

**ACT 33**

S.B. NO. 1442

A Bill for an Act Relating to Mopeds.

*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 or moped to submit to testing to determine alcoholic content of blood.** (a) Any person who operates a motor vehicle or moped on the public highways of the State shall

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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.

(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 or moped upon the public highways is under the influence of intoxicating liquor or drugs only after (1) a lawful arrest, and (2) the person has been informed by a police officer 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 286-155, Hawaii Revised Statutes, is amended to read as follows:

**"§286-155 Revocation of privilege to drive motor vehicle or moped upon refusal to submit to testing.** (a) If a person under arrest refuses to submit to a breath or blood test, none shall be given, except as provided in section 286-163, but the arresting officer [shall], as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had reasonable grounds to believe the arrested person had either been driving or was in actual physical control of a motor vehicle or moped upon the public highways while under the influence of intoxicating liquor;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing as provided in section 286-156, and shall determine whether the statements contained in the affidavit are true and correct. If the district judge finds the statements contained in the affidavit are true, the judge shall revoke the arrested person's license, permit, or any nonresident [operating] privilege to operate a motor vehicle or moped in the State as follows:

- (1) For a first revocation, or any revocation not preceded within a five-year period by a revocation under this section, for a period of twelve months; and
- (2) For any subsequent revocation under this section, for a period not less than two years and not more than five years.

(c) If the arrested person is a resident without a license or permit to operate a motor vehicle or moped in the State, the district judge shall send notice of the results of the hearing to the examiners of drivers of all counties. The examiners of drivers shall deny the person the issuance of a license or permit for the period of revocation imposed by the district judge under subsection (b).

(d) Whenever a court penalizes a person under this section, it shall also require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the person to obtain appropriate treatment. All costs for such assessment or treatment or both shall be borne by the penalized person.

(e) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law."

SECTION 3. 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 driving or was in actual physical control of a motor vehicle or moped 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 the person's breath or blood."

SECTION 4. Section 286-161, Hawaii Revised Statutes, is amended to read as follows:

**"§286-161 Notice to other states.** When it is determined under this part that a nonresident's privilege to operate a motor vehicle or moped in the State shall be revoked or denied, the chief of police shall inform, in writing, the official in charge of traffic control or public safety of the nonresident's home state and of any state in which the nonresident has a driver's license of the action taken."

SECTION 5. Section 286-162, Hawaii Revised Statutes, is amended to read as follows:

**"§286-162 Test results to be collected.** The results of any test for alcohol content made upon any person, including any person who has been fatally injured in a traffic accident or upon the driver of a motor vehicle or moped involved in an accident which resulted in another person's death, shall be sent to the state director of transportation who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the state and county highway safety councils and to other agencies the director of transportation deems necessary and advisable."

SECTION 6. Section 286-162.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a) Every intoxication control roadblock program shall:**

- (1) Require either that all motor vehicles, or mopeds, or both, approaching roadblocks be stopped, or that certain motor vehicles, or mopeds, or both, be stopped by selecting motor vehicles, or mopeds, or both, in a specified numerical sequence or pattern.
- (2) Require that roadblocks be located at fixed locations for a maximum three hour period.
- (3) Provide for the following minimum safety precautions at every roadblock:
  - (A) Proper illumination;
  - (B) Off-road or otherwise safe and secure holding areas for motor vehicles, or mopeds, or both, involved in any roadblock stop;

- (C) Uniformed police officers carrying proper identification;
  - (D) Adequate advance warning of the fact and purpose of the roadblocks, either by sign posts, flares, or other alternative methods; and
  - (E) Termination of roadblocks at the discretion of the police officer in charge where traffic congestion would otherwise result.
- (4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to assure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience."

SECTION 7. Section 291-3.1, Hawaii Revised Statutes, is amended to read as follows:

**"§291-3.1 Consuming or possessing intoxicating liquor while operating motor vehicle[.] or moped.** (a) No person shall consume any intoxicating liquor while operating a motor vehicle or moped upon any public street, road, or highway.

(b) No person shall possess, while operating a motor vehicle or moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) This section shall not apply to the living quarters of a trailer or camper.

(d) Any person violating this section shall be guilty of a misdemeanor."

SECTION 8. Section 291-3.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) No person shall consume any intoxicating liquor while a passenger in any motor vehicle or on any moped upon any public street, road, or highway.

(b) No person shall possess, while a passenger in a motor vehicle or on a moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed."

SECTION 9. Section 291-3.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall keep in a motor vehicle, or on a moped when such vehicle or moped is upon any public street, road, or highway or at any scenic lookout, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed or fully removed, unless such container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers."

SECTION 10. This Act does not apply to acts which occurred or proceedings which were begun before its effective date.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 12. This Act shall take effect upon its approval.**

**(Approved May 11, 1987.)**