

ACT 221

S.B. NO. 2266-86

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 286-151, Hawaii Revised Statutes, is amended to read as follows:

“§286-151 Implied consent of driver of motor vehicle to submit to testing to determine alcoholic content of blood. (a) Any person who operates a motor vehicle on the public highways of the State shall be deemed to have given consent, subject to this part, to a test approved by the director of transportation of the person’s breath or blood for the purpose of determining the alcoholic content of the person’s blood; such person shall have the option to take a test of the person’s breath or blood, or both].

(b) The test or tests shall be administered at the request of a police officer having reasonable grounds to believe the person driving or in actual physical control of a motor vehicle upon the public highways is under the influence of intoxicating liquor or drugs¹ only after (1) a lawful arrest, and (2) the person has been informed by a police officer² of the sanctions of section 286-155.

(c) If there are reasonable grounds to believe that a person is in violation of section 291-4, then such person shall have the option to take a breath or blood test, or both, for the purpose of determining the alcoholic content of that person’s blood.”

SECTION 2. Section 286-156, Hawaii Revised Statutes, is amended to read as follows:

“§286-156 Hearing before a district judge. A hearing to determine the truth and correctness of an affidavit submitted to a district judge shall be held within twenty days after the district judge has received the affidavit.

The district judge shall hear and determine:

- (1) Whether the arresting officer had reasonable grounds to believe that either the person had been [either] driving or was in actual physical control of a motor vehicle [upon the highways] within this State while under the influence of intoxicating liquor;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of section 286-155; and
- (4) Whether the person refused to submit to a test of his breath or blood.”

SECTION 3. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) As used in this section the terms “driver,” “driver’s license,” and “examiner of drivers,” [and “vehicle”] shall have the same meanings as provided in section 286-2[.]; and the term “vehicle” shall have the same meaning as provided in section 291C-1.”

SECTION 4. Section 291-7, Hawaii Revised Statutes, is amended to read as follows:

“§291-7 Driving under the³ influence of drugs. [Whoever operates any vehicle while under the influence of any drug to a degree which renders him incapable of operating the vehicle in a careful and prudent manner shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

The fact that any person charged with a violation of this section is, or has been, legally authorized to use the drug shall not constitute a defense to such charge.] (a) A person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs such person's ability to operate the vehicle in a careful and prudent manner. The term "drug" as used in this section shall mean any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

(b) A person committing the offense of driving under the influence of drugs 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 five-year period by a conviction under this section, by:
 - (A) A fourteen-hour minimum drug abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court; and
 - (B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in drug treatment programs; 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 five years of a prior conviction under this section:
 - (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
 - (B) Either one of the following:
 - (i) Not less than eighty hours of community service work; or
 - (ii) Not less than forty-eight consecutive hours of imprisonment; and
 - (C) A fine of not less than \$500 but not more than \$1,000.
- (3) For an offense which occurs within 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 drugs shall be considered a prior conviction.

(c) Whenever a court sentences a person pursuant to section 291-7(b)(2) or (3), it shall also require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's drug dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the offender to obtain appropriate treatment.

All costs for such assessment or treatment or both shall be borne by the offender.

(d) 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.

(e) As used in this section, the terms "driver", "driver's license", and "examiner of drivers" shall have the same meanings as provided in section 286-2; and the term "vehicle" shall have the same meaning as provided in section 291C-1.

SECTION 9.⁴ Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10.⁴ This Act shall take effect upon its approval.

(Approved May 27, 1986.)

Notes

1. The words "or drugs" should be underscored.
2. Prior to amendment this phrase read "the police officer has informed the person".
3. The word "the" should be underscored.
4. So in original.