

ACT 196

H.B. NO. 334

A Bill for an Act Relating to Operating a Vehicle Under the Influence of an Intoxicant.

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

SECTION 1. The legislature finds that highway safety in Hawaii is compromised by drunk and drugged drivers who continue to jeopardize the safety of all road users. The police continue their efforts to make our roads safer by arresting those individuals suspected of driving while impaired. However, prosecuting these cases can be hampered by test results frequently not being available in time for the respective hearings, as well as by expensive court costs.

The legislature notes that presently, testing of blood and urine samples obtained for the purpose of prosecuting cases involving the operation of a motor vehicle under the influence of an intoxicant is performed by private laboratories, with the exception of alcohol blood testing within the city and county of Honolulu. The drug and alcohol testing performed by private laboratories is costly.

The legislature also finds that testing performed by out-of-state private laboratories takes time to complete. Instances have occurred in which test results were not timely provided for trial, and cases were dismissed as a result. Court cases involving drunk or drugged driving can become extremely costly when the prosecution subpoenas experts and lab personnel to testify, especially if these witnesses are from private laboratories located out-of-state.

The legislature recognizes that other states have found that costs for drunk and drugged driving cases are greatly reduced when state-run laboratories perform the testing and confirmations that will be used in court. Some of these state-run laboratories perform other testing functions such as workplace drug testing, post-mortem drug testing, and testing of inmates and parolees. These types of testing functions can further reduce costs for those states.

The legislature further finds that having an in-state drug and alcohol toxicology testing laboratory would be part of a multi-pronged approach to addressing impaired driving on our roadways. This dangerous and one hundred per cent preventable driving behavior can be further curbed with strict enforcement by our law enforcement officers, public education, and training.

The purpose of this Act is to:

- (1) Establish the state drug and alcohol toxicology testing laboratory special fund to support a state drug and alcohol toxicology testing laboratory;
- (2) Specify that moneys in the state highway fund may be expended for the cost of establishing a state drug and alcohol toxicology testing laboratory;
- (3) Require that fines imposed on offenders convicted of repeat or habitual offenses involving operating a vehicle under the influence of an intoxicant or convicted of operating a vehicle after a license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant be deposited into the state drug and alcohol toxicology testing laboratory special fund; and
- (4) Require the department of health to submit reports to the legislature on expenditures from the state drug and alcohol toxicology testing laboratory special fund.

SECTION 2. 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- State drug and alcohol toxicology testing laboratory special fund; established. (a) There is established in the state treasury a state drug and alcohol toxicology testing laboratory special fund, into which shall be deposited:

- (1) All fines collected pursuant to sections 291E-61(b)(2)(C), 291E-61.5(c)(2)(C), and 291E-62(c);
- (2) Moneys appropriated by the legislature to the fund;
- (3) Other grants and gifts made to the fund; and
- (4) Any income and interest earned on the balance of the fund.

(b) Moneys in the state drug and alcohol toxicology testing laboratory special fund shall be administered and expended by the department of health to support a state drug and alcohol toxicology testing laboratory.”

SECTION 3. Section 248-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of operation, maintenance, and repair of the state highway system, including without limitation, the cost of equipment and general administrative overhead;
- (2) To pay the costs of acquisition [~~including~~], including real property and interests therein~~];~~; ~~planning~~~~];~~ ~~designing~~~~];~~ ~~construction~~~~];~~ and reconstruction of the state highway system and bikeways, ~~including~~~~]~~ without limitation, the cost of equipment and general administrative overhead;
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where the bonds are designated to be reimbursable out of the state highway fund; ~~and~~
- (4) To pay the costs of construction, maintenance, and repair of county roads; provided that none of the funds expended on a county road or program shall be federal funds when ~~[such]~~ expenditure would cause a violation of federal law or a federal grant agreement~~];~~ and
- (5) To pay the cost of establishing a state drug and alcohol toxicology testing laboratory that is intended to support the prosecution of offenses relating to operation of a motor vehicle while under the influence of an intoxicant.”

SECTION 4. 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 without possibility of probation or suspension of sentence as follows:

- (1) For the first offense, or any offense not preceded within a ten-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) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the

- revocation period of an ignition interlock device on any vehicle operated by the person;
- (C) Any one or more of the following:
- (i) Seventy-two hours of community service work;
 - (ii) No less than forty-eight hours and no more than five days of imprisonment; or
 - (iii) A fine of no less than \$250 but no more than \$1,000;
- (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (E) A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within ten years of a prior conviction for an offense under this section or section 291E-4(a):
- (A) Revocation for no less than twenty-four months nor more than three years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
- (B) Either one of the following:
- (i) No less than two hundred forty hours of community service work; or
 - (ii) No less than five days but no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;
- (C) A fine of no less than \$1,000 but no more than \$3,000[;]. to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
- (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
- (E) A surcharge of up to \$50, if the court so orders, to be deposited into the trauma system special fund;
- (3) In addition to a sentence imposed under paragraphs (1) and (2), 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) or (2), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be no less than two years; and
- (4) If the person demonstrates to the court that the person:
- (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or
- (B) Is otherwise unable to drive during the revocation period, the person shall be absolutely prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (3); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period.”

SECTION 5. Section 291E-61.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- “(c) 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 no less than three years but no more than five years;
 - (B) No less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
 - (C) A fine of no less than \$2,000 but no more than \$5,000[;], to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
 - (D) Referral to a certified substance abuse counselor as provided in subsection (d);
 - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (F) ~~[May be charged a]~~ 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.”

SECTION 6. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person convicted of violating this section shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
 - (A) A term of imprisonment of ~~[not]~~ no less than three consecutive days but ~~[not]~~ no more than thirty days;
 - (B) A fine of ~~[not]~~ no less than \$250 but ~~[not]~~ no more than \$1,000[;], to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
 - (C) Revocation of license and privilege to operate a vehicle for an additional year; and
 - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001:
 - (A) Thirty days imprisonment;
 - (B) A \$1,000 fine[;], to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
 - (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
 - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable; and
- (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section, section 291E-66, or sec-

tion 291-4.5 as that section was in effect on December 31, 2001, or any combination thereof:

- (A) One year imprisonment;
- (B) A \$2,000 fine^[;], to be deposited into the state drug and alcohol toxicology testing laboratory special fund;
- (C) Permanent revocation of the person's license and privilege to operate a vehicle; and
- (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable.”

SECTION 7. Section 706-643, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures that are proceeds of the wildlife revolving fund under section 183D-10.5^[;]; fines that are proceeds of the state drug and alcohol toxicology testing laboratory special fund under sections 291E-61(b)(2)(C), 291E-61.5(c)(2)(C), and 291E-62(c); and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-410, the director of finance shall transmit the fines and forfeitures to the respective funds.”

SECTION 8. No later than thirty days prior to the convening of each of the regular sessions of 2023 and 2024, the department of health shall submit a report to the legislature on the expenditures made from the state drug and alcohol toxicology testing laboratory special fund, including the amounts expended and the purpose of each expenditure as it relates to supporting the state drug and alcohol toxicology testing laboratory.

SECTION 9. The state drug and alcohol toxicology testing laboratory special fund established in section 291E- , Hawaii Revised Statutes, shall be abolished and repealed on June 30, 2026, and any unencumbered remaining balances shall lapse to the general fund.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect on July 1, 2021; provided that on June 30, 2026, sections 4, 5, 6, and 7 of this Act shall be repealed and section 291E-61, 291E-61.5, 291E-62, and 706-643, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved July 6, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.