

JAN 26 2011

A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 291E-61, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§291E-61 Operating a vehicle under the influence of an
4 intoxicant. (a) A person commits the offense of operating a
5 vehicle under the influence of an intoxicant if the person
6 operates or assumes actual physical control of a vehicle:

7 (1) While under the influence of alcohol in an amount
8 sufficient to impair the person's normal mental
9 faculties or ability to care for the person and guard
10 against casualty;

11 (2) While under the influence of any drug that impairs the
12 person's ability to operate the vehicle in a careful
13 and prudent manner;

14 (3) With .08 or more grams of alcohol per two hundred ten
15 liters of breath; or

16 (4) With .08 or more grams of alcohol per one hundred
17 milliliters or cubic centimeters of blood.

18



1 (b) A person committing the offense of operating a vehicle
2 under the influence of an intoxicant shall be sentenced without
3 possibility of probation or suspension of sentence as follows:

4 (1) For the first offense, or any offense not preceded
5 within a five-year period by a conviction for an
6 offense under this section or section 291E-4(a):

7 (A) A fourteen-hour minimum substance abuse
8 rehabilitation program, including education and
9 counseling, or other comparable program deemed
10 appropriate by the court;

11 (B) One-year revocation of license and [~~privilege to~~
12 ~~operate~~] absolute prohibition of operating a
13 vehicle [during the revocation period and
14 installation during the revocation period of an
15 ignition interlock device on any vehicle operated
16 by the person;], followed by a six-month
17 revocation of license and installation of an
18 ignition interlock device on any vehicle operated
19 by the person; provided that the person may only
20 drive subject to the requirements of
21 subsection (i);

22 (C) Any one or more of the following:



- 1 (i) Seventy-two hours of community service work;
- 2 (ii) Not less than forty-eight hours and not more
- 3 than five days of imprisonment; or
- 4 (iii) A fine of not less than \$150 but not more
- 5 than \$1,000;

6 (D) A surcharge of \$25 to be deposited into the
7 neurotrauma special fund; and

8 (E) A surcharge, if the court so orders, of up to \$25
9 to be deposited into the trauma system special
10 fund;

11 (2) For an offense that occurs within five years of a
12 prior conviction for an offense under this section or
13 section 291E-4(a):

14 (A) A twenty-eight hour substance abuse
15 rehabilitation program, including education and
16 counseling, or other comparable program deemed
17 appropriate by the court;

18 ~~[(A)]~~ (B) Revocation for not less than eighteen months
19 nor more than ~~[two]~~ three years of license and
20 ~~[privilege to operate]~~ an absolute prohibition of
21 operating a vehicle ~~[during the revocation period~~
22 ~~and installation during the revocation period of~~



1 ~~an ignition interlock device on any vehicle~~
2 ~~operated by the person;],~~ followed by a
3 revocation of license of not less than one year
4 and more than eighteen months and installation of
5 an ignition interlock device on any vehicle
6 operated by the person; provided that the person
7 may only drive subject to the requirements of
8 subsection (i);

9 ~~[-B-]~~ (C) Either one of the following:

10 (i) Not less than two hundred forty hours of
11 community service work; or

12 (ii) Not less than five days but not more than
13 ~~[thirty days]~~ one year and one day of
14 imprisonment [~~of which at least forty eight~~
15 ~~hours shall be served consecutively]~~;

16 ~~[-C-]~~ (D) A fine of not less than \$500 but not more
17 than \$1,500;

18 ~~[-D-]~~ (E) A surcharge of \$25 to be deposited into the
19 neurotrauma special fund; ~~[and]~~

20 ~~[-E-]~~ (F) A surcharge of up to \$50 if the court so
21 orders, to be deposited into the trauma system
22 special fund; and



1 (G) Forfeiture under chapter 712A of the vehicle
2 owned and operated by the person committing the
3 offense if the fines and surcharges in
4 subsections 291E(b) (2) (D), (E), and (F) are not
5 paid within thirty days of conviction, guilty
6 plea, or plea of nolo contendere; provided that
7 the department of transportation shall provide
8 storage for vehicles forfeited under this
9 subparagraph;

10 (3) For an offense that occurs within five years of two
11 prior convictions for offenses under this section or
12 section 291E-4(a):

13 (A) [~~A fine of not less than \$500 but not more than~~
14 ~~\$2,500;~~] Ninety days at a long-term residential
15 treatment program, or other comparable program
16 deemed appropriate by the court;

17 (B) Revocation for [~~two~~] five years of license and
18 [~~privilege to operate~~] absolute prohibition of
19 operating a vehicle during the revocation period
20 [~~and installation during the revocation period of~~
21 ~~an ignition interlock device on any vehicle~~
22 ~~operated by the person~~];



