

ACT 231

S.B. NO. 1804

A Bill for an Act Relating to the Trauma System Special Fund.

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

PART I

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

“§291- Trauma system surcharge. (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense; and
- (2) The maximum of which may be \$100 if the violation is an offense under section 291-12.
 - (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.
 - (c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

“§291C- Trauma system surcharge. (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
- (2) The maximum of which may be \$100 if the violation is an offense under sections 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16, 291C-103, 291C-104, or 291C-105;
- (3) The maximum of which may be \$500 if the violation is an offense under section 291C-12; and
- (4) The maximum of which may be \$250 if the violation is an offense under section 291C-12.5.
 - (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.
 - (c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

SECTION 3. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to part I, to be appropriately designated and to read as follows:

“§291E- Trauma system surcharge. (a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
- (2) The maximum of which may be \$25 if the violation is an offense under sections 291E-61(a)(1), 291E-61(a)(3), or 291E-61(a)(4);
- (3) The maximum of which may be \$50 if the violation is an offense under sections 291E-61(a)(2), or 291E-61.5 or the offense under 291E-61(a)(3) or 291E-61(a)(4) was committed by a highly intoxicated driver as defined by section 291E-1, or if the offense under 291E-61(a)(3) or 291E-61(a)(4) is a second or subsequent offense that occurred within five years of the first offense.
 - (b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.

(c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.”

PART II

SECTION 4. 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;
 - (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;
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders;
- (2) For a conviction of a second offense committed within three years of any other conviction under this section, the person shall:
 - (A) Be fined not less than \$100 but 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;
 - (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;
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders; and
- (3) For a conviction of a third or subsequent offense committed within three years of any other conviction under this section, the person shall:
 - (A) Be fined not less than \$200 but 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;
 - (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;¹

- (E) Pay up to a \$10 surcharge to be deposited into the trauma system fund if the court so orders."

SECTION 5. 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 and², a surcharge of \$10 which shall be deposited into the neurotrauma special fund, and may be subject to a surcharge of up to \$10 which shall be deposited into the trauma system special fund."

SECTION 6. Section 291-12, Hawaii Revised Statutes, is amended to read as follows:

"**§291-12 Inattention to driving.** Whoever operates any vehicle without due care or in a manner as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than \$500 or imprisoned not more than thirty days, or both, and may be subject to a surcharge of up to \$100 which shall be deposited into the trauma system 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 neurotrauma special fund.

(e) For any violation under this section, a surcharge of up to \$500 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

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

"**§291C-12.5 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 neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to \$250 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

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

“§291C-12.6 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 neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 10. Section 291C-13, Hawaii Revised Statutes, is amended to read as follows:

“§291C-13 Accidents involving damage to vehicle or property. The driver of any vehicle involved in an accident resulting only in damage to a vehicle or other property that is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible, but shall 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. For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.”

SECTION 11. Section 291C-14, Hawaii Revised Statutes, is amended to read as follows:

“§291C-14 Duty to give information and render aid. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle or other property which is driven or attended by any person shall give the driver’s name, address, and the registration number of the vehicle the driver is driving, and shall upon request and if available exhibit the driver’s license or permit to drive to any person injured in the accident or to the driver or occupant of or person attending any vehicle or other property damaged in the accident and shall give such information and upon request exhibit such license or permit to any police officer at the scene of the accident or who is investigating the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary, or if such carrying is requested by the injured person; provided that if the

vehicle involved in the accident is a bicycle, the driver of the bicycle need not exhibit a license or permit to drive.

(b) In the event that none of the persons specified is in condition to receive the information to which they otherwise would be entitled under subsection (a), and no police officer is present, the driver of any vehicle involved in the accident after fulfilling all other requirements of section 291C-12, 291C-12.5, or 291C-12.6, and subsection (a) of this section, insofar as possible on the driver's part to be performed, shall forthwith report the accident to the nearest police officer and submit thereto the information specified in subsection (a).

