

ACT 78

H.B. NO. 212

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. The legislature finds that serious motor vehicle collisions involving child passengers are on the increase. Many of these collisions have involved a driver who consumed intoxicating liquor and then operated a motor vehicle. In several recent incidents, child passengers of vehicles driven by such drivers have been killed or severely injured. Therefore, the legislature finds that stronger penalties are needed to deter persons who would endanger their child passengers by "drinking and driving."

Accordingly, it is the purpose of this Act to impose an additional, stiffer fine (in addition to the existing penalties for driving under the influence of intoxicating liquor) on any person age eighteen years or over convicted of driving under the influence of intoxicating liquor while having in the vehicle a passenger younger than fifteen years of age. The Act also clarifies that a conviction under section 291-4.4, Hawaii Revised Statutes (habitually driving under the influence), counts as a prior driving under the influence of intoxicating liquor offense for sentencing purposes.

SECTION 2. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 first offense, or any offense not preceded within a five-year period by a conviction for driving under the influence of intoxicating liquor under this section[,], or section 291-4.4 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] that occurs within five years of a prior conviction for driving under the influence of intoxicating liquor under this section[,], or section 291-4.4 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 one hundred hours of community service work; or
- (ii) Not less than forty-eight consecutive hours but not more than 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 \$1,500.
- (3) For an offense [which] that occurs within five years of two prior convictions for driving under the influence of intoxicating liquor under this section[,] or section 291-4.4 by:
 - (A) A fine of not less than \$500 but not more than \$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 thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
- (4) Any person eighteen years of age or older, who is convicted under this section and who operated or assumed actual physical control of a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500, and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person convicted under this section shall not exceed thirty days.

[(4)] Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor[,] under this section or section 291-4.4 shall be considered a prior conviction[.] for purposes of imposing sentence under this section.

[(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."

SECTION 3. Section 291-4.4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purposes of this section, a driving under the influence offense means a violation of this section or section 291-4, 291-7, or 707-702.5, or violation of laws in another jurisdiction [which] that requires proof of each element of the offenses punishable under either this section or section 291-4, 291-7, or 707-702.5 if committed in Hawaii."

SECTION 4. No person arrested for a violation of section 291-4, Hawaii Revised Statutes, prior to the effective date of this Act shall be sentenced to an additional mandatory \$500 fine or to an additional mandatory term of forty-eight hours of imprisonment under this Act. This Act shall apply, for purposes of determining prior convictions under sections 291-4 and 291-4.4, Hawaii Revised Statutes, to any person convicted under section 291-4 or 291-4.4 prior to its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 21, 1999.)