

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2863, H.D. 1, RELATING TO THE TAX LIEN AND ENCUMBRANCE RECORD.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 16, 2010 **TIME:** 2:15 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Elton Au, Deputy Attorney General

Chair Karamatsu and Members of the Committee:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is to expand the existing tax lien and encumbrance record statute to assist state and county agencies in recovering moneys owed for outstanding judgments by encumbering vehicle titles of any debtor that has an outstanding judgment payable to the State or a county. This bill will also require the payment of judgments owed to the State or a county as a condition precedent to the vehicle's renewal, registration, or transfer of ownership. This bill also includes a provision to exempt state or county agencies from paying the statutory fee of \$5 for each recordation.

The encumbrance of motor vehicle titles will strengthen the ability of state and county agencies to recover moneys for outstanding judgments owed to any state or county agency. By requiring the payment of outstanding judgments payable to the State or a county before the renewal, registration, or transfer of ownership of the debtor's vehicle, debtors will be encouraged to repay debts owed to state or county agencies. Also, the statutory fee of \$5 per recordation is hindering some agencies

from using the statute to assist in the recovery of outstanding debts owed to the agency. Waiving the \$5 fee will encourage more state and county agencies to use this recovery tool. This bill allows for only actual judgments obtained by the State or counties, in order to satisfy any due process issues, since such judgments are rendered only after ample notice and opportunity to be heard have already been given.

This measure has been amended to include input from the City and County of Honolulu's licensing Administrator and various private automobile associations, in order to protect their interests.

We respectfully request passage of this measure.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth State Legislature, Regular Session of 2010

House Committee on Judiciary

The Honorable Jon Riki Karamatsu, Chair

The Honorable Ken Ito, Vice Chair

Tuesday, March 16, 2010, 2:15 p.m.

State Capitol, Conference Room 325

by

Iris T. Murayama

Deputy Chief Court Administrator

First Circuit

Bill No. and Title: Senate Bill No. 2863, S.D. 2, H.D. 1, Relating to the Tax Lien and Encumbrance Record

Purpose: Enables encumbrance of motor vehicle titles for outstanding judgments payable to the State or a county by allowing recordation in a county director of finance's "tax lien and encumbrance record" with an exception for a state or county agencies from paying the statutory fee. Provides certain exceptions.

Judiciary's Position:

The Judiciary does not oppose the intent of Senate Bill 2863, S.D. 2, H.D. 1, but opposes the amendments in H.D. 1 (page 2, line 4 to page 3, line 2 and Section 3, beginning on page 5) for the following reasons:

1. The Judiciary, by way of orders of the court (judge), already has the discretion to settle, dispose of, amend and dismiss cases. No Judiciary or City and County employee can overrule a judge and settle for less than the amount of the judgment. Reconsideration of any judgment requires that the matter be brought before the court by way of motion, and decided by a judge on a case-by-case basis.



Senate Bill No. 2863, S.D. 2, H.D. 1, Relating to the Tax Lien and Encumbrance
Record
House Committee on Judiciary
Tuesday, March 16, 2010
Page 2