(c) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 12. Section 291C-15, Hawaii Revised Statutes, is amended to read as follows:

"[§291C-15] Duty upon striking unattended vehicle or other property. The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to the other vehicle or property shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or other property of the driver's name, address, and the registration number of the vehicle the driver is driving or shall attach securely in a conspicuous place in or on such vehicle or other property a written notice giving the driver's name, address, and the registration number of the vehicle the driver is driving and shall without unnecessary delay notify the nearest police office. Every such stop shall be made without obstructing traffic more than is necessary. For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 13. Section 291C-16, Hawaii Revised Statutes, is amended to read as follows:

"§291C-16 Immediate notice of accident. (a) The driver of a vehicle involved in an accident resulting in injury or death of any person or total damage to all property to an apparent extent of \$3,000 or more shall immediately by the quickest means of communication give notice of the accident to the nearest police office. If sent to the site of the accident, a responding police officer shall file a written report if it appears at the time that the accident has resulted in the injury or death of any person, or total damage to all property to an apparent extent of \$3,000 or more.

(b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in subsection (a) and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(c) For any violation under this section, a surcharge of up to \$100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund."

SECTION 14. Section 291C-103, Hawaii Revised Statutes, is amended to read as follows:

"§291C-103 Racing on highways. (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed

or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test, or exhibition prohibited by this section.

(b) "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

(c) "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(d) "Exhibition of speed or acceleration" means the sudden acceleration of a vehicle resulting in the screeching of the vehicle's tires which is done to intentionally draw the attention of persons present toward the vehicle.

(e) Any person who violates this section, except subsection (d), shall be fined not more than \$500 or imprisoned not more than six months, or both. Any person who violates subsection (d) shall be fined not more than \$500 or be sentenced to perform community service, or both.

(f) Any person who violates this section while operating a vehicle at a speed exceeding the posted speed limit by thirty miles per hour or more shall be subject to a fine of not more than \$2,000, a term of imprisonment of not more than one year, or both; provided that the following additional penalties shall also apply:

- (1) For an offense that occurs within five years of a prior conviction, a one-year license suspension;
- (2) For an offense that occurs within five years of two prior convictions:
 - (A) A three-year license suspension; and
 - (B) A vehicle owned by the defendant and used in the commission of the offense which has been used in at least two prior offenses that resulted in convictions may be ordered by the court to be subject to forfeiture under chapter 712A.
- (3) For all offenses under this section, a surcharge of up to \$100 may be deposited in the trauma system special fund if the court so orders."

SECTION 15. Section 291C-104, Hawaii Revised Statutes, is amended to read as follows:

"§291C-104 Speeding in a school zone or construction area. (a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a school zone or a construction area; provided that if the person drives a motor vehicle at a speed greater than thirty miles an hour or more over the maximum speed limit established in subsection (b), or over eighty miles per hour or more in a school zone or a construction zone, the provisions of section 291C-105 shall control. Appropriate law enforcement personnel may enforce the maximum speed limits established for school zones and construction areas.

(b) Section 291C-102 notwithstanding, the director of transportation and the counties, in their respective jurisdictions, shall establish maximum speed limits for school zones and construction areas and shall require the owner, general contractor, or other person responsible for construction to provide proper signs in construction areas. The director of transportation shall place official signs in school zones.

Signs posted pursuant to this subsection shall be plainly visible at all times under ordinary traffic conditions.

(c) Any person who violates this section shall be fined \$250 and may be charged with a surcharge of up to \$100 to be deposited into the trauma system special fund.³

(d) For purposes of this section:

“Construction area” includes any area in which there is occurring the installation, construction, or demolition of connections for streets, roads, driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping, or grading within the highway rights-of-way, including aboveground and underground utility work, excavation and backfilling of trenches or other openings in state highways, the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, or any other highway improvements.

“School zone” means every street and all public property in the vicinity of a school as designated by the department of transportation and the counties, in their respective jurisdictions.

(e) The director shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.”

SECTION 16. Section 291C-105, Hawaii Revised Statutes, is amended to read as follows:

“§291C-105 Excessive speeding. (a) No person shall drive a motor vehicle at a speed exceeding:

- (1) The applicable state or county speed limit by thirty miles per hour or more; or
- (2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

(b) For the purposes of this section, “the applicable state or county speed limit” means:

- (1) The maximum speed limit established by county ordinance;
- (2) The maximum speed limit established by official signs placed by the director of transportation on highways under the director’s jurisdiction; or
- (3) The maximum speed limit established pursuant to section 291C-104 by the director of transportation or the counties for school zones and construction areas in their respective jurisdictions.

