

## ACT 160

S.B. NO. 594

A Bill for an Act Relating to Neurotrauma.

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

SECTION 1. The legislature finds that every year two million six hundred sixty thousand Americans experience neurotrauma injury. About half of these cases result in short-term disability. Of neurotrauma injury survivors, three hundred seventy-five thousand to ninety thousand endure life-long debilitating losses of function.

Neurotrauma injury is defined as:

A severe chronic disability of a person that is attributable to an injury to the central nervous system, such as traumatic brain injury and spinal cord injury, and likely to continue indefinitely. Neurotrauma can include other neurological dysfunctions but does not include substance misuse and abuse, Alzheimer's disease, or the infirmities of aging. Neurotrauma or other neurological deficits result in substantial functional limitations in two or more of the following areas:

- (1) Self-care;
- (2) Speech, hearing, or communication;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency.

The legislature further finds that the physical consequences of neurotrauma injury include impairment of speech, vision and hearing loss, headaches, muscle spasticity, paralysis, and seizure disorders. The cognitive consequences of neurotrauma injury may include memory deficit, limited concentration, impaired perception and communication, and difficulties with reading, writing, planning, and

judgment. The psychosocial-behavioral-emotional consequences of neurotrauma injury include fatigue, mood swings, denial, anxiety, depression, lack of motivation, and decreased social skills.

Advances in neurosurgery and rehabilitation therapy have dramatically increased the number of individuals who survive neurotrauma injury and have made the hope of returning to the community more realistic. However, little has been done to assist neurotrauma injury survivors to adjust to life after the injury.

In Hawaii, the Hawaii Health Information Corporation estimates that thirty-five hundred people are discharged annually from Hawaii's hospitals with neurotrauma injuries. The State also lacks effective and affordable treatment and rehabilitation programs and community support to facilitate independent living. Support programs for family members and caregivers are also lacking.

In 1997, the legislature passed Act 333 that created the state traumatic brain injury advisory board to advise the department of health in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders of the brain. As a result of the board's effective actions, it became clear that there exists a large community within Hawaii of individuals with neurotrauma injuries. To best address the health of Hawaii's citizens and specifically the needs of individuals with neurotrauma disabilities, it is necessary to create a neurotrauma advisory board, with a strong mandate to advise the department on programs and resources to effectively meet the needs of these constituents.

As a subset of the neurotrauma board, the traumatic brain injury advisory board would continue to exist and advocate on behalf of the individuals affected by disorders and disabilities of the brain, and would advise the Department of Health in consultation with the newly created neurotrauma board.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
NEUROTRAUMA**

§ -1 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Board” means the neurotrauma advisory board established under section -3.

“Department” means department of health.

“Director” means the director of health.

“Neurotrauma” means a severe chronic disability of a person that is attributable to an injury to the central nervous system, such as traumatic brain injury and spinal cord injury, and likely to continue indefinitely. Neurotrauma can include other neurological dysfunctions but does not include substance misuse and abuse, Alzheimer's disease, or the infirmities of aging. Neurotrauma or other neurological deficits result in substantial functional limitations in two or more of the following areas:

- (1) Self-care;
- (2) Speech, hearing, or communication;
- (3) Learning;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living; and
- (7) Economic sufficiency.

§ **-2 Neurotrauma system.** The department of health shall develop, lead, administer, coordinate, monitor, evaluate, and set direction for a comprehensive system to support and provide services for survivors of neurotrauma injuries.

§ **-3 Neurotrauma advisory board.** (a) There is established within the department a neurotrauma advisory board to advise the director in implementing this chapter.

(b) The board shall consist of twenty-one members to be appointed by the director. The director shall designate a member to be the chairperson of the advisory board. The director or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of members, five shall be appointed for a term of one year, five for a term of two years, five for a term of three years, and six for a term of four years. In establishing the advisory board, the director shall appoint:

- (1) Five survivors of neurotrauma or their family members (two each for traumatic brain injuries and spinal cord injuries);
- (2) Two members of the Brain Injury Association of Hawaii;
- (3) One member representing the state traumatic brain injury advisory board;
- (4) Three members representing private sector businesses that provide services for neurotrauma survivors;
- (5) One member representing trauma centers that provide services for neurotrauma survivors;
- (6) Two members of the Spinal Cord Association;
- (7) Two representatives for persons with stroke; and
- (8) Five at-large members.

(c) The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.

§ **-4 Neurotrauma special fund.** (a) There is established the neurotrauma special fund to be administered by the department with advisory recommendations from the neurotrauma advisory board. The fund shall consist of:

- (1) Moneys raised pursuant to the surcharges levied under sections 291-11.5, 291-11.6, 291C-12, 291C-12.5, 291C-12.6, 291C-102, and 291E-61;
- (2) Federal funds granted by Congress or executive order, for the purpose of this chapter; provided that the acceptance and use of federal funds shall not commit state funds for services and shall not place an obligation upon the legislature to continue the purpose for which the federal funds are made available; and
- (3) Funds appropriated by the legislature for the purpose of this chapter.

(b) The fund shall be used for the purpose of funding and contracting for services relating to neurotrauma as follows:

- (1) Education on neurotrauma;
- (2) Assistance to individuals and families to identify and obtain access to services;
- (3) Creation of a registry of neurotrauma injuries within the State to identify incidence, prevalence, individual needs, and related information; and
- (4) Necessary administrative expenses to carry out this chapter not to exceed two per cent of the total amount collected.

