

ACT 117

H.B. NO. 187

A Bill for an Act Relating to Traffic Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291-4, Hawaii Revised Statutes, is amended to read as follows:

**“§291-4 Driving under influence of intoxicating liquor.** (a) [Whoever operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:] A person commits the offense of driving under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with 0.10 per cent or more, by weight of alcohol in the person's blood.

(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a [four-year] five-year period by a conviction under this section, by:
  - (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and
  - (B) [Any two of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Thirty-day suspension of license;
    - (iii) Forty-eight hours of imprisonment;] Ninety day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license; and

- (C) Any one or more of the following:
- (i) Seventy-two hours of community service work; or
  - (ii) Not less than forty-eight hours of imprisonment; or
  - (iii) A fine of not less than \$150 but not more than \$1,000.
- (2) For an offense which occurs within [four] five years of a prior conviction under this section[, by any two of the following:
- (A) A fine of not less than \$250 but not more than \$1,000 or not less than seventy-two hours but not more than one hundred-fifty hours of community service work;
  - (B) Ninety-day suspension of license;
  - (C) Not less than two days but not more than ten days of imprisonment;];
  - (A) Prompt suspension of license for a period of one year; and
  - (B) Any one of the following:
    - (i) Not less than ten days of community service work; or
    - (ii) Not less than forty-eight consecutive hours of imprisonment;
    - or
    - (iii) A fine of not less than \$500 but not more than \$1,000.
- (3) For an offense which occurs within [four] five years of two prior convictions under this section, by:
- (A) A fine of not less than \$500 but not more than \$1,000;
  - (B) Revocation of license for a period not less than one year but not more than five years; and
  - (C) Not less than ten days but not more than one hundred-eighty days imprisonment.
- (4) Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor, shall be considered a prior conviction.

[(b)] (c) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to the provisions of this section, the examiner of drivers shall not grant to such person an application for a new driver's license for such period as specified by the court.

[(c)] (d) As used in this section the terms "driver," "driver's license," "examiner of drivers," and "vehicle" shall have the same meanings as provided in section 286-2."

SECTION 2. Section 291-5, Hawaii Revised Statutes, is amended to read as follows:

**"§291-5 Evidence of intoxication. (a) In any criminal prosecution for a violation of section 291-4, ten-hundredths per cent or more by weight of alcohol in the defendant's blood within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.**

(b) In any criminal prosecution for a violation of section 291-4, the amount of alcohol in the defendant's blood within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of

the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there was five-hundredths per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor at the time of the alleged violation.
- (2) If there was in excess of five-hundredths per cent but less than ten-hundredths per cent by weight of alcohol in the defendant's blood, such fact may be considered with other competent evidence in determining whether or not the defendant was at the time of the alleged violation under the influence of intoxicating liquor but shall not of itself give rise to any presumption.
- [(3) If there was ten-hundredths per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.]

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation."

SECTION 3. Section 8, Act 251, Session Laws of Hawaii 1982, is amended to read as follows:

"SECTION 8. This Act shall take effect upon its approval. [Any conviction prior to the effective date shall not be a prior conviction under this Act.]"

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 25, 1983.)