

LATE

Testimony in support Of **SENATE BILL 2517** [relating to Traffic Violation Records] – (January 30, 2012)  
..... ( with suggestions for amendment of the bill ).  
To Senator Kalani English [Transportation Committee Chairman ]  
and to all Senate members of the Transportation Committee.

Thank you, Committee members for hearing this bill regarding the amendment of the wording of a poorly written... (and consequently misunderstandable ) law, [H.R.S. 287-3]Record-Keeping of Traffic Violations on Drivers' Abstracts.

This BILL was created at my request and introduced by Senator Pohai Ryan. Thank you, Senator.  
My thanks also go out to Senators ...Chun- Oakland, Espero, Galuteria, Kahele, Kidani, Shimabukuro, Baker, English, Fukunaga, Gabbard, Nishihara, Taniguchi, Tokuda, and Wakai.....for their signatures in support of this very necessary bill for clarification of [H.R.S. 287-3]. MAHALO !

I would like to begin by mentioning that there is presently a similar Bill (H.B. 0014) which was introduced last year at my request by Representative Cynthia Thielen (Kailua / Kaneohe Bay). MAHALO ! The information that guides ((THIS BILL...H.B. 0014)) was researched by John Morsey (research attorney) at the request of Representative Thielen. I had asked that a bill be created with the intent to remedy the problems with the wordage contained in [H.R.S.287-3] but, somehow it got directed at a different section of the law on "keeping of records"... (H.R.S.286-137), to which it apparently does not pertain. Nonetheless, the research done by John Morsey at the Legislative Reference Bureau is clear, and addresses several of the problems involved with the present "Record-Keeping" misinterpretations, which are being enforced by our District Court Traffic Violations Bureau. I would like to submit that written record by researcher Morsey, which was reported to Representative Thielen's office (on Jan. 4, 2011) under the approval of Charlotte A. Carter-Yamauchi (Acting Director) of the Legislative Reference Bureau. I have done the same research and have uncovered the same information. Thank you, John.

This H.B. 14...(or H.B. 0014) was introduced by House Speaker (Emeritus) Joseph Souki...and passed by the House of Representatives Transportation Committee Hearing last Wednesday, Jan. 25<sup>th</sup>. I want to thank Representative Souki , and his Transportation Committee members for their time and interest. I also want to apologize for this misdirection of their energies. I would also like to request that all readers of Senate Bill 1527 please refer to the LATE TESTIMONY ( for H.B.14 ) by Calvin Ching. Mr. Ching is the Acting Deputy Chief Court Administrator at the District Court of the First Circuit. He makes it quite clear that H.R.S.286-137 would find itself in conflict with H.R.S. 604-17...and he recommends the clarifying language that is suggested by the State of Hawaii Dept. of Transportation Director, Glenn Okimoto . Thank you Mr. Ching and Mr. Okimoto for helping to clear up this confusion. MAHALO ! I would like to have both of these pages of TESTIMONY on [H.B. 0014] be included in the TESTIMONY for this Senate Bill 1527.....and I would like to ask you please to consider the word changes for H.B.14 that were suggested by Glenn Okimoto, /Dept. of Transportation. Again ...thank you all for your support for these clarifying revisions. (((please read page (2)...Thank You !))) **Guy Moncrief** (256-4283)

P.O. Box 4942 Kaneohe, Hi., 96744

comments ?

**LATE**

TESTIMONY [SENATE BILL 1527] Re: Record-Keeping of Traffic Violations(Monday , January 30, 2012)

Next, I think I should list the major topics that I would like to see Senate Bill 1527 address..... !

Rights of Privacy is one issue. Removal of Drivers' Abstracts from Governmental Websites.

Reasonable duration periods...for keeping records of Violations on Certified Traffic Abstracts.

Separate Laws (no overlap) for Commercial Licenses versus "ordinary" Drivers' Abstracts.

Immediate deletion of "ALLEGATIONS" if defendant is not convicted.

Appropriate Time - Limitation on [Dismissals Without Prejudice] and [Nolle Prosequi].

Police Profiling Problem ( Erasure of all "DISMISSED ALLEGATIONS" from Police computers).

These are the main issues needing amendment in [H.R.S 287-3]. Some redundancy appears here, but the further explanation of each of these problems will (hopefully) help legislators to understand how to assess what the proper wording would be.

