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

3           1. By amending the definition of "measurable amount of  
4 alcohol" to read as follows:

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

10          2. By amending the definition of "under the influence" to  
11 read as follows:

12          "Under the influence" means that a person:

13          (1) Is under the influence of alcohol in an amount  
14               sufficient to impair the person's normal mental  
15               faculties or ability to care for the person and guard  
16               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 2. 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 3. 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 [~~-.08,~~] .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 4. 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 5. 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 6. 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 7. 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 8. Statutory material to be repealed is bracketed  
19          and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval.

2

INTRODUCED BY:                     Dann BIR                    

JAN 25 2023



**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.*

