



Testimony of
GLENN M. OKIMOTO
DIRECTOR

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

IN REPLY REFER TO:

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

January 23, 2014
2:00 p.m.
State Capitol, Room 325

HB 979, H.D. 1
RELATING TO HARBORS

House Committee on Judiciary

The Department of Transportation (DOT) **strongly supports** this hold over Administration bill. This bill will expressly authorize the DOT to impose upon private parties who use our commercial harbors, the duty to defend, indemnify and hold harmless the State against claims that arise from such use.

Section 19-41-7, Hawaii Administrative Rules (HAR), imposed a duty upon users of harbor facilities to defend and indemnify the State against all claims arising from such activities, except where the State was proven to be solely and legally negligent. However, the Hawaii Supreme Court's decision in William Haole v. State of Hawaii, 111 Haw. 144 (2006), rendered Section 19-41-7, unenforceable. The Court ruled, in pertinent part, that:

"DOT's governing statutes do not explicitly or implicitly authorize the DOT to issue administrative rules exonerating the State from the negligence of its employees (i.e., they do not allow the DOT to impose upon private parties a duty to defend or indemnify the State)."

As a result of the Haole decision, the State, as the landowner, has and will continue to bear considerable financial exposure in costly lawsuits filed against the State for injury caused to plaintiffs by the negligent acts of the users of our harbor facilities.

This bill will provide the DOT with the express authority to impose, via the Hawaii Administrative Rules, a duty to defend, hold harmless and indemnify the State. Users of commercial harbor piers and properties should be held responsible for the safe operation of maritime and maritime-related activities on harbor lands. While the duty to defend, hold harmless and indemnify is already imposed upon tenants under written lease agreements, other commercial operational activities take place within our harbors, such as on our general purpose piers, for which written agreements are impracticable and/or do not exist. Because tariffs presently control the fees charged to most users of commercial harbor facilities and services, written agreements are not executed by all

HB 979, H.D. 1
January 23, 2014

users as a matter of custom and practice. This Administration Measure will provide protection to the State in situations where such historical uses are not covered by a written agreement.

Accordingly, we ask that the bill be amended to take effect upon its approval and for your favorable consideration of this bill to protect the interests of the State and the general public.

Thank you for the opportunity to testify.



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Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 979, H.D. 1, RELATING TO HARBORS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, January 23, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Rowena A. Somerville, Depury Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General strongly supports this Administration bill. This bill will explicitly authorize the Department of Transportation (DOT) to impose upon users of harbor facilities a duty to defend, hold harmless, and indemnify the State.

The Hawaii Supreme Court held in William Haole v. State of Hawaii, 111 Haw. 144 (2006), that section 19-41-7, Hawaii Administrative Rules, or its governing statutes, did not explicitly or implicitly authorize the DOT to issue administrative rules to impose upon private parties a duty to defend, hold harmless, and indemnify the State. As a result of the holding in this case, the State bears considerable financial exposure.

This bill will provide the DOT with the authority to impose the duty to defend, hold harmless, and indemnify the State through the adoption of administrative rules. This will significantly reduce the State's exposure to liability. The duty to defend, hold harmless, and indemnify the State is currently imposed upon the users of harbor facilities with whom the State has a written contractual agreement. This bill will allow the DOT to require all users of harbor facilities, regardless of the presence of a written agreement, to defend, hold harmless, and indemnify the State. All users of the harbor facilities should be held responsible to operate in a safe manner.

We respectfully request that the bill be amended to take effect upon its approval and be passed.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT OF
H.B. NO. 1181 – RELATING TO THE DRIVING UNDER THE INFLUENCE**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary
January 23, 2014

Chair Rhoads, Vice Chair Har and Members of the Committee:

HB 1181, HD 1 seeks to expand the definition of "habitual operator of a vehicle while under the influence of an intoxicant" as it exists under HRS Section 291E-61.5(b). Under the current law, a prior felony conviction for Habitually Operating a Vehicle Under the Influence of an Intoxicant ("HOVUII") is treated the same as a prior petty misdemeanor conviction for Operating a Vehicle Under the Influence of an Intoxicant ("OVUII") for purposes of triggering a subsequent HOVUII charge. Because of this, a loophole exists where a person committing OVUII after being convicted of HOVUII may not have the status of a habitual operator.

For example, under the current law, a person was convicted of OVUII in 2002, 2003, and 2010, and was also convicted of HOVUII in 2012. If that person commits OVUII in 2014, the person cannot be charged with HOVUII even though he was just determined to be a habitual operator just two years prior. The problem is that the HOVUII conviction is treated the same as an OVUII conviction. The 2002 and 2003 convictions must be disregarded, leaving the person with only two prior convictions. HB 1181, HD 1 will close this loophole by keeping a person's habitual operator status for a period of ten years, and make that status apply to subsequent offenses within that time period.

Based on the foregoing, the County of Kauai, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** the passage of this bill. We ask that the Committee **PASS** HB 1181, HD 1.