(c) Moneys in the neurotrauma special fund may be appropriated to obtain federal and private grant matching funds, subject to section -4(a)(2).

(d) In administering the fund, the director shall maintain records of all expenditures and disbursements made from the neurotrauma special fund.

(e) The director shall submit to the legislature an annual report on the activities under the neurotrauma special fund no later than twenty days prior to the convening of each regular session.

§ -5 Rules. The director may adopt rules under chapter 91 necessary to carry out this chapter.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;
- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; and
- (31) Tobacco enforcement special fund established by section 28-15; and

(32) Neurotrauma special fund under section -4; shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees’ retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special fund established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund under section 231-3.2;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649;
- (24) High technology special fund under section 206M-15.5;
- (25) Public schools special fees and charges fund under section 302A-1130(f);
- (26) Cigarette tax stamp enforcement special fund established by section 28-14;
- (27) Cigarette tax stamp administrative special fund established by section 245-41.5; [and]
- (28) Tobacco enforcement special fund established by section 28-15; and
- (29) Neurotrauma special fund under section -4;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

- (1) For a first conviction, the person shall:
  - (A) Be fined not more than \$100;
  - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
    - (i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and
    - (ii) The class shall not exceed four hours; [~~and~~]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund;
- (2) For a conviction of a second offense, the person shall:
  - (A) Be fined not more than \$200;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; [~~and~~]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education; and<sup>1</sup>
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and
- (3) For a conviction of a third or subsequent offense, the person shall:
  - (A) Be fined not more than \$500;
  - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class; [~~and~~]
  - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education[-]; and
  - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund.”

SECTION 6. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A person who fails to comply with the requirements of this section shall be subject to a fine of \$45 for each violation[-] and a surcharge of \$10 which shall be deposited into the neurotrauma special fund.”

SECTION 7. Section 291C-12, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-12 Accidents involving death or serious bodily injury.** (a) The driver of any vehicle involved in an accident resulting in serious bodily injury to or death of any person shall immediately stop the vehicle at the scene of the accident or

as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class B felony.

(c) The license or permit to drive and any nonresident operating privilege of the person so convicted shall be revoked.

(d) For any violation under this section, a surcharge of \$500 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 8. Section 291C-12.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§291C-12.5** ~~[H]~~ **Accidents involving substantial bodily injury.** (a) The driver of any vehicle involved in an accident resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class C felony.

(c) For any violation under this section, a surcharge of \$250 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 9. Section 291C-12.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§291C-12.6** ~~[H]~~ **Accidents involving bodily injury.** (a) The driver of any vehicle involved in an accident resulting in bodily injury to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of section 291C-14. Every such stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a misdemeanor.

(c) For any violation under this section, a surcharge of \$100 shall be imposed, in addition to any other penalties, and shall be deposited into the neuro-trauma special fund.”

SECTION 10. Section 291C-102, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-102 Noncompliance with speed limit prohibited.** (a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under the director’s jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.

(c) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.”

SECTION 11. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person committing the offense of operating a vehicle under the influence of an intoxicant 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 an offense under this section or section 291E-4(a):
  - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; [and]
  - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle<sup>2</sup> during the suspension period, 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 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 substance abuse 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[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:<sup>3</sup>
  - (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days 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[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
  - (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation of license and privilege to operate a vehicle 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[-]; and
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;



- (4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section 291E-4(a):
- (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
  - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; ~~and~~
  - (C) Referral to a substance abuse counselor as provided in subsection (d)[-]; ~~and~~
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund.
- An offense under this paragraph is a class C felony.
- (5) Any person eighteen years of age or older who is convicted under this section and who operated 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 that the total term of imprisonment for a person convicted<sup>4</sup> under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.’’

SECTION 12. Section 321-28, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§321-28 Traumatic brain injury advisory board.**~~]]~~ There is established within the department of health the traumatic brain injury advisory board. The advisory board, in consultation with the neurotrauma advisory board, shall advise the department in the development and implementation of a comprehensive plan to address the needs of persons affected by disorders and disabilities that involve the brain. Further, the advisory board, in consultation with the neurotrauma advisory board, shall advise the department of the feasibility of establishing agreements with private sector agencies to develop services for persons with brain injuries.

The advisory board shall consist of at least nine members who shall be appointed by the director of health in accordance with section 26-35. The director of health shall designate a member to be the chairperson of the advisory board. The director of health or a designee shall serve as an ex officio nonvoting member of the advisory board. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years. In establishing the advisory board, the director of health shall appoint at least:

- (1) Two members representing private sector businesses that provide services for brain injured persons;
- (2) Two survivors of traumatic brain injury; and
- (3) One member representing trauma centers that provide services for brain injured persons.

The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.’’

SECTION 13. There is appropriated out of the neurotrauma special fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2002-2003 to be expended for the purpose of chapter , Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of health.

## **ACT 160**

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2002; provided that sections 5 through 11 shall take effect on January 1, 2003.

(Approved June 7, 2002.)

### **Notes**

1. So in original.
2. Prior to amendment “with absolute prohibition from operating a vehicle” appeared here.
3. “By” should be underscored.
4. Prior to amendment “sentenced” appeared here. “Convicted” should be underscored.