



GOV. MSG. NO. 1251

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 29, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 29, 2023, the following bill was signed into law:

HB1113 HD1 SD1 CD1

RELATING TO THE DRUG AND ALCOHOL
TOXICOLOGY TESTING LABORATORY.
ACT 148

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUN 29 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1113
H.D. 1
S.D. 1
C.D. 1

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:

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

14 Act 119, Session Laws of Hawaii 2022, appropriated moneys
15 from the state highway fund to the state drug and alcohol
16 toxicology testing laboratory special fund for fiscal year 2022-
17 2023; and authorized the department of health to expend funds



1 from the state drug and alcohol toxicology testing laboratory
2 special fund for the establishment of the state drug and alcohol
3 toxicology testing laboratory.

4 Act 120, Session Laws of Hawaii 2022, appropriated moneys
5 from the state highway fund to the state drug and alcohol
6 toxicology testing laboratory special fund for fiscal year 2021-
7 2022; and authorized the department of health to expend these
8 funds from the state drug and alcohol toxicology testing
9 laboratory special fund for the establishment of the state drug
10 and alcohol toxicology testing laboratory.

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

18 The purpose of this Act is to:

- 19 (1) Allow moneys in the state highway fund to be expended
20 for the cost of maintaining a drug and alcohol
21 toxicology testing laboratory;



- 1 (2) Require moneys in the drug and alcohol toxicology
2 testing laboratory special fund to be administered and
3 expended by the department of transportation or
4 appropriated as a grant-in-aid to the emergency
5 services department of a county with a population of
6 five hundred thousand or more to support a drug and
7 alcohol toxicology testing laboratory;
- 8 (3) Change the name of the state drug and alcohol
9 toxicology testing laboratory, and its special fund,
10 to repeal reference to the "state" to reflect its
11 expanded scope;
- 12 (4) Appropriate funds from the state highway fund to the
13 drug and alcohol toxicology testing laboratory special
14 fund;
- 15 (5) Appropriate funds out of the drug and alcohol
16 toxicology testing laboratory special fund for the
17 establishment and maintenance of a drug and alcohol
18 toxicology testing laboratory; and
- 19 (6) Require reports to the legislature on expenditures
20 made from the drug and alcohol toxicology testing
21 laboratory special fund.



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

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

5 (1) To pay the costs of operation, maintenance, and repair
6 of the state highway system, including without
7 limitation, the cost of equipment and general
8 administrative overhead;

9 (2) To pay the costs of acquisition, including real
10 property and interests therein; planning; designing;
11 construction; and reconstruction of the state highway
12 system and bikeways, including without limitation, the
13 cost of equipment and general administrative overhead;

14 (3) To reimburse the general fund for interest on and
15 principal of general obligation bonds issued to
16 finance highway projects where the bonds are
17 designated to be reimbursable out of the state highway
18 fund;

19 (4) To pay the costs of construction, maintenance, and
20 repair of county roads; provided that none of the
21 funds expended on a county road or program shall be



1 federal funds when expenditure would cause a violation
2 of federal law or a federal grant agreement; and
3 (5) To pay the ~~cost~~ costs of establishing and
4 maintaining a ~~state~~ drug and alcohol toxicology
5 testing laboratory that is intended to support the
6 prosecution of offenses relating to operation of a
7 motor vehicle while under the influence of an
8 intoxicant."

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

11 "[+]§291E-8[+] ~~State drug~~ Drug and alcohol toxicology
12 testing laboratory special fund; established. (a) There is
13 established in the state treasury a ~~state~~ drug and alcohol
14 toxicology testing laboratory special fund, into which shall be
15 deposited:

- 16 (1) All fines collected pursuant to sections
17 [+]291E-61(b)(2)(E)[+], 291E-61.5(c)(2)(C), and
18 291E-62(c);
19 (2) Moneys appropriated by the legislature to the fund;
20 (3) Other grants and gifts made to the fund; and



1 (4) Any income and interest earned on the balance of the
2 fund.

