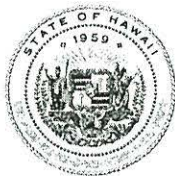


HB 1509 , HD1

Specifies that operating a motor vehicle in the State while using a mobile device is a traffic infraction. Specifies that the penalty for such an infraction shall be a fine of not less than \$250 and that collected fines shall be deposited in the state highway fund. (HB1509 HD1)

NEIL ABERCROMBIE
GOVERNOR



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

March 18, 2014
1:16 p.m.
State Capitol, Room 224

**H.B. 1509, H.D. 1
RELATING TO HIGHWAY SAFETY**

Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

Senate Committee on Transportation and International Affairs

The Department of Transportation (DOT) supports H.B. 1509, H.D. 1, Relating to Highway Safety. This bill specifies that the violation of using a mobile device while operating a motor vehicle is a traffic infraction and that the fine for this violation shall be not less than \$250. The bill establishes a state highway fund and directs all fines collected be deposited into this fund.

The DOT acknowledges that the fines collected from violations will deter drivers from using electronic devices while driving and sustain the level of enforcement necessary to promote and educate highway safety by preventing crashes.

To clarify the definition of "operate" on page 3, line 6, the DOT is recommending that this definition be replaced by the federal definition by reading:

"Operate" a motor vehicle means the same as is defined in section 291E-1- and includes the operation while temporarily stationary because of traffic, a traffic light or stop sign, or otherwise; and does not include operating a motor vehicle when the vehicle has pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary with the engine turned off.

Thank you for the opportunity to provide testimony.

Committee on Transportation and International Affairs
The Honorable J. Kalani English, Chair
The Honorable Donovan Dela Cruz, Vice Chair

March 17, 2014

Subject: Testimony in SUPPORT OF HB1509 HD1 WITH AMENDMENTS.

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

Thank you for the opportunity to provide testimony on HB1509 HD1. I support the passage of HB1509 HD1, with amendments, as it relates to the use of mobile electronic devices while operating a motor vehicle. In short, while I believe the House version does improve on the existing law by removing references to HRS 291D-2, it still falls short in providing for a law that discourages the use of a cell phone while driving, too broad in its definition of "use", and is not consistent with laws in other states around the nation.

While you may read testimony from law enforcement agencies that a bill that broadens the acceptable use of a mobile device would make enforcement impossible, such statements are not only untrue, they are in direct contrast to the success that many states have had in enforcing mobile device bans with broader and more sensible language. Out of the 12 states that have a primary ban on the use of mobile devices, we are the only state to have language that is overly broad, provides no reasonable defense for holding a mobile device, and has allowed for citations to be issued to motorists who violate the "use" definition in the most inconsequential ways.

Currently, the language in HRS §291C-137 (Act 74) is overly broad and reaches far beyond the legislative intent of stopping the use of mobile devices while driving. The enforcement of this statute has led to a variety of negative consequences affecting the prosecutors, courts, law enforcement and other state resources. Out of the 12 (including Hawaii) states that have a primary ban on hand-held devices, §291C-137 is by far the most overreaching, and is the only state to give drivers nearly zero opportunities to provide exculpatory evidence in their defense. HB1509 HD1 does not revise the definitions of "use/using" a cell phone that will bring fairness to the law and restructures fines that will improve deterrence while lifting the burden on our state resources in enforcing the law.

Current law is too broad

Section (a) reads:

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

Section (e) reads:

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

The above sections allow law enforcement to issue citations to any driver, in the driver's seat, holding a mobile device, while the engine is turned on. This means that whether or not a driver is stopped at a stop light, pulled over safely on the side of the road, or parked in a parking lot, they are in violation of this law

if they meet those three conditions. Actively using the mobile device to text message, make phone calls, utilize internet or applications, turn a phone off etc., is not a requirement. The simple act of holding a mobile device, even if it is turned off, is a crime. This is simply not reasonable nor fair.

Additionally, while I am not supportive of E-cigarettes, this law would also make the use of E-cigs while driving illegal as they are electronic devices as well.

Current law is a strain on state and county resources

Sections (f) and (g) further demonstrates the impracticality of the law.

