-35, Hawai'i Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13 "(a) In cases involving an alcohol related offense, if a  
14 test conducted in accordance with part II and section 321-161  
15 and the rules adopted thereunder shows that a respondent had an  
16 alcohol concentration less than [~~-.08~~,] .05, the director or the  
17 arresting law enforcement agency immediately shall return the  
18 respondent's license along with a certified statement that  
19 administrative revocation proceedings have been terminated with  
20 prejudice."



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

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

17 (1) A copy of the arrest report or the report of the law  
18 enforcement officer who issued the notice of  
19 administrative revocation to the person involved in a  
20 collision resulting in injury or death and the sworn  
21 statement of the arresting law enforcement officer or



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1 the officer who issued the notice of administrative  
2 revocation, stating facts that establish that:

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

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

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

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

19 (A) The equipment used to conduct the test was  
20 approved for use as an alcohol testing device in  
21 this State;



1 (B) The person had been trained and at the time the  
2 test was conducted was certified and capable of  
3 maintaining the testing equipment; and

4 (C) The testing equipment used had been properly  
5 maintained and was in good working condition when  
6 the test was conducted;

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

11 (A) The person was trained and at the time the test  
12 was conducted was certified and capable of  
13 operating the testing equipment;

14 (B) The person followed the procedures established  
15 for conducting the test;

16 (C) The equipment used to conduct the test functioned  
17 in accordance with operating procedures and  
18 indicated that the respondent's alcohol  
19 concentration was at, or above, the prohibited  
20 level; and





- 1 (D) The person whose breath or blood was tested is  
2 the respondent;
- 3 (4) In a case involving a drug related offense, the sworn  
4 statement of the person responsible for maintenance of  
5 the testing equipment, stating facts that establish  
6 that, pursuant to section 321-161 and rules adopted  
7 thereunder:
- 8 (A) The equipment used to conduct the test was  
9 approved for use in drug testing;
- 10 (B) The person conducting the test had been trained  
11 and, at the time of the test, was certified and  
12 capable of maintaining the testing equipment; and
- 13 (C) The testing equipment used had been properly  
14 maintained and was in good working condition when  
15 the test was conducted;
- 16 (5) In a case involving a drug related offense, the sworn  
17 statement of the person who conducted the test,  
18 stating facts that establish that, pursuant to section  
19 321-161 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 subsection (a) 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           SECTION 7. Section 291E-61.5, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

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

19           (1) The person is a habitual operator of a vehicle while  
20               under the influence of an intoxicant; and



1           (2) The person operates or assumes actual physical control  
2           of a vehicle:

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

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

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

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

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

18          SECTION 9. Statutory material to be repealed is bracketed  
19          and stricken. New statutory material is underscored.

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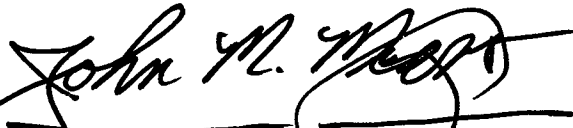



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1 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY:

JAN 21 2020



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**Report Title:**

Blood Alcohol Concentration; Operating a Vehicle While Under the Influence of an Intoxicant

**Description:**

Lowers the threshold blood alcohol concentration for the offense of operating a vehicle while under the influence of an intoxicant.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

