

SB 2871

RELATING TO COMMERCIAL DRIVER'S LICENSE.

Prohibits driving a commercial motor vehicle without a commercial driver's license in the driver's possession; and prohibits texting while operating a commercial motor vehicle.



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

February 10, 2012

SB 2871
RELATING TO COMMERCIAL DRIVER'S LICENSE

SENATE COMMITTEE ON TRANSPORTATION & INTERNATIONAL AFFAIRS

The Department of Transportation supports this Administration bill, because it will make Hawaii laws parallel the federal regulations. Federal Motor Carrier Safety Regulation 383.51 (c) (7) lists driving without a commercial driver's license in possession as a serious traffic violation. The proposed amendment will make this violation enforceable by State law and allow law enforcement officers to cite drivers for this violation instead of 286-102 (no driver's license) which is not counted as a serious violation.

Section 383.51 (c) (9) lists texting while driving a commercial motor vehicle as a serious traffic violation, which if accumulated, results in penalties that are progressively more serious. This bill puts Hawaii law in harmony with the federal regulation.

Beginning on August 1, 2011, new codes B57 Driving a CMV (commercial motor vehicle) without a CDL in the driver's possession and M85 Texting while driving were added to a list of codes used by all jurisdictions in the Commercial Driver License Information System (CDLIS), a United States-wide system about CDL holders and their driver histories, and in the Problem Driver Pointer Systems (PDPS), the United States-wide system identifying drivers who have been convicted and/or withdrawn for federally specified offenses.

A state must come in substantial compliance with the requirements in this bill as soon as practical but not later than October 28, 2013. Failure to enact the changes could result in the loss of approximately \$5,500,000 (or 5% of \$109,016,036 federal-aid highway funds (based on FY 2011 funding) for the first year of non-compliance and \$10,900,000 (or 10%) per year thereafter.

Thank you for the opportunity to provide testimony.



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OUR REFERENCE KK-LC

February 10, 2012

The Honorable J. Kalani English, Chair
and Members
Committee on Transportation
and International Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair English and Members:

Subject: Senate Bill No. 2871, Relating to Commercial Driver's License

I am Kurt Kendro, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the passage of Senate Bill No. 2871, Relating to Commercial Driver's License, but would offer suggestions to amend this bill.

Section 1 of this bill proposes that no person shall use an electronic device for texting while operating a commercial motor vehicle. There is also a fine for a violation of this section. Section 2 of this bill provides definitions of an electronic device and texting.

If this bill is passed as written, law enforcement officers will be unable to enforce this law. Law enforcement officers who see a commercial motor vehicle operator holding an electronic device will not be able to determine what the driver is doing with the device, whether they are texting, or one of the exceptions written in to the bill.

Currently, the four counties have an ordinance that restricts the use of mobile electronic devices. Section 15-24.23, Mobile Electronic Devices, Revised Ordinances of Honolulu, prohibits a person from operating a motor vehicle while using a mobile electronic device. The ordinance further defines "use or using" as "holding a mobile electronic device while operating a motor vehicle." The four county ordinances are similar in using the same terminology and definitions. None of the county laws specifically prohibit texting because law enforcement officers cannot enforce this prohibition.

The HPD recommends that a statewide prohibition of use of a mobile electronic device be created to codify the county ordinances that would include texting and commercial motor vehicles.

Serving and Protecting With Aloha

The Honorable J. Kalani English, Chair
and Members

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Section 3 of the bill would amend Section 286-231, Commercial Driver Licensing, Hawaii Revised Statutes, to include a violation of state or local law or ordinance that prohibits texting while driving as a "serious traffic violation." This is problematic because law enforcement officers are not able to enforce a "texting" law as it is impossible to determine whether a driver is texting, making a phone call, or engaging in any other prohibited conduct. The HPD recommends that the mobile electronic device ordinances of the four counties be inserted as a "serious traffic violation."

Section 4 of this bill would amend Section 286-235, Commercial driver's license required, Hawaii Revised Statutes, to require a person operating a commercial motor vehicle to have a commercial driver's license in their possession. The HPD supports this section of the bill as written.