(c) Any person who violates this section shall be guilty of a petty misdemeanor and shall be sentenced as follows without the possibility of probation or suspension of sentence:

- (1) For a first offense not preceded by a prior conviction for an offense under this section in the preceding five years:
 - (A) A fine of not less than \$500 and not more than \$1,000;
 - (B) Thirty-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the thirty-day prompt suspension of license, a minimum fifteen-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the thirty-day period, a restriction on the license that allows the person to drive for limited work-related purposes;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (E) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders;

- (E)² (F) An assessment for driver education pursuant to section 286G-3; and
- (F)² (G) Either one of the following:
- (i) Thirty-six hours of community service work; or
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, by:
- (A) A fine of not less than \$750 and not more than \$1,000;
 - (B) Prompt suspension of license and privilege to operate a vehicle for a period of thirty days with an absolute prohibition from operating a vehicle during the suspension period;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (E) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders;
- (E)² (F) An assessment for driver education pursuant to section 286G-3; and
- (F)² (G) Either one of the following:
- (i) Not less than one hundred twenty 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
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section, by:
- (A) A fine of \$1,000;
 - (B) Revocation of license and privilege to operate a vehicle for a period of not less than ninety days but not more than one year;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) No fewer than ten days but no more than thirty days of imprisonment of which at least forty-eight hours shall be served consecutively;
 - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (F) May be charged a surcharge of up to \$100 to be deposited into the trauma system special fund if the court so orders; and
- (F)² (G) An assessment for driver education pursuant to section 286G-3.”

SECTION 17. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

“§291E-61 Operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person’s normal mental faculties or ability to care for the person and guard against casualty;
- (2) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
- (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or

- (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.
- (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) Except as provided in [paragraph]² (2), 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;
 - (B) Ninety-day prompt suspension of license and privilege to operate a vehicle 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;
 - (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; and
 - (E) May be charged a surcharge of up to \$25 to be deposited into the trauma system special fund if the court so orders;
 - (2) For a first offense committed by a highly intoxicated driver, or for any offense committed by a highly intoxicated driver 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;
 - (B) Prompt suspension of a license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;
 - (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; and
 - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
 - (3) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
 - (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;
 - (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; and
 - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders;
- (4) 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;
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; ~~and~~²
 - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders; and
 - ~~(E)~~² (F) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- (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 under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (3), or (4).
- (c) Notwithstanding any other law to the contrary, any:
- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
 - (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or
 - (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5;

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently

reversed, the person's license and privilege to operate a vehicle shall be suspended or revoked as provided in this section.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(e) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(h) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 18. Section 291E-61.5, Hawaii Revised Statutes, is amended to read as follows:

"§291E-61.5 Habitually operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
 - (A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
 - (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
 - (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
 - (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

"Convicted three or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
- (3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

A person has the status of a "habitual operator of a vehicle while under the influence of an intoxicant" if the person has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

(c) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(d) For a conviction under this section, the sentence shall be either:

- (1) An indeterminate term of imprisonment of five years; or
- (2) A term of probation of five years, with conditions to include:
 - (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;
 - (C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;¹ and
 - (E) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders.

In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A, provided that the department of transportation shall provide storage for vehicles forfeited under this subsection.

(e) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a

series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(h) As used in this section, the term “examiner of drivers” has the same meaning as provided in section 286-2.”

SECTION 19. Section 291C-161, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every person convicted under or found in violation of section 291C-12, 291C-12.5, 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16,⁴ 291C-72, 291C-73, 291C-95, 291C-102, 291C-103, 291C-104, or 291C-105 shall be sentenced or fined in accordance with those sections.”

SECTION 20. Section 321-22.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[(§)321-22.5]~~ **Trauma system special fund.** (a) There is established within the state treasury a special fund to be known as the trauma system special fund to be administered and expended by the department of health. The fund shall consist of:

- (1) Surcharges collected pursuant to sections 291- , 291C- , and 291E- ;
- (2) Cigarette tax revenues designated under section 245-15;
- (3) 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;
- (4) Funds appropriated by the legislature for this purpose, including grants-in-aid;
- (5) Grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund; and
- (6) Interest on and other income from the fund, which shall be separately accounted for.

