

ACT 103

S.B. NO. 991

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding six new sections to part VII to be appropriately designated and to read as follows:

“§286-A Revocation of privilege to drive a motor vehicle upon refusal to submit to drug testing. (a) If a person under arrest refuses to submit to a blood or urine test for the presence of drugs under section 286-151(d) or (e), none shall be given except as otherwise provided, but the arresting officer, as soon as practicable, shall submit an affidavit to a district court judge of the circuit in which the arrest was made, stating:

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

(b) Upon receipt of the affidavit, the district court judge shall hold a hearing, as provided in section 286-B, 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 suspend the arrested person's license, permit, or any nonresident operating privilege as follows:

- (1) One year, if the arrestee's driving record shows no prior revocations under this section during the five years preceding the date of arrest;
- (2) Two years, if the arrestee's driving record shows one prior drug enforcement contact under this section during the five years preceding the date of arrest;
- (3) Four years, if the arrestee's driving record shows two prior drug enforcement contacts under this section during the seven years preceding the date of arrest; or
- (4) For life, if the arrestee's driving record shows three or more prior drug enforcement contacts under this section during the ten years preceding the date of arrest.

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

(d) Drug enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the revocation period.

(e) This section shall not preclude a finding under part XIV for failure to comply with section 286-151(b).

§286-B Hearing before a district judge. (a) 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.

- (b) The district judge shall hear and determine:

- (1) Whether the arresting officer had reasonable grounds to believe that the person had been operating a vehicle while under the influence of drugs;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of section 286-A; and
- (4) Whether the person refused to submit to a test of the person's blood or urine.

(c) For purposes of a hearing under this section, there shall be no limit on the introduction of any other competent evidence bearing on the question of whether the person was under the influence of drugs, including but not limited to personal observation by a law enforcement officer of the defendant's manner, disposition, speech, muscular movement, general appearance, or behavior.

§286-C Appeal to supreme court. An order of a district court issued under section 286-A may be appealed to the supreme court.

§286-D Interpretation of drug tests; competent evidence. In any criminal prosecution or civil proceeding relating to section 291-7, the presence of any drug that impairs a person's ability to operate a vehicle in a careful and prudent manner within three hours after the time of the alleged offense, as shown by chemical analysis or other approved analytical techniques of the defendant's blood or urine, shall be competent evidence that the defendant was under the influence of drugs at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291-7 or in any proceeding under section 286-B, of relevant evidence of a person's drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence.

§286-E Proof of refusal of drug testing; admissibility. If a legally arrested person refuses to submit to a test of the person's blood or urine, proof of refusal shall be admissible only in a hearing under section 286-B or part XIV and shall not be admissible in any other action or proceeding, whether civil or criminal.

§286-F Presence of drugs or metabolic products; admissibility. Any results reflecting the presence of drugs or metabolic products obtained from a blood or urine specimen obtained under chapter 286 shall not be admissible in any proceeding brought under chapter 329 or 712."

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by amending the title to part VII to read as follows:

"PART VII. ALCOHOL, DRUGS, AND HIGHWAY SAFETY"

SECTION 3. 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] alcohol concentration and drug content [of blood]. (a) Any person who operates a motor vehicle or moped on the public highways of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person's breath [or, blood, or urine for the purpose of determining [the alcoholic content of the person's blood.] alcohol concentration or drug content of the person's breath, blood, or urine, as applicable.

(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 only after:

- (1) [a] A lawful arrest[.]; and
- (2) [the] The person has been informed by a police officer of the sanctions under part XIV [of this chapter.] and section 286-A.

(c) If there is probable cause to believe that a person is in violation of section 291-4, then the 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.] alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291-7, then the person shall have the option to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any scheduled drug as provided in section 291-7 or its metabolic products or both. The person shall be informed of the sanctions of section 286-A for failure to take either test.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the officer has probable cause to believe that the person was driving under the influence of any drug under section 291-7 or the combined influence of alcohol and drugs and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of drugs. The officer shall state in the officer's report the facts upon which that belief is based. The person shall have the option to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol content. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c)."

SECTION 4. Section 286-152, Hawaii Revised Statutes, is amended to read as follows:

“§286-152 Persons qualified to take blood specimen. No person, other than a physician, registered nurse, phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the [alcoholic] alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.”

SECTION 5. Section 286-153, Hawaii Revised Statutes, is amended to read as follows:

“§286-153 Additional tests. The person tested may [have] choose any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 [of the person's own choosing] to withdraw blood and also may choose any qualified person [of the person's own choosing] to administer a test or tests in addition to any administered at the direction of a police officer. The result of the test or tests may be used as provided in section 291-5[.] or 286-D. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a police officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the police officer shall be made available to that person.”

SECTION 6. Section 286-162.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§286-162.5~~]]~~ **Authorization to establish intoxication and drug control roadblock programs.** The police departments of the respective counties are authorized to establish and implement intoxication and drug control roadblock programs in accordance with the minimum standards and guidelines provided in section 286-162.6. The chief of police in any county establishing an intoxication and drug control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 286-162.6.”

SECTION 7. Section 286-162.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Every intoxication and drug 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 8. Section 286-163, Hawaii Revised Statutes, is amended to read as follows:

“**§286-163 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death.** (a) Nothing in this part shall be construed to prevent the police from obtaining a sample of breath [or], blood, or urine as evidence of intoxication or influence of drugs from the driver of any vehicle involved in a collision resulting in injury to or death of any person.

(b) In the event of a collision resulting in injury or death, and the police have probable cause to believe that a person involved in the incident has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7, the police shall request that a sample of blood or urine be recovered from the driver or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7.

(c) The police shall make [this] the request under subsection (b) to the hospital or medical facility treating the person from whom the police request that the

blood or urine be recovered. Upon the request of the police that blood or urine be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person represents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall provide the police with the blood or urine sample requested, recover the sample in compliance with section 321-161, and assign a person authorized under section 286-152 to withdraw the blood sample or obtain the urine. Any person complying with a request to withdraw the blood or obtain the urine under the direction of a police officer pursuant to this section shall be exempt from liability pursuant to section 663-1.9 as a result thereof.”

SECTION 9. Section 291-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person whose driver’s license has been revoked, suspended, or otherwise restricted pursuant to [part XIV of] chapter 286 or section 291-4 or 291-7 shall operate a motor vehicle [either] upon the highways of this State either while the person’s license remains suspended or revoked or in violation of the restrictions placed on the person’s license. The period of suspension or revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 10. Section 321-161, Hawaii Revised Statutes, is amended to read as follows:

“**§321-161 Chemical testing for [blood-alcohol] alcohol concentration[.] or drug content.** (a) The department of health shall establish and administer a statewide program relating to chemical testing of [blood-alcohol] alcohol concentrations or drug content for the purposes of [chapter] chapters 286, [part XIV, and chapters] 291, and 291C, with the consultation of the state director of transportation. Under the program, appropriate procedures shall be established for specifying:

- (1) The qualifications of personnel who administer chemical tests used to determine [blood-alcohol] alcohol concentrations[;] or drug content;
- (2) The procedures for specimen selection, collection, handling, and analysis; and
- (3) The manner of reporting and [tabulation of] tabulating the results.

(b) The director of health may adopt rules [and regulations] pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 12. In codifying the new sections added to chapter 286, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections’ designations in this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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SECTION 14. This Act shall take effect on January 1, 1998.
(Approved June 2, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.