

SB 2729

Amends section 291C-137, HRS, to prohibit the operation of a motor vehicle while using a mobile electronic device held in a person's hand for making or receiving a non-emergency call, texting, or receiving a text message. Adds exemptions to prohibition. Amends the penalties for violations. Deems a violation to be a traffic infraction. Takes effect retroactive to 5/20/2013.

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
(808) 586-2165

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

February 6, 2014
1:16 pm
State Capitol, Room 224

S.B. 2729
RELATING TO MOBILE ELECTRONIC DEVICES

Senate Committee on Transportation and International Affairs

The Department of Transportation (DOT) **opposes** Senate Bill No. 2729, Relating to Mobile Electronic Devices. This bill amends Section 291C-137, Hawaii Revised Statutes, by specifically limiting this law to cellular phones for making or receiving non-emergency calls, texting, or receiving a text message. The bill also expands the exemptions to the search of traffic conditions, accidents, or alternative traffic routes and for drivers who are at a complete stop in a safe location. It further deletes the increased fines and makes this violation a traffic infraction.

Should this measure pass, it will not allow the DOT to be eligible to receive federal grant funds because it does not meet the requirements of 23 United States Code, Section 405(e), the distracted driving grant. Under Hawaii's existing law, the definition of a mobile electronic device specifically defines what devices are covered and specifies the term "use" or "uses." A requirement of the federal grant prohibits the use of such mobile electronic device while driving and defines driving to mean "on a public road, including the operation while temporarily stationary because of traffic, a traffic light, stop sign or otherwise." However, it does not include operating of a motor vehicle when pulled over to the side of, or off, an active roadway and has stopped in a location where it can safely remain stationary. Another grant requirement requires that there be minimum fines for the first violation and increased fines for repeat offenders. The propose amendments to the law, through this bill, does not meet any of the federal grant requirements and would therefore disqualify Hawaii from receiving a distracted driving grant.

The DOT recommends the following amendments:

- Page 1, lines 10 through 12: Delete the proposed amendment.
- Page 2, lines 10 through 15: Delete the proposed amendment.
- Page 3, lines 13 through 16: Delete the proposed amendment and insert the following:

"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 engine turned off.

- Page 3, lines 18 and 19: Delete the proposed amendment as it is difficult for law enforcement to prove by just observing from the outside.
- Page 4, lines 1 through 11: Delete amendment and recommend that:
 - Line 6, \$200 is amended to read \$201; and
 - Line 11, \$300 is amended to read \$301.
- Page 4, line 17: Delete the proposed amendment.
- Page 5, line 3: To read, "shall take effective upon approval."

The Department of Transportation urges your committee not to pass S.B. 2729 as written and respectfully ask you consider the aforementioned amendments.

Thank you for the opportunity to testify.



The Judiciary, State of Hawaii

**Testimony to the
Senate Committee on Transportation and International Affairs**

Senator J. Kalani English, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Thursday, February 6, 2014, 1:16 p.m.
State Capitol, Conference Room 224

by
Calvin Ching
Deputy Chief Court Administrator, First Circuit

Bill No. and Title: Senate Bill No. 2729, Relating to Mobile Electronic Devices.

Purpose: Amends section 291c-137, HRS, to prohibit the operation of a motor vehicle while using a mobile electronic device held in a person's hand for making or receiving a non-emergency call, texting, or receiving a text message. Adds exemptions to prohibition. Amends the penalties for violations. Deems a violation to be a traffic infraction. Takes effect retroactive to 5/20/2013.

Judiciary's Position:

The Judiciary takes no position on the merits of Senate Bill No. 2729; however, we have strong concerns for Section 5 which states that this Act, upon its approval, shall take effect retroactive to May 20, 2013.