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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**TESTIMONY IN OPPOSITION TO
H.B. NO. 1341 – RELATING TO ANTIQUE GAMBLING DEVICES**

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary
January 23, 2014

Chair Rhoads, Vice Chair Har and Members of the Committee:

The County of Kauai, Office of the Prosecuting Attorney, OPPOSES HB 1341 – Relating to Antique Gambling Devices. HB 1341 will create a definition for "antique slot machine" and provide that possession of antique slot machines that are not used or intended for use in prohibited gambling activity.

We believe that HB 1341 undermines current gambling laws by making them harder to enforce. The bill will also cause confusion and make the possession of gambling devices, antique or not, uncontrollable.

Based on the foregoing, the County of Kauai, Office of the Prosecuting Attorney, OPPOSES the passage of this bill. We ask that the Committee HOLD HB 1341.

Thank you very much for the opportunity to provide testimony on this bill.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar".

Justin F. Kollar
Prosecuting Attorney



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 1341, RELATING TO ANTIQUE GAMBLING DEVICES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, January 23, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Laura Maeshiro, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General respectfully opposes this bill.

This bill creates a definition for "antique slot machine" and excludes this type of device from Hawaii's gambling laws under chapter 712, Hawaii Revised Statutes (HRS). The proposed antique gambling device exception will weaken our gambling laws and make it harder for law enforcement to enforce Hawaii's laws prohibiting gambling.

Section 712-1223, HRS, provides:

- (1) A person commits the offense of gambling if the person *knowingly advances* or participates in any gambling activity.
- (2) Gambling is a misdemeanor.

(Emphasis added.)

Under section 712-1220(1), a person *advances* gambling activity if he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes "the acquisition or maintenance of premises, **paraphernalia, equipment, or apparatus.**" Just the act of acquiring or maintaining a functioning 25-year-old gambling device such as a slot machine may constitute the advancement of gambling activity, regardless of a person's intentions on how the device will be used.

Although the bill's intent is to exclude gambling devices that are at least 25 years old, and not intended to be used to advance gambling activity, there are a myriad of gambling schemes that could potentially fall into this exception. By way of an example, this bill would

allow a collector to create a display or casino with a hundred "antique slot machines" and have people view his collection and even test the machines.

Furthermore, the age of a device holds no bearing as to whether or not it is functional in the playing phases of any gambling activity, and cannot practicably be used to create a separate category for machines in order to exclude them. Creating exceptions, absent a compelling reason, compromises the law and may lead to various interpretations or conduct to avoid criminal culpability.

Accordingly, the Department of the Attorney General respectfully requests that this bill be held.



Hawaii Credit Union League

Your Partner For Success

1654 South King Street
Honolulu, Hawaii 96826-2097

Telephone: (808) 941.0556

Fax: (808) 945.0019

Web site: www.hcul.org

Email: info@hcul.org



Testimony to the House Committee on Judiciary
January 23, 2014 at 2:00 p.m.

Testimony in support of the intent of HB 1415 – Relating to Service by Publication

To: The Honorable Karl Rhoads, Chair
The Honorable Sharon Har, Vice-Chair
Members of the Committee on Judiciary

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 75 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support of the intent of HB 1415, Relating to Service by Publication, which would clarify legal service in a civil action by publication in a newspaper of general circulation. We are in support of the Hawaii Financial Services Association's proposed HD1 of this bill.

Thank you for the opportunity to testify.

My name is Mario Canton and my wife is Evangelina Canton. We are the parents of Kristen Marie Fonseca who passed away after a Jet Ski accident in Keehi Lagoon on Sunday afternoon August 5, 2012 at the young age of sixteen. Our family changed forever on that tragic day. It was on that day that the youngest of our children was taken away from us after a senseless accident that could have been prevented. It was on that day that I was forced to beg and plead for my daughter's life and that a simple thing like taking a breath of air was like a miracle to me as I attempted to bring my baby girl back to life. It was on that day that I learned how cruel life can be and know the pain of losing not only a loved one, but one of our precious children. In a matter of 3 seconds the precious, invaluable life of our daughter was taken away by an individual who had a total disregard for his own life and safety as well as the life of others around him by operating a jet ski at a very high rate of speed on that fateful day. Our family will never again be able to touch, kiss, hug, laugh with or see her graduate from high school, nor will we experience her getting married and having kids. Kristen's goal of being a nurse was all taken away from us again for actions that could have been prevented.

As someone who saw the brutal and tragic crash with my own eyes I am not able to get the image of seeing my daughters last moments of her life. This is something that I must live with for the rest of my life. The crash is like a video recording that is on constant playback as the images of the crash are a constantly imprinted in my mind. How do you get over seeing your daughter killed right in front of you? Since the day our daughter was taken away from us, our lives have been a roller coaster ride with all of the ups and downs, the feelings of sadness and then anger, but most of all emptiness. I constantly pinch myself hoping that this is all a horrible nightmare and that I wake up from it. But the reality is that our baby girl is gone and is never coming back. My wife still wakes up in the middle of night in tears and continues to suffer from heartache due to the loss of our daughter.

