



The Judiciary, State of Hawaii

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

House Committee on Finance

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Friday, March 26, 2010, 10:00 a.m.
State Capitol, Conference Room 308

by

Iris T. Murayama
Deputy Chief Court Administrator
First Circuit

Bill No. and Title: Senate Bill No. 2863, S.D. 2, H.D. 2, 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 No. 2863, S.D. 2, H.D. 2, but opposes the amendments in H.D. 2 (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.



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2. If the amendments proposed under H.D. 2 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 Hawaii State Constitution.

3. Having another state or county agency overrule judgments may compromise court records and accountability. Adjustments to the judgment amounts by another state or county agency will require documentation and court approval to maintain accurate court records.

Major overhaul of case management systems costing thousands of dollars may be required by the state and county agencies to electronically port over information into JIMS in order to keep the records updated timely as other law enforcement agencies depend on court records for their work.

4. The Judiciary also recognizes that the H.D. 2 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). If the court finds in favor of the entity filing the motion, the amount posted is returned.

If the motor vehicle owner, such as the rental car agency, is not receiving timely notification as reported in Catrala's written testimony, it is more than likely the result of the lessee or non-owner driver's failure to report the citation to the vehicle owner and not due to JIMS (the Judiciary's computer system). The citation IS the notice and it should be the responsibility of the person who owns the vehicle to assure accountability for any action on the vehicle. The Judiciary is not responsible for the vehicle and the function of the courts is to adjudicate, not monitor vehicles for entities.

The Judiciary has learned that eHawaii.gov is ready to launch a computerized notification system to track citations issued to vehicles in April 2010 for interested entities wishing to monitor their vehicles.

The Judiciary acknowledges 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. If the entities feel that delay in notification is an issue, the avenue to contest this is to file a motion and have the court decide what is just and fair.



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5. Presently, the driver/owner has 90 days (for judgments if \$500.00 or less) or 180 days (for judgments of \$500.00 or more) after entry of judgment to pay the judgment amount. If the judgment is not paid within this specified time period, the matter is referred to the collection agency. If there is an "amnesty period" of 18 months in which car rental companies and the public can pay for the outstanding 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 would only benefit the "debtors" under H.D. 2 by allowing them to pay only the initial judgment amount and would not outweigh nor balance the financial losses and huge resource expenditures to correct court records and develop computer interfaces with the various agencies who wish to be involved in overruling court judgments.

6. It should be noted that by choosing to contract with a collection agency, the Judiciary has been 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. 2 are enacted, the Judiciary is prevented from moving forward in its mission.

Thank you for the opportunity to testify on this measure.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2863, S.D. 2, H.D. 2, RELATING TO THE TAX LIEN AND ENCUMBRANCE RECORD.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, March 26, 2010 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 308

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

Chair Oshiro 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

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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.

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 23, 2010

The Honorable Marcus Oshiro, Chair
and Committee Members
Committee on Finance
House of Representatives
State of Hawaii
State Capitol, Room 306
Honolulu, Hawaii 96813

Dear Chair Oshiro and Committee Members:

Subject: S. B. No. 2863, SD2, HD2

The City and County of Honolulu has no objections to S. B. No. 2863, SD2 HD2, 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.

We note that HD2 placed a defective date of December 21, 2058 which should be amended.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Kamimura".

Dennis A. Kamimura
Licensing Administrator

Honorable Marcus Oshiro, Chair
Committee on Finance
House of Representatives, Hawaii

Hearing: March 26, 2010, 10:00 a.m.; Room 308

Re: SB 2863 HD2 – Relating To The Tax Lien and Encumbrance Record

Chair Oshiro 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 with clarifying amendment given concerns expressed by the Judiciary. Due to such concerns, the Judiciary Committee placed a defective date in the bill. Catrala has no objection to this Committee passing this bill with suggested amendment and defective date to allow for further discussions to keep this bill alive.

To address the Judiciary's concern that no State agency or County agency should have the right to settle a judgment held by the Judiciary, Catrala's attached clarifying amendment sets forth that only the State or County agency responsible for collecting any amounts owed shall be the only agency that has the right to settle or resolve such claim as long as it is less than \$500. Thus, judgment amounts owed to the Judiciary shall be settled by the Judiciary and not by any other State or County agency as complained by the Judiciary in its prior testimony.

The Judiciary in its testimony acknowledges that due to its faulty computer system many owners of vehicles did not receive timely notice of parking tickets. This dragged on for more than 1 year. As a result many thousands of parking tickets were sent out late to owners by many months and in many hundreds of cases 1 or more years late. Vehicle owners who changed address or vehicle owners who did not get timely notice were not able to respond in time or attend court hearings. As a result, the Judiciary entered judgments against vehicle owners and turned over such judgments to the Judiciary's collection agency so additional amounts are now owed to the Judiciary.

Is this fair given the circumstances that due to Judiciary's failure to send out timely notices? In many hundreds of cases for notices sent out more than 1 year later? Obviously it is not a fair situation. Still further, it would be outrageous for the Judiciary to seek collection fees and/or to report such judgments to any collection bureau given the circumstances as mentioned. The Judiciary refers to taking such collection action in its prior testimony and reporting such judgments to credit bureaus. That should not be case for any individual or company owning vehicles that got late notices due to the Judiciary's computer problems.

Why should anyone suffer extra hardship due to the Judiciary's computer problems and be faced with higher amounts owed, collection fees and possible reporting of such judgments to credit bureaus? Is this fair? Again, obviously not.

While this bill applies to all debtors owing less than \$500 for any individual claim or debt to State or County agencies (not only just parking tickets), for the u-drive industry owning thousands of vehicles it was very difficult to look for files and records of renters receiving parking tickets that were many months and in some cases one or more years old. It was understandably difficult to track down information as to the names and addresses of renters and provide them to the Judiciary within 45 days as required by law. As a result, u-drive companies owning thousands of vehicles saw several hundreds of judgments entered against their vehicles.

In addition to u-drive companies likely thousands of persons owing vehicles are now debtors due to failure to receive a timely notice in the mail because they moved or for other reasons and saw judgment entered against them by the Judiciary. Further, these individuals are now faced with having to pay higher amounts, penalties, fees and/or charges. For these and other reasons likely thousands of debtors have delayed and/or refused to make such payments to the Judiciary. It simply is not fair given the circumstances.

What is even more unfair is that the Judiciary given its past testimony is not willing to consider settling with you unless you file a court motion (likely requiring assistance of an attorney) and submit a bond or security for the full amount owed which in most cases due to collection fees or other charges is more than the original amount owed. Is this fair? Why the extra costs, fees and burdens to right a wrong created by the Judiciary? Is the Judiciary taking unfair advantage for many who do not have the means or resources to go through these costly and time consuming procedures to correct an unfair situation caused by the Judiciary's computers? For the u-drive vehicles with approximately 2,000 or more judgments, it is extremely unfair burden and costly proposition to satisfy a problem created by the Judiciary. This is not fair. There must be and is a simpler way to resolve matters for both individuals and companies as proposed in this bill.

For your information, Catrala discussed this problem with the Legislature last year and proposed a new law that required the Judiciary to send out notices of parking tickets to everyone within 45 days of the violation. The Judiciary objected to this and the Legislature urged the u-drive industry to pursue a resolution of this problem with the Judiciary. The industry has tried to do so for the past 12 months and while some improvements have been made the major issue as to how to deal with these unpaid parking judgments remains. This bill seeks to solve this problem not only as to small claims dealing with parking of tickets but also the many thousands of other claims for individual amounts less than \$500. Let's quickly and simply offer an 18 month period to wipe out these claims.

The industry believes the terms in this proposed bill are fair given the circumstances. It does not mandate the Judiciary or any other State or County agency to do anything.

Please pass this bill. It is obviously fair and reasonable.

CATRALA PROPOSED AMENDMENT TO SB 2863 (March 26, 2010)

Amend section 3 of bill. New language underlined.

SECTION 3. Notwithstanding the provisions contained in Section 2 of this Act or any law to the contrary, for a period of eighteen months from the effective date of this Act and as to the State or any county to whom a debtor may be responsible for any judgment, claim, lien or encumbrance under section 286-46, Hawaii Revised Statutes, as amended in section 2 of this Act, the State and county department or agency responsible for collecting any judgment, claims, liens or encumbrances covered by this Act shall have the absolute right, power, and authority to settle, discharge, release, and resolve in its sole and absolute discretion any and all such judgments, claims, liens and encumbrances for an amount not less than what the debtor would have paid the State or county had the debtor made timely payment or taken appropriate action prior to such judgment, claim, lien, or encumbrance; provided that the outstanding amount as to any single violation, judgment, claim, lien, or encumbrance settled in accordance with this Act shall not exceed \$500 as of the effective date of this Act.