Under the current law, which treats operating a motor vehicle while using a mobile electronic device as a violation, the person receiving the citation is required to appear in court, face arraignment, enter a plea of guilty, no contest or not guilty, and, if the person enters a plea of not guilty, return to court for a trial. If the defendant fails to make any court appearance, a bench warrant would be issued and the defendant would face possible arrest.

Since the inception of the current law there have been 7,184 mobile device cases statewide of which 4,171 cases have been adjudicated. However, in almost 900 of these cases a



Senate Bill No. 2729, Relating to Mobile Electronic Devices
Senate Committee on Transportation and International Affairs
Thursday, February 6, 2014
Page 2

bench warrant has been issued for those defendants who did not make a court appearance. In some cases where the warrants have been served, defendants have also been convicted of contempt of court for failure to appear. For these cases, defendants have a criminal conviction record which is recorded in the Hawaii Criminal Justice Data Center's CJIS database.

If Senate Bill No. 2729 passes with retroactive application, there are serious concerns on how the courts will deal with adjudicated cases, pending cases and outstanding warrants. If the effective date is retroactive, each of the adjudicated cases would need to be reopened and the databases in our case management systems (Criminal and Traffic) as well as in CJIS would require updating. All outstanding warrants would have to be recalled.

The retroactivity of the bill also poses immense logistical problems beyond the situations in which a bench warrant was issued and a conviction for failure to appear was entered. The Judiciary cannot assume that it can simply enter default judgments for defendants who did not appear in court on their scheduled arraignment dates. Defendants in civil traffic infraction cases are given 21 days to answer, and the answer can be a denial, admission or an admission with mitigating circumstances. In cases where a defendant does not comply with required payment, it will generate a license stopper on either the driver license or car license plate number. The case could also end up in collection. Hence all 7,184 cases would have to be manually reviewed to assure that the law has been appropriately applied.

Other concerns are that the Judiciary will need processes and resources to manually review all cases, including:

- The calendaring and scheduling of court appearances for some cases.
- Notifying parties, which will require added costs for postage.
- Providing funding for staff overtime to process the cases and to update case management system to reflect amendments to the records, make changes to our fiscal records and to assure that the amendments are accurately reflected and displayed on the traffic abstract.
- The Judiciary case management system would need to be updated to reflect any changes on past cases so that they display accurately on the traffic abstract.

The Judiciary notes that there are enforcement and proof issues; however, we feel that law enforcement would be the appropriate entities to provide comments.

Thank you for the opportunity to provide comments on this bill.

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai'i

POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai'i 96720-3998
(808) 935-3311 • Fax (808) 961-8865

February 5, 2014

Senator J. Kalani English
Chairperson and Committee Members
Committee on Transportation and International Affairs
415 South Beretania Street, Room 224
Honolulu, Hawai'i 96813

RE: SENATE BILL 2729, RELATING TO MOBILE ELECTRONIC DEVICES

Dear Senator English:

The Hawai'i Police Department opposes Senate Bill 2729 with its purpose being to add exemptions to some of the current prohibitions as well as amending the penalties for violations.

This legislation as written will allow those who are observed utilizing mobile electronic devices while operating a vehicle and who are searching for current traffic conditions, accidents, or alternative traffic routes to utilize their handheld mobile electronic devices.

In essence what this portends is anytime law enforcement officers detect a driver utilizing such a device, their defense will be they were searching for traffic conditions, accidents, or alternative routes. Unlike the current exemptions which are clear cut and easily verified, law enforcement would not be able to verify such a defense.

For these reasons, we must oppose this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 2729.

Sincerely,

PAUL K. FERREIRA
ACTING POLICE CHIEF

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCCAULEY
DEPUTY CHIEFS

OUR REFERENCE KK-LC

February 6, 2014

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

Dear Chair English and Members:

Subject: Senate Bill No. 2729, Relating to Mobile Electronic Devices

I am Kurt Kendro, Major of the Traffic Division of the Honolulu Police Department (HPD), City and County of Honolulu. The HPD is strongly opposed to the passage of Senate Bill No. 2729, Relating to Mobile Electronic Devices. The passage of this bill would amend the definition of "use or using" a handheld Mobile Electronic Device (MED), would endanger our driving community, and in effect make enforcement of this section virtually impossible. Additionally, this bill would amend the penalty to a traffic infraction with a \$200 fine.

