

## ACT 216

S.B. NO. 765

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. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Highly intoxicated driver” means a person whose measurable amount of alcohol is:

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person’s breath.”

SECTION 2. Section 291E-3, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-3 Evidence of intoxication.** (a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

- (1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;
- (2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) In any criminal prosecution for a violation of section 291E-61 or in any proceeding under part III:

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person's breath,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood or breath shall be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation.

[(e)] (d) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 3. 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;
- (5) Regulate the course and conduct of the hearing; and
- ~~[(6) Impose up to the maximum license revocation period as specified under section 291E-41(b)(4); and~~
- (7) (6) Make a final ruling.”

SECTION 4. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsections (a) through (d) to read as follows:

“(a) Unless an administrative revocation is reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44.5, no license ~~[and privilege]~~ to operate a vehicle shall be restored under any circumstances during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in ~~[paragraph]~~ paragraphs (4)(A)(ii) and (5) and in section 291E-44.5, the respondent shall keep an ignition interlock device installed and operating in ~~[any vehicle]~~ all vehicles operated by the respondent ~~[operates]~~ during the revocation period. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent’s expense. The periods of administrative revocation, with respect to a license ~~[and privilege]~~ to operate a vehicle, that shall be imposed under this part are as follows:

- (1) A 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]~~ ten years preceding the date the notice of administrative revocation was issued;
- (2) ~~[An eighteen-month]~~ A two-year revocation of license ~~[and privilege]~~ to operate a vehicle, if the respondent’s record shows one prior alcohol enforcement contact or drug enforcement contact during the ~~[five]~~ ten years preceding the date the notice of administrative revocation was issued;
- (3) A ~~[two-year]~~ four-year revocation of license ~~[and privilege]~~ to operate a vehicle, if the respondent’s record shows two or more prior alcohol enforcement contacts or drug enforcement contacts during the ~~[five]~~ ten years preceding the date the notice of administrative revocation was issued;
- (4) ~~[A minimum of five years up to a maximum of ten years revocation of license and privilege to operate a vehicle, 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;]~~ For a respondent who is a highly intoxicated driver:
  - (A) If the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued:
    - (i) An eighteen-month revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; or
    - (ii) A two-year revocation of license to operate a vehicle, without mandatory installation of an ignition interlock

device in all vehicles operated by the respondent during the revocation period;

- (B) If the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued, a three-year revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; and
- (C) If the respondent's record shows two or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued, a six-year revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period;
- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revocation period provided in paragraphs (1) to ~~[(4)]~~ (3) or in subsection (c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period; or
- (6) For respondents, other than those excepted pursuant to section 291E-44.5(c), who do not install an ignition interlock device in ~~[any vehicle]~~ all vehicles operated by the respondent ~~[operates]~~ during the revocation period, revocation of license ~~[and privilege]~~ to operate a vehicle for the period of revocation provided in paragraphs (1) to ~~[(5)]~~ (4)(A) or in subsection (c); provided that:
  - (A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and
  - (B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5;

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.

- (c) If a respondent has refused to be tested after being informed:
  - (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
  - (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (2), or (3) ~~[- or (4)]~~ shall be for a period of two years, ~~[three years,]~~ four years, or ~~[ten]~~ eight years, respectively.

(d) Whenever a license ~~[and privilege]~~ to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance

abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.”

SECTION 5. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (b) to read:

“(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) ~~[(F)]~~ Except as provided in paragraph (4), 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];~~
  - (C) Installation during the revocation period of an ignition interlock device on ~~[any vehicle]~~ all vehicles operated by the person;
  - ~~[(C)]~~ (D) 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)]~~ (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - ~~[(E)]~~ (F) 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) A substance abuse program of at least thirty-six hours, including education and counseling or other comparable programs deemed appropriate by the court;
  - ~~[(A)]~~ (B) Revocation of license to operate a vehicle for no less than ~~[twenty-four months nor]~~ two years but no more than three years ~~[of license and privilege to operate a vehicle during the revocation period and installation];~~
  - (C) Installation during the revocation period of an ignition interlock device on ~~[any vehicle]~~ all vehicles operated by the person;
  - ~~[(B)]~~ (D) 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)]~~ (E) A fine of no less than \$1,000 but no more than \$3,000;
  - ~~[(D)]~~ (F) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - ~~[(E)]~~ (G) 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) In addition to a sentence imposed under paragraph (1), for a first offense under this section, or an offense not preceded within a ten-year period by a conviction for an offense, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment for forty-eight consecutive hours and an additional mandatory revocation period of six months; 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). Notwithstanding paragraph (1), the revocation period for a person sentenced under this paragraph shall be no less than eighteen months;

(5) In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; 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 (2), as applicable. Notwithstanding paragraph (2), the revocation period for a person sentenced under this paragraph shall be no less than three years; and

[(4)] (6) 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.”

2. By amending subsections (g) and (h) to read:

“(g) 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 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 revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be revoked as provided in this section. There shall be no requirement for the installation of an ignition interlock device pursuant to this section if the requirement has previously been imposed pursuant to part III for the same act; provided that, if the requirement is subsequently reversed, a requirement for the installation of an ignition interlock device shall be imposed as provided in this section.]~~

(h) 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~~[,]~~ deemed appropriate by the court, 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."

SECTION 6. 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) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.
- (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~~;~~, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period;

- (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;
- (D) Referral to a certified substance abuse counselor as provided in subsection [(d);] (e);
- (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].

(d) For any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident, the offense shall be a class B felony and the person shall be sentenced to the following:

- (1) An indeterminate term of imprisonment of ten years; or
- (2) A term of probation of five years, with conditions to include the following:
  - (A) Permanent revocation of license to operate a vehicle;
  - (B) No less than eighteen months imprisonment;
  - (C) A fine of no less than \$5,000 but no more than \$25,000; and
  - (D) Referral to a certified substance abuse counselor as provided in subsection (e).

In addition to the foregoing, any vehicle owned and operated by the person who committed the offense shall be subject to forfeiture pursuant to chapter 712A.

[(d)] (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.

[(e)] (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.

[(f)] (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.

[(g)] (h) As used in this section:  
 “Convicted one or more times for offenses of habitually 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 one 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 291-4.4 as that section was in effect on December 31, 2001;



- (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 291-4.4 as that section was in effect on December 31, 2001; 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 291-4.4 as that section was in effect on December 31, 2001,

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 before 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.

"Convicted two 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 two 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 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 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 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 before the instant offense shall not be deemed prior convictions for the purposes of proving that the person is a habitual operator of a vehicle while under the influence of an intoxicant.

"Examiner of drivers" has the same meaning as provided in section 286-2.

"Habitual operator of a vehicle while under the influence of an intoxicant" means that the person was convicted:

- (1) Two or more times for offenses of operating a vehicle under the influence; or
- (2) One or more times for offenses of habitually operating a vehicle under the influence."

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 10. This Act shall take effect on July 1, 2021.

(Approved July 6, 2021.)