- (g) Any violation as provided in subsections (a) and (c) shall not be deemed to be a traffic infraction as defined in section 291D-2.

Due to the tiered of fines (Section f) and classification as a traffic crime, every person cited for violating this law must go to court where they are arraigned and tried in the same manner as a DUI or other serious traffic crime. Before Act 74 was enacted, the City and County of Honolulu passed its own law against the use of mobile electronics. Under Section 15-24.23 ROH, a single fine of \$97 was established and violators were given the option of paying the fine via mail or going to traffic court. Court was not made mandatory. In October 2013, only four months after Act 74 went into effect, the Star Advertiser published an article titled "Phone violations pack traffic court". In the article, more than 4,500 citations were issued, all with a requirement to show up to court. 4,500 individuals must certainly have a big impact on the limited resources the courts have. The following quote from the Honolulu Prosecutors Office sums up one of the core problems with the current law.

"At this point, the sheer numbers are definitely stretching our resources," Dave Koga, a spokesman for the Honolulu prosecutor's office, said in an email Friday. "Hopefully, as more people become aware of the law, we'll see a reduction in cases." (Star Advertiser, October 23, 2013)

Hawaii is only state without reasonable exemptions to hold or touch mobile devices

Of the 12 (California, Colorado, Connecticut, Delaware, Illinois, Maryland, Nevada, New Jersey, New York, Oregon, Washington, West Virginia, Hawaii) states that have a primary ban on hand-held devices, Hawaii's Act 74 is the only law that does not allow for reasonable conditions for the use of a mobile device while operating a vehicle, such as pulling off to the side of the road (West Virginia's law) or being at a complete stop while the car is put in park or neutral. It does not allow incidental touching or holding of a cell phone without actively using to call/text/use applications etc., nor dialing numbers or answering calls to use a hands-free or Bluetooth device. All 11 states have a reasonable exemption(s) that allows for some form of incidental or limited touching/holding of a mobile device. Some states require that the mobile phone be held at or near the proximity of the driver's ear to be considered a violation.

Hawaii's Act 74 provides nearly zero opportunity for individuals to defend incidental and/or momentary holding or touching a mobile device, a part from calling for emergency services. This presumption that one is using a mobile device by holding that device is unfair, if it does not allow for drivers to prove otherwise. One of the above mentioned states, New York, has specific language in its statute to provide defendants an opportunity to provide exculpatory evidence in defense of incidentally holding/touching a cell phone or mobile device. §1225-c of the New York Vehicle and Traffic Law states;

"1. For purposes of this section, the following terms shall mean: (a) "Mobile telephone" shall mean the device used by subscribers and other users of wireless telephone service to access such service. (b) "Wireless telephone service" shall mean two-way real time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3. (c) "Using" shall mean holding a mobile telephone to, or in the immediate proximity of, the user's ear. (d) "Hand-held mobile telephone" shall mean a mobile telephone with which a user engages in a call using at least one hand. (e) "Hands-free mobile telephone" shall mean a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate or initiate a function of such telephone. (f) "Engage in a call" shall mean talking into or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone. (g) "Immediate proximity" shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear. 2. (a) Except as otherwise provided in this section, no person shall operate a motor vehicle upon a public highway while using a mobile telephone to engage in a call while such vehicle is in motion. (b) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of his or her ear while such vehicle is in motion is presumed to be engaging in a call within the meaning of this section. The presumption established by this subdivision is rebuttable by evidence tending to show that the operator was not engaged in a call."

Exemptions do not reduce enforcement

Allowing some exemptions to touch or hold cell phone does not negatively impact enforcement. Despite California's law that allows drivers to dial a number and therefore touch and hold their cell phone, at least momentarily, law enforcement issued more than 57,000 citations during a month-long awareness campaign in April of 2013. The state of New Jersey allows drivers to touch/use their phones to activate, deactivate, or initiate a function on their phone. This exemption to touching/holding a cell phone has not deterred New Jersey law enforcement from issuing tickets. In the first 23 months of the laws effect, 224,725 citations were issued.