\*Rights of Privacy should be addressed with wordage that prohibits putting citizens' [Drivers' Abstracts] on public Government Websites like "Court Connect" on the Hawaii Judiciary website. There should also be specific language that only allows copies of any T.V.B. "Certified Abstract" or "Court History" to be released to the citizen himself, or an appointed intermediary (with some sort of permission given on some kind of legitimizing official form ).

\*Reasonable Duration Period ...should correlate with the seriousness of the offense. There should be a "TABLE" or "EQUITABLE EQUATION SCHEDULE" developed from existing penalties for [petty misdemeanors], [misdemeanors], [felonies (A) & (B)] that fits each "infraction" or "crime". This should be used to determine the appropriate amount of time that a Violation be kept on a citizen's record.

\*Separate recording of Traffic Violations Records should be kept for our "regular" ( non-commercial ) drivers. Federal Records and regulations ( C.D.L. etc.) should not be made to effect regular drivers of regular vehicles. This already has happened at the Traffic Violations Bureau in some basic way...but there is a need to create wording that expresses separation except when someone is applying for a C.D.L. License or other heavy equipment operator's license.

\*Immediate Deletion of "ALLEGATIONS" refers to the present wording of H.R.S.287-3 ...and it needs to be stricken, or reworded in appropriately clear and un mistakeable language...that allegations are immediately deleted when a conviction does not occur. The exception would be only when there is a Dismissal Without Prejudice...and in that case should have applicable time- limits in accordance with the seriousness of the crime (like other [Statute of Limitations]laws).

\*police Profiling exists. It can only be controlled by removing prejudicial and already dismissed "ALLEGATIONS" from their computers. I realize the difficulty here. Thank you. Aloha ! Guy Moncrief

(256-4283) P.O.Box 4942

Kaneohe, Hi. 96744

# Traffic violations remain on record for 55 years

Star  Bulletin



Kokua Line

Vol. 13, Issue 139 - Sunday, May 18, 2008

June Watanabe

**Question:** I received a \$97 ticket -- a "notice of traffic infraction for unsafe lane change." It was the very first ticket I have ever received in my life. I went to the Traffic Violations Bureau and asked how long it would stay on my driver's abstract and was told 55 years! As far as I know, a DUI stays on your record for only 10 years. Is it really true that even if I have received only one ticket in my life that it will really stay on my driver's abstract for 55 years?

**Answer:** It may surprise many people, but the answer is yes. At least for now.

"This applies to all motorists in the Judiciary's traffic database," said state Judiciary spokeswoman Marsha Kitagawa.

A moving violation like yours used to be kept on traffic abstracts for three years.

But after the federal government began requiring states to keep reports in their Judiciary databases for 55 years, Kitagawa said the Hawaii Judiciary also began keeping traffic abstracts "for as long as it is kept in the database."

She said that's because Sec. 287-3 of the Hawaii Revised Statutes requires that the abstract provide "all alleged moving violations and any convictions resulting therefrom," without any limitation as to time.

The Judiciary did make "several attempts" to amend Sec. 287-3 to limit the time period, but with no success, Kitagawa added.

"The rationale for the 55-year retention period is complex, but is mostly based on the fact that federal regulations concerning commercial driver's licenses requires the ability to report some aspects of driver history for that length of time," she said.

Charlotte A. Carter-Yamauchi  
Acting Director

Research (808) 587-0666  
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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
415 S. Beretania Street, Room 446  
Honolulu, Hawaii 96813

January 4, 2011

## MEMORANDUM

**TO:** Honorable Cynthia Thielen  
Representative, 50th District

**FROM:** John Morsey JM  
Research Attorney

**SUBJECT:** Traffic Abstracts; Retention of Records

You requested information regarding traffic abstracts. Specifically, you wanted to know whether allegations and convictions are reported on traffic abstracts for fifty-five years.

Section 287-3, Hawaii Revised Statutes (HRS), provides that the district courts throughout the State shall furnish certified traffic abstracts relating to any person. The abstracts show all allegations and resulting convictions relating to moving violations and driving while intoxicated. However, the HRS, makes no mention of a specific length of time that records are to be retained.

We contacted the District Court Traffic Violations Bureau in Honolulu for further information. The representative we spoke to stated that driver history does remain on traffic abstracts for fifty-five years. The representative said that the period of "fifty-five years" comes from federally regulated reporting requirements relating to commercial driver's licensing.