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

10 SECTION 4. Section 291E-61, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) A person committing the offense of operating a
13 vehicle under the influence of an intoxicant shall be sentenced
14 without possibility of probation or suspension of sentence as
15 follows:

16 (1) Except as provided in paragraph (4), for the first
17 offense, or any offense not preceded within a ten-year
18 period by a conviction for an offense under this
19 section or section 291E-4(a):

20 (A) A fourteen-hour minimum substance abuse
21 rehabilitation program, including education and



- 1 counseling, or other comparable programs deemed
2 appropriate by the court;
- 3 (B) Revocation of license to operate a vehicle for no
4 less than one year and no more than eighteen
5 months;
- 6 (C) Installation during the revocation period of an
7 ignition interlock device on all vehicles
8 operated by the person;
- 9 (D) Any one or more of the following:
- 10 (i) Seventy-two hours of community service work;
11 (ii) No less than forty-eight hours and no more
12 than five days of imprisonment; or
13 (iii) A fine of no less than \$250 and no more than
14 \$1,000;
- 15 (E) A surcharge of \$25 to be deposited into the
16 neurotrauma special fund; and
- 17 (F) A surcharge, if the court so orders, or up to \$25
18 to be deposited into the trauma system special
19 fund;
- 20 (2) For an offense that occurs within ten years of a prior
21 conviction for an offense under this section:



- 1 (A) A substance abuse program of at least thirty-six
- 2 hours, including education and counseling, or
- 3 other comparable programs deemed appropriate by
- 4 the court;
- 5 (B) Revocation of license to operate a vehicle for no
- 6 less than two years and no more than three years;
- 7 (C) Installation during the revocation period of an
- 8 ignition interlock device on all vehicles
- 9 operated by the person;
- 10 (D) Either one of the following:
- 11 (i) No less than two hundred forty hours of
- 12 community service work; or
- 13 (ii) No less than five days and no more than
- 14 thirty days of imprisonment, of which at
- 15 least forty-eight hours shall be served
- 16 consecutively;
- 17 (E) A fine of no less than \$1,000 and no more than
- 18 \$3,000, to be deposited into the [state] drug and
- 19 alcohol toxicology testing laboratory special
- 20 fund;



- 1 (F) A surcharge of \$25 to be deposited into the
2 neurotrauma special fund; and
- 3 (G) A surcharge of up to \$50, if the court so orders,
4 to be deposited into the trauma system special
5 fund;
- 6 (3) In addition to a sentence imposed under paragraphs (1)
7 and (2), any person eighteen years of age or older who
8 is convicted under this section and who operated a
9 vehicle with a passenger, in or on the vehicle, who
10 was younger than fifteen years of age, shall be
11 sentenced to an additional mandatory fine of \$500 and
12 an additional mandatory term of imprisonment of
13 forty-eight hours; provided that the total term of
14 imprisonment for a person convicted under this
15 paragraph shall not exceed the maximum term of
16 imprisonment provided in paragraph (1) or (2), as
17 applicable. Notwithstanding paragraphs (1) and (2),
18 the revocation period for a person sentenced under
19 this paragraph shall be no less than two years;
- 20 (4) In addition to a sentence imposed under paragraph (1),
21 for a first offense under this section, or an offense



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

11 Notwithstanding paragraph (1), the revocation period
12 for a person sentenced under this paragraph shall be
13 no less than eighteen months;

14 (5) In addition to a sentence under paragraph (2), for an
15 offense that occurs within ten years of a prior
16 conviction for an offense under this section, any
17 person who is convicted under this section and was a
18 highly intoxicated driver at the time of the subject
19 incident shall be sentenced to an additional mandatory
20 term of imprisonment of ten consecutive days and an
21 additional mandatory revocation period of one year;



1 provided that the total term of imprisonment for a
2 person convicted under this paragraph shall not exceed
3 the maximum term of imprisonment provided in paragraph
4 (2), as applicable. Notwithstanding paragraph (2),
5 the revocation period for a person sentenced under
6 this paragraph shall be no less than three years;

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

10 (A) Was not sentenced to any additional mandatory
11 revocation period pursuant to paragraph (3) or
12 (4);

13 (B) Actually installed and maintained an ignition
14 interlock device on all vehicles operated by the
15 person for a continuous period of six months,
16 after which the person maintained the ignition
17 interlock device on all vehicles operated by the
18 person for a continuous period of three months
19 without violation;

20 (C) Includes with [~~their~~] the person's motion for
21 early termination a certified court abstract