2. If the amendments proposed under H.D. 1 are enacted, another state or county agency will be given the authority to overrule current and past judgments. This overly broad and drastic change in state and county agency's authority will undermine judicial discretion given under the Hawai'i State Constitution. Additionally, the Judiciary will be required to overhaul its coordination practices with other government agencies and its internal processes in order to ensure accurate court records.
3. By choosing to contract with a collection agency, the Judiciary is able to maintain its neutrality and not be encumbered by functions that are outside of its scope and jurisdictional authority such as collecting debts and reporting delinquencies to credit bureaus. If the amendments of H.D. 1 are enacted, the Judiciary is prevented from moving forward in its mission.
4. The Judiciary also recognizes that the H.D. 1 amendments appear to benefit the car rental companies. We have been working with some of these car rental companies to resolve the issues regarding their delinquent unpaid parking citations through the current judicial processes already established. Current judicial process requires any person and/or agency to file the appropriate motion and to post the full amount of a default judgment (but not the \$15 for unpaid parking citations under HRS§291D-3.5 which is a difference of a minimum of \$20). The Judiciary does acknowledge that when JIMS (the Judiciary's computer system) was first implemented, notifications of default judgments were delayed. However, since Fall 2009, notifications of default judgments are current.
5. Additionally, if there is an "amnesty period" of 18 months in which car rental companies and the public can pay for citations that have been referred to the collection agency, the Judiciary will face increase in work demands that are already being felt by judicial and staff resources, due to staff shortages and furloughs. The perceived financial benefits offered by the amendments under H.D. 1 would not outweigh nor balance the financial losses and resource expenditures (i.e., labor, equipment, time, etc.) by the Judiciary.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF CUSTOMER SERVICES
CITY & COUNTY OF HONOLULU
DIVISION OF MOTOR VEHICLE, LICENSING AND PERMITS
ADMINISTRATION
P.O. BOX 30300
HONOLULU, HAWAII 96820-0300

MUFI HANNEMANN
MAYOR



GAIL Y. HARAGUCHI
DIRECTOR

DENNIS A KAMIMURA
LICENSING ADMINISTRATOR

March 13, 2010



The Honorable Riki Karamatsu, Chair
and Committee Members
Committee on Judiciary
House of Representatives
State of Hawaii
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Committee Members:

Subject: S. B. No. 2863, SD2, HD1

The City and County of Honolulu has no objections to S. B. No. 2863, SD2 HD1, which among other provisions, will waive the \$5 fee for county and state agencies for entries made to the tax lien and encumbrance records, only if searches and entries are required for motor vehicle records found on the motor vehicle registration computer file.

Sincerely,


for  Gail Y. Haraguchi
Director

Honorable Jon Riki Karamatsu, Chair
Committee on Judiciary
House of Representatives, Hawaii

Hearing: March 16, 2010, 2:15 p.m.; Room 325

Re: SB 2863 HD1 – Relating To The Tax Lien and Encumbrance Record

Chair Karamatsu and Honorable Committee Members,

My name is Paul Kopel and I am the Chair of the Legislative Committee for Catrala-Hawaii. Catrala's membership consists of the major u-drive companies in Hawaii and the many businesses which support the industry

Catrala supports this bill.

Many debtors due to failure to receive a timely notice in the mail or for other reasons may likely have good justification for not making timely payment on a claim or judgment and are now faced with having to pay higher amounts, penalties, fees and/or charges. For these and other reasons debtors have delayed and/or refused to make such payment.

In the case of Catrala's u-drive members good reasons exist as Catrala has testified before at the Legislature last session.

It is no secret that the Judiciary for many years has had a computer problem and thus notice of parking violations by u-drive renters have been late in being sent out to u-drive companies. For many violations, such notices of violations were not sent to the u-drive company for 12 months or longer. As a result, many u-drive renters have refused to pay for such violations when notified leaving u-drive companies stuck with the claim.

Also not receiving these notices from the Judiciary for 12 months or longer, u-drive companies were not able to look up or locate the names and addresses of the car renter and forward the information to the Judiciary in a timely manner. Thus, the u-drive company is now being charged with higher claim amounts, fees and charges. In addition to u-drive companies, other car owners likely experienced similar problems or difficulties.

Catrala has pursued a resolution of this problem with the Judiciary for the past 12 months and a resolution subject to various approvals has been reached. However, a concern has been raised that the Judiciary without further powers granted by the Legislature does not have the power to quickly and economically settle and resolve these outstanding claims. This bill with proposed amendment will provide the Judiciary with such powers. In fairness, such powers should be provided to all agencies of the State as well as the counties to address similar concerns for smaller claims that are not more than \$500.

Please pass this bill. Thank you for allowing us to testify.