

## ACT 226

H.B. NO. 715

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor or Drugs.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291- Habitually driving under the influence of intoxicating liquor or drugs.** (a) A person commits the offense of habitually driving under the influence of intoxicating liquor or drugs if, during a ten-year period the person has been convicted three or more times for a driving under the influence offense; and

- (1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person is under the influence of intoxicating liquor in an amount sufficient to impair the person’s normal mental faculties or ability to care for oneself and guard against casualty;
- (2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath; or
- (3) A 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) For the purposes of this section a driving under the influence offense means a violation of section 291-4, 291-7, or 707-702.5, or violation of laws in another jurisdiction which requires proof of each element of the offenses punishable under either section 291-4, 291-7, or 707-702.5 if committed in Hawaii.

(c) Habitually driving under the influence of intoxicating liquor or drugs is a class C felony.”

SECTION 2. Section 286-251, Hawaii Revised Statutes, is amended by amending the definition of “blood alcohol concentration” to read:

““[Blood alcohol] Alcohol concentration” means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath.”

SECTION 3. Section 286-256, Hawaii Revised Statutes, is amended to read as follows:

**“§286-256 Immediate restoration of license.** If a test conducted in accordance with part VII and section 321-161 and the rules adopted thereunder shows that the arrestee’s [blood] alcohol concentration was less than [.10,] .08, the director or the arresting agency shall immediately return the arrestee’s license along with a certified statement that administrative revocation proceedings have been terminated with prejudice.”

SECTION 4. Section 286-257, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291-4 and submits to a test [which] that establishes that the arrestee’s [blood] alcohol concentration was [.10] .08 or more, the following shall be immediately forwarded to the director:

- (1) A copy of the arrest report and the sworn statement of the arresting officer stating facts [which] that establish that:
  - (A) There was reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
  - (B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
  - (C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the consequences of refusing to be tested for alcohol concentration [of alcohol in the blood]; and
  - (D) The arrestee agreed to be tested;
- (2) The sworn statement of the person responsible for maintenance of the testing equipment stating facts [which] that establish that pursuant to section 321-161 and rules adopted thereunder:
  - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
  - (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) The sworn statement of the person who conducted the test stating facts [which] 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 person’s [blood] alcohol concentration was at, or above, the prohibited level; and
  - (D) The person whose breath or blood was tested was the person arrested;
- (4) A copy of the notice of administrative revocation issued to the arrestee;
- (5) Any driver’s license taken into possession by the arresting officer; and
- (6) A listing of any prior alcohol enforcement contacts involving the arrestee.”

SECTION 5. Section 286-258, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The director shall administratively revoke the arrestee’s driver’s license if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having [a blood] an alcohol concentration of [0.10] .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.”

SECTION 6. Section 286-259, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
- (2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and
- (3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having [a blood] an alcohol concentration of [0.10] .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.”

SECTION 7. Section 286-261, Hawaii Revised Statutes, is amended to read as follows:

“**§286-261 Effective date and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice. Except as provided in section 286-264, no license shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period.

(b) The periods of administrative revocation [which] that may be imposed under this part are as follows:

- (1) Three months, if the arrestee’s driving record shows no prior alcohol enforcement contacts during the five years preceding the date of arrest;
- (2) One year if the arrestee’s driving record shows one prior alcohol enforcement contact during the five years preceding the date of arrest;
- (3) Two years if the arrestee’s driving record shows two prior alcohol enforcement contacts during the seven years preceding the date of arrest;
- (4) For life if the arrestee’s driving record shows three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest; or

- (5) For arrestees under the age of eighteen years, the period remaining until the arrestee's eighteenth birthday, or for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (c), whichever is longer.

(c) The license of an arrestee who refuses to be tested after being informed of the sanctions of this part shall be revoked under subsection (b)(1), (2), [or] and (3) for a period of one year, two years, and four years, respectively.

(d) Whenever a license is administratively revoked under this part, the offender shall be referred to a certified substance abuse counselor for an assessment of the offender's alcohol abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the offender's alcohol abuse or dependence warrants treatment, the director may so order. All costs for assessment and treatment shall be paid by the offender.