1 establishing that [~~they were~~] the person was not
2 sentenced to any additional mandatory revocation
3 period pursuant to paragraph (3) or (4);

4 (D) Includes with [~~their~~] the person's motion for
5 early termination a certified statement from the
6 director of transportation establishing that:

7 (i) The person installed and maintained an
8 ignition interlock device on all vehicles
9 operated by the person for a continuous
10 period of six months; and

11 (ii) After the six-month period, the person
12 maintained the ignition interlock device on
13 all vehicles operated by the person for a
14 continuous period of three months without
15 violation; and

16 (E) Has complied with all other sentencing
17 requirements.

18 Nothing in this paragraph shall require a court to
19 grant early termination of the revocation period if
20 the court finds that continued use of the ignition



1 interlock device will further the person's
2 rehabilitation or compliance with this section;
3 (7) If the person demonstrates to the court that the
4 person:
5 (A) Does not own or have the use of a vehicle in
6 which the person can install an ignition
7 interlock device during the revocation period; or
8 (B) Is otherwise unable to drive during the
9 revocation period,
10 the person shall be prohibited from driving during the
11 period of applicable revocation provided in paragraphs
12 (1) to (5); provided that the person shall be
13 sentenced to the maximum license revocation period,
14 the court shall not issue an ignition interlock permit
15 pursuant to subsection (i), and the person shall be
16 subject to the penalties provided by section 291E-62
17 if the person drives during the applicable revocation
18 period; and
19 (8) For purposes of this subsection, "violation" means:
20 (A) Providing a sample of .04 or more grams of
21 alcohol per two hundred ten liters of breath when



1 starting the vehicle, unless a subsequent test
2 performed within ten minutes registers a breath
3 alcohol concentration lower than .02 and the
4 digital image confirmed the same person provided
5 both samples;

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

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

15 (D) Violating section 291E-66; or

16 (E) Failing to provide a clear photo of the person
17 when the person blows into the ignition interlock
18 device."

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

1 "(c) For a conviction under this section, the sentence
2 shall be either:

3 (1) An indeterminate term of imprisonment of five years;

4 or

5 (2) A term of probation of five years, with conditions to
6 include:

7 (A) Mandatory revocation of license to operate a
8 vehicle for a period no less than three years but
9 no more than five years, with mandatory
10 installation of an ignition interlock device in
11 all vehicles operated by the respondent during
12 the revocation period;

13 (B) No less than ten days imprisonment, of which at
14 least forty-eight hours shall be served
15 consecutively;

16 (C) A fine of no less than \$2,000 but no more than
17 \$5,000, to be deposited into the [state] drug and
18 alcohol toxicology testing laboratory special
19 fund;

20 (D) Referral to a certified substance abuse counselor
21 as provided in subsection (e);



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

3 (F) A surcharge of up to \$50 to be deposited into the
4 trauma system special fund if the court so
5 orders.

6 In addition to the foregoing, any vehicle owned and operated by
7 the person committing the offense shall be subject to forfeiture
8 pursuant to chapter 712A."

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

11 "(c) Any person convicted of violating this section shall
12 be sentenced as follows without possibility of probation or
13 suspension of sentence:

14 (1) For a first offense, or any offense not preceded
15 within a ten-year period by conviction for an offense
16 under this section, section 291E-66, or section
17 291-4.5 as that section was in effect on December 31,
18 2001:

19 (A) A term of imprisonment of no less than three
20 consecutive days and no more than thirty days;



- 1 (B) A fine of no less than \$250 and no more than
2 \$1,000, to be deposited into the [~~state~~] drug and
3 alcohol toxicology testing laboratory special
4 fund; and
- 5 (C) Revocation of license and privilege to operate a
6 vehicle for an additional year;
- 7 (2) For an offense that occurs within ten years of a prior
8 conviction for an offense under this section, section
9 291E-66, or section 291-4.5 as that section was in
10 effect on December 31, 2001:
- 11 (A) Thirty days imprisonment;
- 12 (B) A \$1,000 fine, to be deposited into the [~~state~~]
13 drug and alcohol toxicology testing laboratory
14 special fund; and
- 15 (C) Revocation of license and privilege to operate a
16 vehicle for an additional two years;
- 17 (3) For an offense that occurs within ten years of two or
18 more prior convictions for offenses under this
19 section, section 291E-66, or section 291-4.5 as that
20 section was in effect on December 31, 2001, or any
21 combination thereof:



- 1 (A) No less than six months and no more than one year
- 2 imprisonment;
- 3 (B) A \$2,000 fine, to be deposited into the [state]
- 4 drug and alcohol toxicology testing laboratory
- 5 special fund; and
- 6 (C) Permanent revocation of the person's license and
- 7 privilege to operate a vehicle; and
- 8 (4) In addition to a sentence imposed under paragraphs (1)
- 9 through (3), any person who is convicted under this
- 10 section and also convicted under section 291E-61 or
- 11 291E-61.5, for an offense based on the same incident
- 12 or arising from the same episode, shall be sentenced
- 13 to terms of imprisonment for both offenses, which
- 14 shall be served consecutively."

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

17 "(2) All fines and other final payments received by a
 18 clerk or other officer of a court shall be accounted for, with
 19 the names of persons making payment, and the amount and date
 20 thereof, being recorded. All such funds shall be deposited with
 21 the director of finance to the credit of the general fund of the



1 State. With respect to fines and bail forfeitures that are
2 proceeds of the wildlife revolving fund under section 183D-10.5;
3 fines that are proceeds of the [state] drug and alcohol
4 toxicology testing laboratory special fund under sections
5 [~~291E-61(b)(2)(C)~~] 291E-61(b)(2)(E), 291E-61.5(c)(2)(C), and
6 291E-62(c); and fines that are proceeds of the compliance
7 resolution fund under sections 26-9(o) and 431:2-410, the
8 director of finance shall transmit the fines and forfeitures to
9 the respective funds."

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

12 1. By amending section 9 to read:

13 "SECTION 9. The [state] drug and alcohol toxicology
14 testing laboratory special fund established in section
15 [~~291E-8~~], 291E-8, Hawaii Revised Statutes, shall be abolished
16 and repealed on June 30, [~~2026~~] 2028, and any unencumbered
17 remaining balances shall lapse to the [~~general fund~~] credit of
18 the state highway fund."

19 2. By amending section 11 to read:

20 "SECTION 11. This Act shall take effect on July 1, 2021;
21 provided that on June 30, [~~2026~~] 2028, sections 4, 5, 6, and 7



1 of this Act shall be repealed and [~~section~~] sections 291E-61,
2 291E-61.5, 291E-62, and 706-643, Hawaii Revised Statutes, shall
3 be reenacted in the form in which it read on the day before the
4 effective date of this Act."

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

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

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

17 "SECTION 7. This Act shall take effect on January 1, 2023;
18 provided that the amendments made to sections 291E-61 and 291E-
19 62, Hawaii Revised Statutes, by sections 1 and 2, respectively,
20 of this Act shall not be repealed when those sections are
21 reenacted on June 30, [~~2026~~] 2028, pursuant to section 11 of



1 Act 196, Session Laws of Hawaii 2021[-], as amended by section 8
2 of Act _____, Session Laws of Hawaii 2023."

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

9 SECTION 12. There is appropriated out of the drug and
10 alcohol toxicology testing laboratory special fund the sum of
11 \$2,000,000 or so much thereof as may be necessary for fiscal
12 year 2023-2024 and \$400,000 or so much as necessary for fiscal
13 year 2024-2025 for the establishment and maintenance of a drug
14 and alcohol toxicology testing laboratory, including the costs
15 of laboratory instrumentation, facility renovation and security
16 upgrades, office furniture and supplies, laboratory equipment,
17 and other purposes that support a drug and alcohol toxicology
18 testing laboratory.

19 The sums appropriated shall be expended by the department
20 of transportation or appropriated as a grant-in-aid to the city



1 and county of Honolulu emergency services department for the
2 purposes of this Act.

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

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

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



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

APPROVED this 29th day of June , 2023



GOVERNOR OF THE STATE OF HAWAII



HB No. 1113, HD 1, SD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: **MAY 04 2023**
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: MAY 04 2023
Honolulu, Hawai‘i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai‘i, Regular Session of 2023.


President of the Senate


Clerk of the Senate