The HPD supports the intent of this bill to prohibit texting and operating a commercial motor vehicle. However, passage of this bill would be impossible to enforce. The HPD recommends that a section in Chapter 291C of the Hawaii Revised Statutes instead codify the mobile electronic device ordinances of the four counties and include this as a serious traffic violation of Section 286-231, Commercial Driver Licensing, Hawaii Revised Statutes.

I have attached Honolulu Revised Ordinance 15-24.23, to this testimony for your reference.

Thank you for the opportunity to testify.

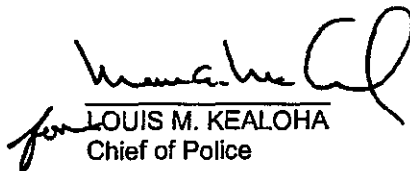
Sincerely,



KURT B. KENDRO, Major
Traffic Division

Attachment

APPROVED:



LOUIS M. KEALOHA
Chief of Police

Sec. 15-24.23 Mobile electronic devices.

(a) No person shall operate a motor vehicle while using a mobile electronic device.

(b) The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this ordinance.

(c) The following persons shall be exempt from the provisions of subsection (a):

(1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;

(2) Drivers using two-way radios while in the performance and scope of their work-related duties;

(3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.

(d) As used in this section:

"Emergency responders" include firefighters, emergency medical technicians, mobile intensive care technicians, civil defense workers, police officers and federal and state law enforcement officers.

"Mobile electronic device" means any handheld or other portable electronic equipment capable of providing wireless and/or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle or video entertainment to the passengers in the rear seats of the motor vehicle.

"Operate" a motor vehicle means the same as is defined in HRS Section 291E-1.

"Use or using" means holding a mobile electronic device while operating a motor vehicle

**SENATE COMMITTEE ON
TRANSPORTATION AND INTERNATIONAL AFFAIRS**

February 10, 2012

Senate Bill 2871 Relating to Commercial Driver's License

Chair English and members of the Senate Committee on Transportation and International Affairs, I am Rick Tsujimura, representing General Motors, LLC (General Motors).

General Motors requests amendments to Senate Bill 2871 Relating to Commercial Driver's License.

We request that the following new subsection (c) be added to Section 1 of the measure on page 1, line 11 which would state: "This section does not apply to the use of hands-free or voice operated technology including the pressing of a button to initiate or terminate the operation of any such technology."

We also request adding to the definition in Section 2 of "Electronic device" on page 1, line 18 the following: "but does not include a device that is physically or electronically integrated into the motor vehicle."

Thank you for the opportunity to present this testimony.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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TO: Senator J. Kalani English
Chair, Committee on Transportation and International Affairs
Via Email:

FROM: Gary M. Slovin

DATE: February 8, 2012

RE: **S.B. No. 2871 – Relating to Commercial Driver’s License**
Hearing Date: Friday, February 10, 2012 at 1:01 p.m.
Conference Room 224

Dear Chair English and Members of the Committee on Transportation and International Affairs:

I am Gary Slovin testifying on behalf of the Alliance of Automobile Manufacturers (“Alliance”). The Alliance is a trade association of twelve car and light truck manufacturers including BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of North America, and Volvo.

S.B. 2871 prohibits text messaging while operating a commercial motor vehicle. The Alliance suggests the following changes to allow for integrated communication systems.

For S.B. 2871, we suggest adding a section (c) to Section 1 that states “This section does not apply to the use of hands-free or voice operated technology including the pressing of a button to initiate or terminate the operation of any such technology.”

We also suggest adding to the definition in Section 2 of “Electronic device” as follows: “but does not include a device that is physically or electronically integrated into the motor vehicle.”

Thank you for the opportunity to submit testimony on this measure.



February 10, 2012

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
TRANSPORTATION AND INTERNATIONAL AFFAIRS
ON SB 2871 RELATING TO COMMERCIAL DRIVER'S LICENSE**

Thank you Chair English and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

Hawaii Transportation Association supports this bill.

The texting prohibition is already contained in the federal motor carrier safety regulations and this measure brings Hawaii's commercial drivers closer to those requirements.

Thank you.