[(e) In addition to the provisions of subsections (c) and (d), the director may order the person to install an ignition interlock system as a condition precedent to relicensing pursuant to section 286-265 or to driving under a conditional permit issued pursuant to section 286-264.

(f) [(e) Alcohol enforcement contacts [which] that occurred prior to August 1, 1991, shall be counted in determining the administrative revocation period.”

SECTION 8. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a driver's license has been suspended or revoked pursuant to part XIV of chapter 286[,] except as provided in section 291-4(f), or upon a conviction of any offense pursuant to law, or, in the case of minors, suspended or revoked pursuant to part V of chapter 571, the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to any conviction of a moving violation or any administrative license suspension pursuant to chapter 291A. Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this section, under the laws of the State or ordinances of any political subdivision, a court of competent jurisdiction has discretion to revoke or suspend a driver's license but does not revoke or suspend the license, the administrator shall nevertheless after the expiration of thirty days from the date of conviction or adjudication suspend the license and shall keep the same suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

- (1) Reckless or inattentive driving, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person's license has been suspended or revoked; and
- (2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of \$1,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault.”

SECTION 9. Section 291-4, Hawaii Revised Statutes, is amended as follows:

“§291-4 Driving under the influence of intoxicating liquor. (a) 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, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person’s normal mental faculties or ability to care for oneself and guard against casualty; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with [.10] .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or [.10] .08 or more grams of [a] alcohol per two hundred ten liters of breath.

(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 the<sup>1</sup> first offense, or any offense not preceded within a 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) 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 alcoholism treatment programs; and
  - (C) Any one or more of the following:
    - (i) Seventy-two hours of community service work;
    - (ii) Not less than forty-eight hours and not more than five days 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[:], by:
  - (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] one hundred hours of community service work; or
    - (ii) Not less than forty-eight consecutive hours but not more than [sixty] fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
  - (C) A fine of not less than \$500 but not more than [\$1,000.] \$1,500.
- (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;] \$2,500;
  - (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] thirty days imprisonment of which at least forty-eight hours shall be served consecutively.

- (4) Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor, shall be considered a prior conviction.
- (5) No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same offense; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection.

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

All cost for 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 the person an application for a new driver's license for a period to be determined by the court.

(e) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted under section 286-152. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department, or other agency incurring the expense of the blood test.

(f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under part XIV of chapter 286 unless the person's license had been previously revoked under that part in the five-year period immediately preceding the revocation at issue, nor shall the requirement to provide proof of financial responsibility pursuant to section 287-20 be based upon a sentence imposed under subsection (b)(1).

[(f)] (g) 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<sup>2</sup> and the term "vehicle" shall have the same meaning as provided in section 291C-1."

SECTION 10. 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] .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the defendant's blood or .08 or more grams of alcohol per two hundred ten liters of the defendant's breath 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 found in the defendant's blood or breath 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 were [five-hundredths per cent or less by weight of alcohol in the defendant's blood,] .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of intoxicating liquor at the time of the alleged violation[.]; and
- (2) If there were in excess of [five-hundredths per cent but less than ten-hundredths per cent by weight of alcohol in the defendant's blood, such] .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that 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.

(c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291-4 or in any proceeding under part XIV of chapter 286, of relevant evidence of a person's [blood] alcohol content obtained more than three hours after an alleged violation[.]; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 11. Section 286-251, Hawaii Revised Statutes, is amended by deleting the definition "ignition interlock system".

[““Ignition interlock system” means a mechanical device certified by the director of transportation which, when affixed to the ignition system of a motor vehicle, prevents the vehicle from being started without first testing a deep-lung breath sample which indicates that the blood alcohol concentration of the vehicle's operator is less than .10 and which has been approved for use pursuant to section 321-161 and rules adopted thereunder.”]

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date; provided that the amendment to section 291-4(f) and 287-20, Hawaii Revised Statutes, shall apply to all cases pending on the effective date of this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved June 29, 1995.)

#### Notes

1. Prior to amendment “a” appeared here. “The” should be underscored.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.