Commercial motor vehicle operators are regulated generally by 49 United States Code Chapter 313. Though this chapter of the Code prescribes the reporting obligations to which states must adhere, it does not explicitly state the number of years that states must keep traffic violation data on record. However, according to the American Association of Motor Vehicle Administrators, the federal government does require the retention of certain commercial driver history records for a period of fifty-five years.<sup>1</sup>

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1. See [http://aamva.webroom.com/files/pdf/CDLIS\\_Basics\\_Part\\_A\\_200901.pdf](http://aamva.webroom.com/files/pdf/CDLIS_Basics_Part_A_200901.pdf)

As the federal requirement that each state retain driver history records for fifty-five years appears to only apply to commercial drivers, we have drafted a bill that, among other things, limits the disclosure of traffic infractions, but we have excepted commercial drivers from the disclosure limitation.

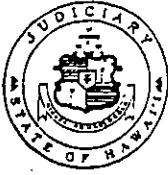
If you have any questions, please contact me by phone at 587-0666 or by email at [j.morse@capitol.hawaii.gov](mailto:j.morse@capitol.hawaii.gov).

APPROVED:

A handwritten signature in black ink that reads "Charlotte A. Carter-Yamauchi". The signature is written in a cursive style with a large initial "C".

Charlotte A. Carter-Yamauchi  
Acting Director

Enc.

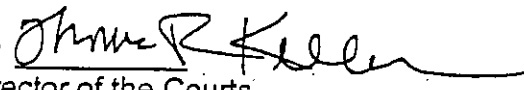


Office of the Administrative Director of the Courts — THE JUDICIARY • STATE OF HAWAII  
417 SOUTH KING STREET • ALI'IOLANI HALE • HONOLULU, HAWAII 96813-2902 • TELEPHONE (808) 539-4900 • FAX (808) 539-4855

Thomas R. Keller  
ADMINISTRATIVE DIRECTOR

Walter M. Ozawa  
DEPUTY ADMINISTRATIVE DIRECTOR

To: All Persons Ordering Abstracts  
Traffic Violations Bureaus Personnel

From: Thomas R. Keller   
Administrative Director of the Courts

Date: November 7, 2005

Re: Traffic Abstracts

- A traffic abstract is a report created from the District Courts' records of cases involving moving traffic violations.
- The abstract contains all alleged moving violations that are in the District Court's public records database until those records are archived. See Hawai'i Revised Statutes § 287-3.
- The abstract will show the disposition, if any, of each alleged moving violation.
- The abstract is preprogrammed to provide the data required.
- The clerk has no control over the content of the abstract.
- The clerk and the court do not control how public information contained in court records and reflected in an abstract is used by others (including insurance companies, employers, or licensing agencies).
- Anyone who thinks the court record is incorrect may contact his or her lawyer for advice about how to proceed and/or may file a motion to correct the record.
- Court personnel may not give legal advice to any party to a case.
- Do not expect a judge to alter a correct court record merely because the correctly reported information is inconvenient or embarrassing!
- Unlawfully altering a public record is a misdemeanor for which a person may be sentenced to up to one year in prison. See Hawai'i Revised Statutes §§ 710-1017, 701-107.
- Threatening a person, including a public employee or officer, is a crime. See, for example, Hawai'i Revised Statutes § 711-1106 (Harassment, a petty misdemeanor) and Hawai'i Revised Statutes § 707-716 (Terroristic Threatening in the First Degree, a class C felony).

287-2

MOTOR AND OTHER VEHICLES

act. The appeal shall not operate to suspend the order or act unless for cause satisfactory to the court and upon such conditions as may be imposed by the court, the court shall otherwise order. The administrator upon service of a copy of the appeal shall forthwith transmit to the clerk of court a transcript of the papers filed with the administrator and a certified transcript of the evidence, if any, adduced. Upon the filing of the transcript, the appeal shall be at issue, and upon the application of either party, may be advanced and assigned for hearing at the earliest possible date to determine whether the action of the administrator is in accordance with law. The prosecuting officer and the legal advisor of the county shall render assistance to the administrator upon the administrator's request in enforcing and carrying out this chapter and in prosecuting and defending proceedings hereunder. [L 1949, c 393, pt of §1; RL 1955, §160-81; HRS §287-2; am L 1980, c 84, pt of §1; gen ch 1985]

Rules of Court

Appeal to circuit court, see HRCP rule 72.