Conclusion and Proposed Amendment

I respectfully request that the committee amend HB1509 HD1 by inserting the language of SB2729 SD1 in whole as it will do the following:

1. It narrows the scope in which a citation can be issued for "use of a mobile device," re-defining the word "use or using."
2. It removes the tiered fine structure and reclassifies the violation as a traffic infraction.
3. It increases the fine to deter violating the law.

If the committee would like to keep this bill in its current form, I offer the following amendments found in NJ Rev Stat § 39:4-97.3 (2013) for consideration that will specify when a mobile device can be touched and for what purpose (bold and underlined).

1. Section (e) As used in this section:
"Operate" a motor vehicle means the same as is defined in section 291E-1.
"Use" or "using" means holding a mobile electronic device while operating a motor vehicle; **provided, however this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the mobile device.**

Thank you for the opportunity to submit testimony on HB1509 HD1.

Michael Greenough

Kailua, HI

From: Recovery Law Center <attorney@recoveryourloss.com>
Sent: Monday, March 17, 2014 9:55 AM
To: TIATestimony
Subject: HB1509 HD1

Aloha Chair English,

I am in support of HB1509 HD1 with amendments. While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2. Thank you.

George Huffman, Paralegal
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From: Keith Takeda <keithtakeda@gmail.com>
Sent: Monday, March 17, 2014 10:11 AM
To: TIATestimony
Subject: HB1509 HD1

Aloha Chair English,

I am in support of HB1509 HD1 with amendments.

While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

Keith Takeda

From: Don Botsai <dbotsai@gmail.com>
Sent: Monday, March 17, 2014 10:10 AM
To: TIATestimony
Subject: Fwd: send testimony to support and amend HB1509 HD1 (mobile device while driving)

Aloha Chair English,

I am in support of HB1509 HD1 with amendments.

While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

Donald R. Botsai

From: Todd Hall <toddtravels@gmail.com>
Sent: Monday, March 17, 2014 10:03 AM
To: TIATestimony

Aloha Chair English,

I am in support of HB1509 HD1 with amendments.

While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

Samuel Todd Hall
PO Box 88763
Honolulu, HI 96830

Sent from my iPhone

From: Ryan <ryanwade49@hotmail.com>
Sent: Monday, March 17, 2014 3:59 PM
To: TIATestimony
Subject: HB1509 HD1 with amendments

Aloha Chair English, I am in support of HB1509 HD1 with amendments. While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2. Thank you,

Ryan Miyashiro

--

From: Tim Bowden <rhymyn_hawyn@yahoo.com>
Sent: Monday, March 17, 2014 2:28 PM
To: TIATestimony
Subject: In support of HB1509 HD1 with amendments

Aloha Chair English,

I am in support of HB1509 HD1 with amendments. While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

Tim Bowden

From: George Furtado <kekoa22@icloud.com>
Sent: Monday, March 17, 2014 1:01 PM
To: TIATestimony
Cc: Ryan IWWTHM Yonemura
Subject: Support HB1509 HD1

Aloha Chair English,

I am in support of HB1509 HD1 with amendments.

While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

George B. Furtado
91-1774 Kama'aha Ave
Kapolei, HI

From: Dennis Takatsuki <dennist@hawaiiantel.net>
Sent: Monday, March 17, 2014 12:51 PM
To: TIATestimony
Subject: Testimony

Chair English:

I support HB 1509 HD1 with amendments. While I support removal of any reference to HRS 291D-2 found in this version, I believe the senate version SB 2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB 2729 SD2.

Mahalo.

From: kaimanadesign1 <kaimanadesign1@gmail.com>
Sent: Monday, March 17, 2014 9:58 AM
To: TIATestimony
Subject: Relating to: HB1509 HD1

Aloha Chair English,

I am in support of HB1509 HD1 with amendments. While I support the removal of any reference to HRS 291D-2 found in this version, I believe the Senate version SB2729 SD2 in its current form is better and I ask that you amend this bill with the language found in SB2729 SD2.

Thank you,

Daryl Fujiwara
1774 Lower Main St. #11
Wailuku, Hawaii 96793