- 1 (C) Not less than [~~ten~~] thirty days but not more than
2 [~~thirty days~~] one year and one day of
3 imprisonment [~~, of which at least forty eight~~
4 ~~hours shall be served consecutively~~];
- 5 (D) A surcharge of \$25 to be deposited into the
6 neurotrauma special fund; [~~and~~]
- 7 (E) A surcharge of up to \$50 if the court so orders,
8 to be deposited into the trauma system special
9 fund;
- 10 (F) A fine of not less than \$500 but not more than
11 \$2,500; and
- 12 (G) Forfeiture under chapter 712A of the vehicle
13 owned and operated by the person committing the
14 offense if the fines and surcharges in
15 subsections 291E(b)(3)(D), (E), and (F) are not
16 paid within sixty days of conviction, guilty
17 plea, or plea of nolo contendere; provided that
18 the department of transportation shall provide
19 storage for vehicles forfeited under this
20 section;
- 21 (4) In addition to a sentence imposed under paragraphs (1)
22 through (3), any person eighteen years of age or older



1 who is convicted under this section and who operated a
2 vehicle with a passenger, in or on the vehicle, who
3 was younger than fifteen years of age, shall be
4 sentenced to an additional mandatory fine of \$500 and
5 an additional mandatory term of imprisonment of forty-
6 eight hours; provided that the total term of
7 imprisonment for a person convicted under this
8 paragraph shall not exceed the maximum term of
9 imprisonment provided in paragraph (1), (2), or (3),
10 as applicable. Notwithstanding paragraphs (1) and
11 (2), the revocation with absolute prohibition period
12 for a person sentenced under this paragraph shall be
13 not less than two years; and

14 (5) If the person demonstrates to the court that the
15 person:

16 (A) Does not own or have the use of a vehicle in
17 which the person can install an ignition
18 interlock device during the revocation period; or

19 (B) Is otherwise unable to drive during the
20 revocation period[7] allowing an interlock
21 ignition device,



1 the person shall be absolutely prohibited from driving during
2 the entire period of applicable revocation provided in
3 paragraphs (1) to (4); provided that the court shall not issue
4 an ignition interlock permit pursuant to subsection (i) and the
5 person shall be subject to the penalties provided by section
6 291E-62 if the person drives during the applicable revocation
7 period.

8 (c) Notwithstanding any other law to the contrary, the
9 court shall not issue an ignition interlock permit to:

10 (1) A defendant whose license is expired, suspended, or
11 revoked as a result of action other than the instant
12 offense;

13 (2) A defendant who does not hold a valid license at the
14 time of the instant offense; or

15 (3) A defendant who holds either a category 4 license
16 under section 286-102(b) or a commercial driver's
17 license under section 286-239(b), unless the ignition
18 interlock permit is restricted to a category 1, 2, or
19 3 license under section 286-102(b).

20 (d) Except as provided in subsection (c), the court may
21 issue a separate permit authorizing a defendant to operate a
22 vehicle owned by the defendant's employer during the period of



1 revocation following the period of absolute prohibition without
2 installation of an ignition interlock device if the defendant is
3 gainfully employed in a position that requires driving and the
4 defendant will be discharged if prohibited from driving a
5 vehicle not equipped with an ignition interlock device.

6 (e) A request made pursuant to subsection (d) shall be
7 accompanied by:

8 (1) A sworn statement from the defendant containing facts
9 establishing that the defendant currently is employed
10 in a position that requires driving and that the
11 defendant will be discharged if prohibited from
12 driving a vehicle not equipped with an ignition
13 interlock device; and

14 (2) A sworn statement from the defendant's employer
15 establishing that the employer will, in fact,
16 discharge the defendant if the defendant is prohibited
17 from driving a vehicle not equipped with an ignition
18 interlock device and identifying the specific vehicle
19 and hours of the day, not to exceed twelve hours per
20 day, the defendant will drive for purposes of
21 employment.



1 (f) A permit issued pursuant to subsection (d) shall
2 include restrictions allowing the defendant to drive:

3 (1) Only during specified hours of employment, not to
4 exceed twelve hours per day, and only for activities
5 solely within the scope of the employment;

6 (2) Only the vehicle specified; and

7 (3) Only if the permit is kept in the defendant's
8 possession while operating the employer's vehicle.

9 (g) Notwithstanding any other law to the contrary, any:

10 (1) Conviction under this section, section 291E-4(a), or
11 section 291E-61.5;

12 (2) Conviction in any other state or federal jurisdiction
13 for an offense that is comparable to operating or
14 being in physical control of a vehicle while having
15 either an unlawful alcohol concentration or an
16 unlawful drug content in the blood or urine or while
17 under the influence of an intoxicant or habitually
18 operating a vehicle under the influence of an
19 intoxicant; or

20 (3) Adjudication of a minor for a law violation that, if
21 committed by an adult, would constitute a violation of



1 this section or an offense under section 291E-4(a), or
2 section 291E-61.5,
3 shall be considered a prior conviction for the purposes of
4 imposing sentence under this section. Any judgment on a verdict
5 or a finding of guilty, a plea of guilty or nolo contendere, or
6 an adjudication, in the case of a minor, that at the time of the
7 offense has not been expunged by pardon, reversed, or set aside
8 shall be deemed a prior conviction under this section. No
9 license and privilege revocation shall be imposed pursuant to
10 this section if the person's license and privilege to operate a
11 vehicle has previously been administratively revoked pursuant to
12 part III for the same act; provided that, if the administrative
13 revocation is subsequently reversed, the person's license and
14 privilege to operate a vehicle shall be revoked as provided in
15 this section. There shall be no requirement for the
16 installation of an ignition interlock device pursuant to this
17 section if the requirement has previously been imposed pursuant
18 to part III for the same act; provided that, if the requirement
19 is subsequently reversed, a requirement for the installation of
20 an ignition interlock device shall be imposed as provided in
21 this section.