**§287-3 Furnishing of operating records.** (a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus' record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV, as it was in effect on or before December 31, 2001. The traffic violations bureaus may collect a fee, not to exceed \$7, of which \$5 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special fund.

(b) Notwithstanding any provision to the contrary, all alleged moving violations as well as any convictions resulting therefrom or any administrative license suspension pursuant to chapter 291A shall not be included in a certified abstract of the bureaus' record. [L 1949, c 393, pt of §1; RL 1955, §160-82; HRS §287-3; am L 1980, c 84, pt of §1; am L 1982, c 210, §2; am L Sp 1991, c 1, §16; am L 1993, c 135, §2; am L 1994, c 73, §1; am L 1996, c 203, §§3, 9; am L 1999, c 299, §1; am L 2001, c 157, §9]

**§287-4 Report required following accident.** The driver of every motor vehicle which is in any manner involved in an accident within this State in which any person is killed or injured or in which damage to the property of any one person, including the driver, to an apparent extent in excess of \$3,000 is sustained shall at the earliest practical time, and in any event within twenty-four hours after the accident, report the matter in writing or in person to the chief of police. The report, the form of which shall be prescribed by the chief of police and administrator, shall contain information to enable the administrator to determine whether the requirements for the deposit of security under sections 287-5 and 287-6 are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. If the driver is physically incapable of making the report, any other occupant in the vehicle at the time of the accident capable of making the report shall make or cause to be made the report not made by the driver, and the registered owner of the motor vehicle involved in the accident shall, unless the report is filed, within ten days after learning of the accident make the report. The driver, occupant, and

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DIRECTOR

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RANDY GRUNE  
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

January 25, 2012

**HB 0014  
RELATING TO TRAFFIC INFRACTIONS.**

**HOUSE COMMITTEE ON TRANSPORTATION**

The Department of Transportation supports HB 14, with the following amendments to conform to federal regulation 49 CFR 384.225(b) affecting the Commercial Driver License (CDL) program. The CDL Program is a nationwide effort to ensure that only qualified commercial drivers receive and maintain commercial driver's licenses (CDLs) and to remove unsafe and unqualified drivers from our highways.

We agree that the bill's limitation on disclosure should not apply to criminal convictions or holders of a commercial driver's license. We request that the bill be amended to exclude a third group of records from the proposed limitation on disclosure. This can be done by adding a third paragraph to read as follows: "(C) A conviction of a driver who was operating a commercial motor vehicle without a commercial driver's license when one was required". ~~The limitation on disclosure should apply also to drivers who were required to hold a commercial driver's license when cited for the violation.~~ This change will conform Hawaii law to the federal commercial driver's license regulation and HRS 286-245(b)(2). 49 CFR 384.225(b) requires states to record and maintain all convictions committed while the driver was operating a commercial motor vehicle, and was required to have a commercial driver's license.

Thank you for the opportunity to provide testimony.







## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Transportation**

The Honorable Joseph M. Souki, Chair  
The Honorable Linda Ichiyama, Vice Chair

Wednesday, January 25, 2012, 9:00 a.m.  
State Capitol, Conference Room 309

by  
Calvin C. Ching  
Acting Deputy Chief Court Administrator  
District Court of the First Circuit

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**Bill No. and Title:** House Bill No. 14, Relating to Traffic Infractions

**Purpose:** Requires district court to delete from a driver's traffic abstract any violation that the driver is found not to have committed. Prohibits disclosure of dispositions of infractions that precede the date of request by more than years.

#### **Judiciary's Position:**

The Judiciary does not take any position on House Bill No. 14. However, the Judiciary would like to point out that this bill proposes to amend HRS 286-137 to the extent that it would contradict HRS 604-17, which states:

**§604-17 Courts of record; testimony and proceedings.** The district courts shall be courts of record. The district courts shall in all cases preserve in writing, on tape, or such other mechanical device as may be appropriate, the minutes, proceedings, and testimony of their trials, transactions, and judgments, and the facts upon which their decisions rest. [L 1892, c 57, §13; RL 1925, §2285; am L 1927, c 71, §1; RL 1935, §3774; RL 1945, §9684; RL 1955, §216-15; HRS §604-17; am L 1970, c 188, §22; am L 1971, c 144, §6E]

If the intent of this bill relates to traffic abstracts, the appropriate section to amend would be HRS 287-3. We note that if the legislature amends HRS 287-3 to fulfill the intent of this measure, the following clarifying revision should also be considered: