

ACT 102

H.B. NO. 116

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§286- Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility. (a) If a person under arrest for driving after consuming a measurable amount of alcohol, pursuant to section 291- , refuses to submit to a breath or blood test, none shall be given, except as provided in section 286-163, but the arresting officer, 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 probable cause to believe the arrested person was under the age of twenty-one and had been operating a motor vehicle or moped upon the public highways with a measurable amount of alcohol concentration;
 - (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 within twenty days. The district judge shall hear and determine:
- (1) Whether the arresting officer had probable cause to believe that the person was under the age of twenty-one and had been operating a motor

vehicle or moped upon the public highway with a measurable amount of alcohol concentration;

- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of this section; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

(c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's operating privilege as follows:

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

(d) An order of a district court issued under this section may be appealed to the supreme court.

(e) If a legally arrested person under the age of twenty-one refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under this section or part XIV of this chapter and shall not be admissible in any other action or proceeding, whether civil or criminal.

(f) The term "measurable amount of alcohol" shall have the same meaning as provided in section 291- .'

SECTION 2. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

291E-6A

"§291- Driving after consuming a measurable amount of alcohol; persons under the age of twenty-one. (a) It shall be unlawful for any person under ~~the age of twenty-one years to drive,~~ operate, or assume actual physical control of the operation of any vehicle with a measurable amount of alcohol concentration. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been driving or was in actual physical control of a motor vehicle or moped upon the public highways with a measurable amount of alcohol. For purposes of this section, "measurable amount of alcohol" means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath.

- (b) A person who violates this section shall be sentenced as follows:
 - (1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:

- (A) The court shall impose:
 - (i) A requirement that the person and, if the person is under the age of eighteen, the person's parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and
 - (ii) One hundred eighty-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-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 one hundred eighty-day period, a re-

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(h) Any person who violates this section shall be guilty of a violation.

(i) 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, the term “alcohol enforcement contact” shall have the same meaning as in section 286-251, and the term “vehicle” shall have the same meaning as provided in section 291C-1.”

SECTION 3. Section 286-151, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The test or tests shall be administered at the request of a police officer having probable cause 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, or is under the age of twenty-one and has a measurable amount of alcohol concentration, only after:

(1) [a] A lawful arrest[.]; and

(2) [the] The person has been informed by a police officer of the sanctions under section 286- or part XIV [of this chapter].

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

SECTION 4. 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:

(1) Pursuant to section 286- or part XIV of chapter 286, except as provided in section 291-4(f)[.];

(2) Upon a conviction of any offense pursuant to law; or

(3) In the case of minors, 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 a license suspended pursuant to section 291- (b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid no-fault policy.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on December 1, 1997.

(Approved June 2, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.