

## ACT 113

S.B. NO. 2628

A Bill for an Act Relating to the Use of Intoxicants.

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

SECTION 1. Section 291E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer of the sanctions under ~~[part III and]~~ section 291E-41 or 291E-65[-], as applicable to the offense.”

SECTION 2. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291E-61 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test [ø], a blood test, or both, pursuant to section 291E-11. In the case of a drug related offense, the person shall elect to take a blood test [ø], a urine test, or both, pursuant to section 291E-11. The law enforcement officer also shall inform the person of the sanctions under ~~[this part,]~~ section 291E-41, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person 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 person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession."

SECTION 3. Section 291E-36, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-36 Documents required to be submitted for administrative review; sworn statements.** (a) Whenever a respondent has been arrested for a violation of section 291E-61 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
  - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
  - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
  - (C) The respondent was informed of:
    - (i) The sanctions of ~~[this part;]~~ section 291E-41;
    - (ii) The possibility that criminal charges may be filed; and
    - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content; and
  - (D) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for 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) In a case involving an alcohol related offense, 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 respondent's alcohol concentration was at, or above, the prohibited level; and
  - (D) The person whose breath or blood was tested is the respondent;
  - (4) In a case involving a drug related offense, the sworn statement of the person responsible for 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 in drug testing;
    - (B) The person conducting the test had been trained and, at the time of the test, 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;
  - (5) In a case involving a drug related offense, 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) At the time the test was conducted, the person was trained 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 the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
    - (D) The person whose blood or urine was tested is the respondent;
  - (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
  - (7) Any license, and motor vehicle registration and number plates if applicable, taken into possession by the law enforcement officer; and
  - (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.
- (b) Whenever a respondent has been arrested for a violation of section 291E-61 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:
- (1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:
    - (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20;
    - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
    - (C) The respondent was informed of:
      - (i) The sanctions of [~~this part;~~] section 291E-41;
      - (ii) The possibility that criminal charges may be filed; and
      - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
    - (D) The respondent refused to be tested;

- (2) A copy of the notice of administrative revocation issued to the respondent;
- (3) Any driver's license, and motor vehicle registration and number plates if applicable, taken into possession; and
- (4) A listing of all alcohol and drug enforcement contacts involving the respondent."

SECTION 4. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The director shall conduct the hearing and have authority to:

- (1) Administer oaths and affirmations;
- (2) Examine witnesses and take testimony;
- (3) Receive and determine the relevance of evidence;
- (4) Issue subpoenas~~[-, take depositions, or cause depositions or interrogatories to be taken];~~
- (5) Regulate the course and conduct of the hearing; and
- (6) Make a final ruling."

SECTION 5. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) The sworn statements provided in section 291E-36 shall be admitted into evidence. The director shall consider the sworn statements in the absence of the law enforcement officer or other person. Upon written notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement officer or other person who made a sworn statement, the director shall issue a subpoena for the officer or other person to appear at the hearing. Personal service upon the law enforcement officer or other person who made a sworn statement shall be made no later than forty-eight hours prior to the hearing time. If the officer or other person cannot appear, the officer or other person at the discretion of the director, may testify by telephone."

SECTION 6. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

"(k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit, or temporary motor vehicle registration and temporary number plates, if applicable. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week. The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (h), constitutes good cause for a continuance."

SECTION 7. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (2) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- (3) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent's record shows two prior alcohol enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;
- (4) Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (d), whichever is longer[-] and such respondents shall not qualify for a conditional permit;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later."

SECTION 8. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section 291E-41(b)(1), may issue a conditional license permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period; provided that one or more of the following conditions are met:

- (1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or
- (2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 291E-41.

[The] Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to [a];

- (1) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other

than the instant revocation for which the respondent is requesting a conditional license permit under this section[-]; or

- (2) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on October 1, 2002.

(Approved May 31, 2002.)