Distracted driving is a serious problem across the United States and around the world. The National Highway Transportation Safety Administration (NHTSA) reported that in 2012, there were 3,328 people killed, and an estimated 421,000 people were injured in motor vehicle crashes involving distracted driving.

By changing the definition of "use" or using a mobile electronic device in the driver's hand "for the purpose of making or receiving a non-emergency call, texting, or receiving a text message" while operating a motor vehicle would make the statute unenforceable. Law enforcement officers would not be able to testify what the driver of the vehicle was doing on the MED. Allowing drivers to hold the MED to search for current traffic conditions, accidents, or alternative traffic routes, still causes the driver to be distracted and will place our driving community at risk.

By allowing drivers to use an MED, there are three primary distractions.

- Visual distraction: Tasks that require the driver to look away from the roadway to visually obtain information

The Honorable J. Kalani English, Chair
and Members
Page 2
February 6, 2014

- Manual distraction: Tasks that require the driver to take one or both hands off the steering wheel to manipulate a control, device, or other non-driving-related item
- Cognitive distraction: Tasks that require the driver to avert their mental attention away from the driving task

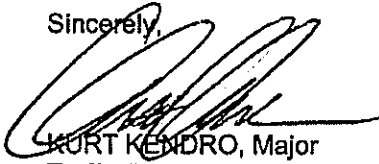
Changing this law would provide a legal and justified excuse for a driver to hold an MED, law enforcement officers would not be able to refute the explanation, and no citations could be issued. The greater risk is that if this law is changed, drivers could hold an MED and as illustrated above are distracted threefold when all of their attention should be on the roadway in front of their vehicles.

In 2013, the HPD issued 11,007 citations for drivers who were holding an MED. Distracted drivers are a serious problem in Hawaii. Changing this law will make it unenforceable and offer no deterrent for drivers.

The HPD strongly urges you to oppose Senate Bill No. 2729, Relating to Mobile Electronic Devices.

Thank you for the opportunity to testify.

Sincerely,



KURT KENDRO, Major
Traffic Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police

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, Līhu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

TESTIMONY IN OPPOSITION TO
S.B. NO. 2729
A BILL FOR AN ACT RELATING TO MOBILE ELECTRONIC DEVICES

Justin F. Kollar, Prosecuting Attorney
County of Kauai

Senate Committee on Transportation and International Affairs

Thursday, February 6, 2014
1:16 p.m., Room 224

Honorable Chair English, Vice-Chair Dela Cruz, and Members of the Senate Committee on Transportation and International Affairs:

The Office of the Prosecuting Attorney, County of Kauai submits the following testimony **in opposition** to S.B. 2729, Relating to Mobile Electronic Devices.

The intent of HRS 291C-137 is to deter use of **any** electronic device while driving. The current statute achieves this goal. Reducing distracted driving is crucial to the safety of our roads and highways. The newly-exempted activity proposed by this law is not any safer than texting while driving. Many of these functions can already be accomplished safely via the use of voice-activated equipment.

In addition, the proposed legislation would disqualify the State from receiving Federal Distracted Driving grant funds. These funds pass to the County police departments and prosecutors and aid our efforts in enforcing distracted driving laws.

Further, the County of Kauai, Office of the Prosecuting Attorney also supports the amendments set forth in the Department of Transportation's testimony.

For these reasons, we **oppose** S.B. 2729 as written. Thank you for the opportunity to testify on this matter.