Kristen's dream of attending UCLA nursing school and ultimately becoming a nurse is now just merely that, a dream. Her hands will never heal a person's pain, or mend someone's wound.

We respectfully ask that the Hawaii State Officials pass the laws to implement much needed Jet Ski speed limits in Hawaii. If anything speed limits would prevent another family from enduring the loss and pain that our family has had to endure given the loss of our precious daughter Kristen. Please do not allow our daughter Kristen to have died in vain. Please I beg of you to pass this law in the name of Kristen, please give us some form of peace.

Mario A. Canton
Step-father of Kristen Fonseca

SB 1170 SD2 RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

I OPPOSE SB1170 SD2

No infraction is significant enough to rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. . The current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action will not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited.

DLNR and the State have sufficient remedies and procedures available to collect delinquent fines and to add another layer to the administrative oversight during these tough fiscal times and already stretched government agencies and workers is an added strained that creates a domino effect to all government departments, which includes increases in our taxes to pay such an effort.

Paul Bueltmann

PO Box 5535

Hilo Hi 96720

SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa L. Nakama	Individual	Oppose	No

Comments: HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014 COMMITTEE ON JUDICIARY Rep. Karl Rhoads, Chair Rep. Sharon E. Har, Vice Chair Rep. Della Au Belatti Rep. Mark M. Nakashima Rep. Tom Brower Rep. Clift Tsuji Rep. Richard Creagan Rep. Jessica Wooley Rep. Ken Ito Rep. Bob McDermott Rep. Derek S.K. Kawakami Rep. Cynthia Thielen Rep. Chris Lee NOTICE OF HEARING DATE: Thursday, January 23, 2014 TIME: 2:00 p.m. PLACE: Conference Room 325 State Capitol 415 South Beretania Street SB 1170 SD2 RELATING TO ENFORCEMENT OF VIOLATIONS BY THE DEPARTMENT OF LAND AND NATURAL RESOURCES. TESTIMONY IN STRONG OPPOSITION. No infraction is significant enough to rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. . The current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action will not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited. DLNR and the State have sufficient remedies and procedures available to collect delinquent fines and to add another layer to the administrative oversight during these tough fiscal times and already stretched government agencies and workers is an added strained that creates a domino effect to all government departments, which includes increases in our taxes to pay such an effort. We the undersign strongly oppose this bill SB1170 SD2 Teresa L. Nakama Mark Lee UmiAliloa S. Ching-Nakam Nathan Ching Nicola Ching Lydia Mahi Dannette Guerpo

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dean Sensui	Individual	Oppose	No

Comments: I oppose bill SB1170 SD2. This bill, if passed, can create more problems than it hopes to solve. While denying someone a car in Honolulu might be an annoying inconvenience, in other parts of Oahu and most areas of the state, it imposes undue hardship due to the lack of public transportation. The phrase, "deny any application for registration" means denying the registered owner of continuing to operate that vehicle. This could mean denying the entire family of legally operating it. This would most likely mean the vehicle would be operated illegally and expose the other innocent drivers to further penalties. It has the potential to turn a productive member of society into a social dependent, unable to get to work or meet the usual requirements of daily modern life. The costs to that family, and the rest of us, escalate beyond reason. A better penalty would be to require the violator to perform some sort of service that benefits the community, preferably the fishing community. That way the offender not only pays back society for what was done, but hopefully learns something important about the reasoning behind our fisheries management. Thank you for your consideration Dean Sensui Executive Producer Hawaii Goes Fishing

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SB1170

Submitted on: 1/23/2014

Testimony for JUD on Jan 23, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dustin	Individual	Oppose	No

Comments: TESTIMONY IN STRONG OPPOSITION. No infraction is significant enough to rise to the level of requiring director's of finance of the respective county to deny any application for vehicle registration upon receipt of notification from the Board of Land and Natural Resources and incongruous with a DLNR violation. . The current level of unregistered vehicles, drivers without current driver's licenses, and/or uninsured motorists that such an action will not improve collection of fines, but may rather force an individual to exercise civil disobedience in order to survive, especially on our neighbor islands where public transportation is limited. DLNR and the State have sufficient remedies and procedures available to collect delinquent fines and to add another layer to the administrative oversight during these tough fiscal times and already stretched government agencies and workers is an added strained that creates a domino effect to all government departments, which includes increases in our taxes to pay such an effort. I strongly oppose this bill SB1170 SD2

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 979, H.D. 1, RELATING TO HARBORS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, January 23, 2014 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Rowena A. Somerville, Deputy Attorney General

Chair Rhoads and Members of the Committee:

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This bill will provide the DOT with the authority to impose the duty to defend, hold harmless, and indemnify the State through the adoption of administrative rules. This will significantly reduce the State's exposure to liability. The duty to defend, hold harmless, and indemnify the State is currently imposed upon the users of harbor facilities with whom the State has a written contractual agreement. This bill will allow the DOT to require all users of harbor facilities, regardless of the presence of a written agreement, to defend, hold harmless, and indemnify the State. All users of the harbor facilities should be held responsible to operate in a safe manner.

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