Moneys in the trauma system special fund shall not lapse at the end of the fiscal year. Expenditures from the trauma system special fund shall be exempt from chapters 103D and 103F.

(b) The moneys in the trauma system special fund shall be used by the department to support the continuing development and operation of a comprehensive state trauma system. The trauma system special fund shall be used to subsidize the documented costs for the comprehensive state trauma system, including but not limited to the following:

- (1) Costs of under-compensated and uncompensated trauma care incurred by hospitals providing care to trauma patients; and
- (2) Costs incurred by hospitals providing care to trauma patients to maintain on-call physicians for trauma care.

The money in the trauma system special fund shall not be used to supplant funding for trauma services authorized prior to July 1, 2006, and shall not be used for ambulance or medical air transport services.

(c) ~~Interest and investment earnings attributable to the moneys in the trauma system special fund, federal funding, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund shall be deposited into the trauma system special fund.~~

(d) Disbursements from the fund shall be made in accordance with a methodology established by the department of health to calculate costs incurred by a

hospital providing care to trauma patients that are eligible to receive reimbursement under subsection (d). The methodology shall take into account:

- (1) Physician on-call coverage that is demonstrated to be essential for trauma services within the hospital;
- (2) Equipment that is demonstrated to be essential for trauma services within the hospital;
- (3) The creation of overflow or surge capacity to allow a trauma center to respond to mass casualties resulting from an act of terrorism or natural disaster; and
- (4) All other hospital services and resources that are demonstrated to be essential for trauma services within the hospital.

The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section~~[-, including the methodology for disbursements from the trauma system special fund].~~

~~[(e)] (d)~~ To receive reimbursement, a hospital providing care to trauma patients shall apply to the trauma system special fund on a form and in a manner approved by the department; provided that recipients of reimbursements from the trauma system special fund shall be subject to the following conditions:

- (1) The recipient of a reimbursement shall:
 - (A) Comply with applicable federal, state, and county laws;
 - (B) Comply with any other requirements the director may prescribe;
 - (C) Allow the director, the legislative bodies, and the state auditor access to records, reports, files, and other related documents, to the extent permissible under applicable state and federal law, so that the program, management, and fiscal practices of the recipient may be monitored and evaluated to ensure the proper and effective expenditure of public funds;
 - (D) Provide care to all injured patients regardless of their ability to pay; and
 - (E) Participate in data collection and peer review activities for the purpose of system evaluation and improvement of patient care; and
- (2) Every reimbursement shall be monitored according to rules established by the director under chapter 91 to ensure compliance with this section.

~~[(f)] (e)~~ Necessary administrative expenses to carry out this section shall not exceed five per cent of the total amount collected in any given year.

~~[(g)] (f)~~ The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of and expenditures from the trauma system special fund.

~~[(h)] (g)~~ For the purposes of this section:

“Comprehensive state trauma system” means a coordinated integrated system providing a spectrum of medical care throughout the State designed to reduce death and disability by appropriate and timely diagnosis and specialized treatment of injuries, which includes hospitals with successive levels of advanced capabilities for trauma care in accordance with nationally accepted standards established by the American College of Surgeons Committee on Trauma.

“Hospital providing care to trauma patients” means a hospital with emergency services that receives and treats injured patients.

“Trauma care” means specialized medical care intended to reduce death and disability from injuries.

“Trauma center” means a facility verified by the American College of Surgeons or designated by the department applying American College of Surgeons recommendations as guidelines as being a level I, level II, level III, or level IV trauma

center. Level I represents the highest level attainable by a verified trauma center, and level IV represents the lowest level attainable by a verified trauma center.”

SECTION 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁵

SECTION 22. This Act shall take effect on July 1, 2008.

(Became law on July 8, 2008, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Notes

1. Semicolon should be underscored.
2. So in original.
3. Period should not be underscored.
4. Comma should be underscored.
5. Edited pursuant to HRS §23G-16.5.