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

12 (i) Upon providing evidence, such as a statement from the
13 defendant's employer or proof of school registration,
14 establishing that the defendant is currently employed or is a
15 student, and proof that the defendant has:

16 (1) Installed an ignition interlock device in any vehicle
17 the defendant operates pursuant to subsection (b); and

18 (2) Obtained motor vehicle insurance or self-insurance
19 that complies with the requirements under either
20 section 431:10C-104 or section 431:10C-105,

21 the court shall issue an ignition interlock permit that will
22 allow the defendant to drive a vehicle equipped with an ignition



1 interlock device during the revocation period[-] following the
2 period of absolute prohibition for the specific hours, including
3 commuting, that the defendant works or attends school; provided
4 that the permit specifies those hours and is kept in the
5 defendant's possession while driving.

6 (j) Notwithstanding any other law to the contrary,
7 whenever a court revokes a person's driver's license pursuant to
8 this section, the examiner of drivers shall not grant to the
9 person a new driver's license until the expiration of the entire
10 period of revocation determined by the court. After the period
11 of revocation is completed, the person may apply for and the
12 examiner of drivers may grant to the person a new driver's
13 license.

14 (k) Any person sentenced under this section may be ordered
15 to reimburse the county for the cost of any blood or urine tests
16 conducted pursuant to section 291E-11. The court shall order
17 the person to make restitution in a lump sum, or in a series of
18 prorated installments, to the police department or other agency
19 incurring the expense of the blood or urine test. Except as
20 provided in section 291E-5, installation and maintenance of the
21 ignition interlock device required by subsection (b) shall be at
22 the defendant's own expense.



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

3 (m) Any person convicted under subsection (b) (2) or (3)
4 shall be guilty of a class C felony."

5 SECTION 2. Section 712A-16, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) All property forfeited to the State under this
8 chapter shall be transferred to the attorney general who:

9 (a) May transfer property, other than currency, which
10 shall be distributed in accordance with subsection (2)
11 to any local or state government entity, municipality,
12 or law enforcement agency within the State;

13 (b) May sell forfeited property to the public by public
14 sale; provided that for leasehold real property:

15 (i) The attorney general shall first offer the holder
16 of the immediate reversionary interest the right
17 to acquire the leasehold interest and any
18 improvements built or paid for by the lessee for
19 the then fair market value of the leasehold
20 interest and improvements. The holder of the
21 immediate reversionary interest shall have thirty
22 days after receiving written notice within which



1 to accept or reject the offer in writing;
2 provided that the offer shall be deemed to be
3 rejected if the holder of the immediate
4 reversionary interest has not communicated
5 acceptance to the attorney general within the
6 thirty-day period. The holder of the immediate
7 reversionary interest shall have thirty days
8 after acceptance to tender to the attorney
9 general the purchase price for the leasehold
10 interest and any improvements, upon which tender
11 the leasehold interest and improvements shall be
12 conveyed to the holder of the immediate
13 reversionary interest.

14 (ii) If the holder of the immediate reversionary
15 interest fails to exercise the right of first
16 refusal provided in subparagraph (i), the
17 attorney general may proceed to sell the
18 leasehold interest and any improvements by public
19 sale.

20 (iii) Any dispute between the attorney general and the
21 holder of the immediate reversionary interest as
22 to the fair market value of the leasehold



- 1 interest and improvements shall be settled by
2 arbitration pursuant to chapter 658A;
- 3 (c) May sell or destroy all raw materials, products, and
4 equipment of any kind used or intended for use in
5 manufacturing, compounding, or processing a controlled
6 substance or any untaxed cigarettes in violation of
7 chapter 245;
- 8 (d) May compromise and pay valid claims against property
9 forfeited pursuant to this chapter; [~~or~~]
- 10 (e) May make any other disposition of forfeited property
11 authorized by law[-]; or
- 12 (f) In the case of vehicles forfeited pursuant to sections
13 291E-61 or 291E-61.5, shall sell the forfeited vehicle
14 to the public by public sale and direct the proceeds
15 to the judiciary."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: John Green

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Report Title:

Drunk Driving; Penalties; Forfeiture

Description:

Increases penalties for operating a vehicle under the influence of an intoxicant. Provides for forfeiture of vehicles if fines are not paid. Provides that proceeds from forfeiture go to the judiciary.

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