Respectfully,

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i



Honda North America, Inc.
1001 G Street, N.W. Suite 950
Washington, D.C. 20001
Phone (202) 661-4400

February 6, 2014

Chairman J. Kalani English
Hawaii Senate Transportation and International Affairs Committee
Hawaii State Capitol
415 South Beretania St
Honolulu, HI 96813

Re: Honda's support for SB 2729

Dear Chairman English and Members of the Senate Transportation and International Affairs Committee:

Thank you for the opportunity to express our support for Senate Bill 2729. Honda shares your desire to improve traffic safety by reducing distracted driving accidents. We applaud you for addressing this important public safety issue. Customer safety has always been at the core of Honda's philosophy, which is why 18 Honda and Acura models earned the Insurance Institute for Highway Safety's Top Safety Pick for model year 2013. Honda is considered an industry leader in safety for its investment in the creation of innovative safety systems and its partnership with Ohio State University on a \$1.3-million Driving Simulation Laboratory aimed specifically at driver distraction issues.

Honda supports state laws that prohibit the use of hand-held devices for phone calls or texting while driving. SB 2729 will serve to clarify and reinforce the existing prohibition against the use of hand-held devices, while expressly allowing the use of systems and devices that maintain the safety of hands-free operation. These safety systems integrate the phone with the vehicle, and allow drivers to keep their eyes on the road and their hands on the wheel, eliminating the dangerous visual and manual distractions associated with talking or texting while driving.

Thank you for your time and leadership on this important issue. For more information on Honda's safety leadership or our value to Hawaii please visit www.hondainamerica.com.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Craig Orlan
State Relations Analyst
Honda North America, Inc.

Sharon Lum Ho

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 04, 2014 2:55 PM
To: TIATestimony
Cc: hi0050@yahoo.com
Subject: *Submitted testimony for SB2729 on Feb 6, 2014 13:16PM*

SB2729

Submitted on: 2/4/2014

Testimony for TIA on Feb 6, 2014 13:16PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Hirata	Safe Community of Maui	Oppose	No

Comments:

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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Sharon Lum Ho

From: Recovery Law Center <attorney@recoveryourloss.com>
Sent: Wednesday, February 05, 2014 9:19 AM
To: TIATestimony
Subject: PASS SB2729

Dear Chair English and Members, I support the passage of SB2729.

Thank You,

George Huffman

George Huffman, Paralegal
GLENN T. HONDA, ESQ.
1260 Young Street, Suite 228
Honolulu, Hawaii 96814
T 808-597-8886
F 808-597-8881



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Sharon Lum Ho

From: Ryan <ryanwade49@hotmail.com>
Sent: Wednesday, February 05, 2014 9:34 AM
To: TIATestimony
Subject: SB2729

Dear Chair English and members,

I support the passage of SB2729.

Thank you,
Ryan Miyashiro

Sharon Lum Ho

From: Tim Bowden <timbowden@jdesign.tv>
Sent: Wednesday, February 05, 2014 9:20 AM
To: TIATestimony
Subject: SB2729.

Dear Chair English and Members,

I support the passage of SB2729.

Thank You,

Tim Bowden

Sharon Lum Ho

From: Wayne Kato <wkato@hawaii.edu>
Sent: Wednesday, February 05, 2014 10:24 AM
Subject: COMG-472-001 [MAN.88666.SP14]: Testimony for SB2729

Dear Chair English and Members, I support the passage of SB2729. Thank You, Wayne Kato

Sharon Lum Ho

From: Patrick Tomiyasu <hawaiijaycees@gmail.com>
Sent: Wednesday, February 05, 2014 10:23 AM
To: TIATestimony
Subject: SB2729 - Support

Dear Chair English and Members,

I support the passage of SB2729.

Thank You,
Patrick Tomiyasu

Sharon Lum Ho

From: George Furtado <kekoa22@icloud.com>
Sent: Wednesday, February 05, 2014 10:38 AM
To: TIATestimony
Subject: SB#2729

Dear Chair English ~

I support passage of your bill (#2729).

