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## A BILL FOR AN ACT

RELATING TO 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:

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:

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;

H.B. NO. 1084

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

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

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

SECTION 2. Section 291E-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

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

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

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

H.B. NO. 1084

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

H.B. NO. 1084

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 and  
18          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

H.B. NO. 1084

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  
22 collision resulting in injury or death and the sworn

H.B. NO. 1084

1 statement of the arresting law enforcement officer or  
2 the officer who issued the notice of administrative  
3 revocation, stating facts that establish that:

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

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

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

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

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

H.B. NO. 1084

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

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

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

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

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

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

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

H.B. NO. 1084

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

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

8 (B) The person conducting the test had been trained  
9 and, at the time of the test, was certified and  
10 capable of maintaining the testing equipment; and

11 (C) The testing equipment used had been properly  
12 maintained and was in good working condition when  
13 the test was conducted;

14 (5) In a case involving a drug related offense, the sworn  
15 statement of the person who conducted the test,  
16 stating facts that establish that, pursuant to section  
17 321-161 and rules adopted thereunder:

18 (A) At the time the test was conducted, the person  
19 was trained and capable of operating the testing  
20 equipment;

21 (B) The person followed the procedures established  
22 for conducting the test;

H.B. NO. 1084

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

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

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

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

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

SECTION 5. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental

H.B. NO. 1084

1           faculties or ability to care for the person and guard  
2           against casualty;

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

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

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

10          SECTION 6. Section 291E-61.5, Hawaii Revised Statutes, is  
11       amended by amending subsection (a) to read as follows:

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

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

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

18           (A) While under the influence of alcohol in an amount  
19           sufficient to impair the person's normal mental  
20           faculties or ability to care for the person and  
21           guard against casualty;

H.B. NO. 1084

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

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

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

SECTION 7. This Act does not affect rights and duties that  
matured, penalties that were incurred, and proceedings that were  
begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed  
and stricken. New statutory material is underscored.

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

INTRODUCED BY:

Nedra K. Nathan

BY REQUEST

JAN 21 2025

# H.B. NO. 1084

**Report Title:**

Drug and Alcohol Toxicology Testing; Blood Alcohol Content;  
Lower Threshold

**Description:**

Lowers the blood alcohol content threshold for driving while under the influence of alcohol from .08 to .05 or more grams of alcohol to reduce impaired driving and fatal crashes.

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

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor.

TITLE: A BILL FOR AN ACT RELATING TO USE OF  
INTOXICANTS WHILE OPERATING A VEHICLE.

PURPOSE: To lower the blood alcohol content threshold  
for driving while under the influence of  
alcohol from 0.08 to 0.05 or more grans of  
alcohol per one hundred milliliters or cubic  
centimeters of blood or per two hundred ten  
liters of breath to reduce impaired driving  
and fatal crashes.

MEANS: Amend sections 291E-1, 291E-3(a) and (b),  
291E-35(a), 291E-36(a), 291E-61(a), and  
291E-61.5(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Impaired driving continues to be a problem  
in Hawaii and is a leading cause of traffic  
fatalities. The National Transportation  
Safety Board recommends that all states  
lower their limits for alcohol impaired  
driving to 0.05 blood alcohol content to  
prevent and reduce traffic fatalities and  
crashes. Lowering the threshold for  
impaired driving brings the State closer to  
making roads safer for all users.

Impact on the public: Likely reduction in  
alcohol-related traffic incidents by  
encouraging more responsible drinking habits  
and deterring impaired driving. This change  
may initially lead to more driving under the  
influence arrests and legal consequences for  
individuals who misjudge the lowered  
threshold, but over time, the lower blood  
alcohol content decreases driving risks and  
promotes safer roads.

Impact on the department and other agencies:  
The Department of Health will need to  
implement public health campaigns that may  
require coordination with the Department of  
the Attorney General, Department of Law  
Enforcement, Department of Transportation,

the Judiciary, and county law enforcement agencies.

The Department of Health may also see an increase in alcohol abuse and misuse services.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Department of Health; Department of Law  
Enforcement; Department of the Attorney  
General; Judiciary; County Law Enforcement  
Agencies.

EFFECTIVE DATE: Upon approval.