

**ACT 84**

H.B. NO. 3082

A Bill for an Act Relating to Administrative Revocation of Driver's License.

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

SECTION 1. The purpose of this Act is to amend the provisions of chapter 286, Hawaii Revised Statutes, where appropriate to make it apply to section 291-4.4, Hawaii Revised Statutes.

SECTION 2. Section 286-251, Hawaii Revised Statutes, is amended by amending the definitions of “administrative revocation”, “arrestee”, and “license” to read as follows:

““Administrative revocation” means termination of the arrestee’s license pursuant to this part and does not include any revocation imposed under section 291-4[.] or 291-4.4.

“Arrestee” means the person arrested for the<sup>1</sup> violation of section 291-4 or 291-4.4 who is subject to administrative revocation pursuant to this part.

“License” means any driver’s license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State and includes:

- (1) Any [temporary license] learner’s permit or instruction permit;
- (2) The privilege of any person to drive a motor vehicle regardless of whether the persons<sup>2</sup> holds a valid license;
- (3) Any nonresident’s operating privilege; and
- (4) The eligibility, including future eligibility, of any person to apply for the privilege to drive a motor vehicle.”

SECTION 3. Section 286-253, Hawaii Revised Statutes, is amended to read as follows:

“**§286-253 Criminal prosecution.** (a) Criminal prosecution under section 291-4 or 291-4.4 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial evidence provided by the arrestee during the administrative proceeding<sup>3</sup> shall not be admissible against the arrestee in any proceedings<sup>4</sup> under section 291-4 or 291-4.4 arising out of the same occurrence.

(b) When a person’s license is revoked under this part and the person also is convicted of an offense under section 291-4 or 291-4.4 arising out of the same occurrence, the total period of revocation or suspension imposed in the two proceedings shall not exceed the longer period of revocation or suspension imposed in either proceeding. If the person is convicted under section 291-4 or 291-4.4 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first.”

SECTION 4. Section 286-254, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

- (1) The statutory authority for administrative revocation;
- (2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291-4[;] or 291-4.4; and
- (3) That criminal charges filed pursuant to section 291-4 or 291-4.4 may be prosecuted concurrently with the administrative action.”

SECTION 5. Section 286-255, Hawaii Revised Statutes, is amended to read as follows:

**“§286-255 Arrest; procedures.** Whenever a person is arrested for a violation of 291-4[,] or 291-4.4, on a determination by the arresting officer that:

- (1) There was reasonable suspicion to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6; and
- (2) There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;

the arresting officer shall immediately take possession of any license held by the person and request the arrestee to take a test for concentration of alcohol in the blood. The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall [also] inform the person of the sanctions under this part, including the sanction for refusing to take a breath or<sup>5</sup> blood test. The arresting officer shall then complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless at the time of arrest the arrestee was unlicensed, the arrestee's license was revoked or suspended, or the arrestee had no license in the arrestee's possession.”

SECTION 6. Section 286-257, Hawaii Revised Statutes, is amended to read as follows:

**“§286-257 Sworn statements of law enforcement officials.** (a) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 and submits to a test that establishes that the arrestee's alcohol concentration was .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 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; and
  - (D) The arrestee agreed to be tested;
- (2) The sworn statement of the person responsible for the maintenance of the testing equipment stating facts 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 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 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.

(b) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 and refuses to submit to a test to determine alcohol concentration in the blood, 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 probable consequences of refusing to be tested for concentration of alcohol in the blood; and
  - (D) The arrestee refused to be tested;
- (2) A copy of the notice of administrative revocation and the temporary permit issued to the arrestee;
- (3) Any driver's license taken into possession; and
- (4) A listing of all alcohol enforcement contacts involving the arrestee."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 26, 1998.)

#### Notes

- 1. "The" should be underscored.
- 2. Prior to amendment "person" appeared here.
- 3. Prior to amendment "proceedings" appeared here.
- 4. Prior to amendment "proceeding" appeared here.
- 5. Prior to amendment "a" appeared here.