Respectfully submitted,

George B. Furtado
Kapolei, HI
Ph: (808) 664-7592

Sent from my iPad

Sharon Lum Ho

From: Jason Azus <jaysonhawaii@gmail.com>
Sent: Wednesday, February 05, 2014 9:39 AM
To: TIATestimony
Subject: SB2729

Dear Chair English and Members, I support the passage of SB2729. Thank You, Jason Azus

--



Jason Azus

Sharon Lum Ho

From: hubert minn <minnh001@hawaii.rr.com>
Sent: Wednesday, February 05, 2014 9:48 AM
To: TIATestimony
Subject: *****SPAM***** SB2729

I support passage of SB 2729.

Mahalo,

Hu Minn

Sharon Lum Ho

From: Keith Takeda <keithtakeda@gmail.com>
Sent: Wednesday, February 05, 2014 11:58 AM
To: TIATestimony
Subject: Senate Bill 2921

Dear Chair English and Members,

I support the passage of SB2729.

Thank You,

Keith Takeda

Sharon Lum Ho

From: Daryl Fujiwara <sfdhawaii@gmail.com>
Sent: Wednesday, February 05, 2014 10:24 AM
To: TIATestimony
Subject: Senate Bill 2921.

Dear Chair English and Members,
I am a resident of Maui and
I support the passage of SB2729.

Thank You,
Daryl Fujiwara

Sharon Lum Ho

From: Dennis Takatsuki <dennist@hawaiiantel.net>
Sent: Wednesday, February 05, 2014 1:04 PM
To: TIATestimony
Subject: SB2729

Dear Chair English and Members:

As a part-time resident of the island of Kauai and Oahu, I fully support the passage of SB2729.

Thank you.

Dennis Takatsuki

Sharon Lum Ho

From: Elise Anderson <eliseanderson808@gmail.com>
Sent: Wednesday, February 05, 2014 10:03 AM
To: TIATestimony
Subject: SB 2729 testimony

Dear Chair English,

I support the intention of SB 2729. It is not right to ticket people simply for holding phones that are turned off, having phones idly on their laps, or using phones while stopped.

That said, the exemption allowing phone use for checking routes and traffic conditions opens risky doors. As it is, many people indeed use phones for these reasons, but without diverting all attention to the phone. Were we to check traffic and routes without fear of penalty if caught, we would likely keep our eyes on the screen continuously, or read the phone in explicit manners that avert all visual attention from the road. Moreover, people could use phones for other reasons (Facebook, email, etc), and then change their screen to a traffic site when pulled over, to convince the police they were scanning traffic all along. Thus, the exemption would prove unenforceable.

Thank you. Other than Item 4, SB2729 improves justice for drivers of Hawaii.

Elise Anderson

Sent from my iPhone

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

February 6, 2014

Subject: Testimony in **STRONG SUPPORT** of SB2729; Relating to Mobile Electronic Devices.

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

Thank you for the opportunity to provide testimony on SB2729. I strongly support the passage of SB2729, with amendments, as it relates to the use of mobile electronic devices while operating a motor vehicle.

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. SB2729 revises 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.

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

Senate Bill 2279 address all of the issues are currently flawed with Act 74. It address 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.

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). However, I do also support the passage of the bill as is.

1. Section (e) As used in this section:
"Use" or "using" means holding a mobile electronic device in the driver's hand for the purpose of making or receiving a non-emergency call, texting, or receiving a text message 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 SB2279.

James Cavin
Ph: 436-3454

Sharon Lum Ho

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 05, 2014 6:44 AM
To: TIATestimony
Cc: ricky.uedoi@mpd.net
Subject: *Submitted testimony for SB2729 on Feb 6, 2014 13:16PM*

SB2729

Submitted on: 2/5/2014

Testimony for TIA on Feb 6, 2014 13:16PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Ricky Uedoi		Oppose	No

Comments:

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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