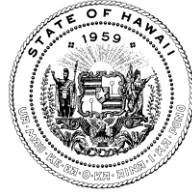


# SB16

RELATING TO TOWING.

Establishes definitions of "hooked up", "scene", and "vehicle owner" to clarify when a vehicle must be released by a towing company. Establishes date and time stamped photo as proof of vehicle being hooked up.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
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DEPUTY DIRECTOR

**PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION**

**TO THE SENATE COMMITTEE ON TRANSPORTATION**

**THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015**

**JANUARY 27, 2015  
2:45 PM**

TESTIMONY ON S.B. 16, RELATING TO TOWING.

TO THE HONORABLE CLARENCE K. NISHIHARA, CHAIR,  
AND TO THE HONORABLE BREENE HARIMOTO, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs, Office of Consumer Protection (“OCP”), appreciates the opportunity to offer comments in support of S.B. 16, Relating to Towing. My name is Bruce B. Kim and I am the Executive Director of OCP.

S.B. 16 proposes to add a definition of “vehicle owner” to Section 290-11, Hawaii Revised Statutes (“HRS”), that would clarify the definition in the context of HRS § 290-11, and makes amendments to address the inconsistent terminology used to refer to vehicle owners throughout the section. The bill also adds definitions for “hooked up” and “scene” to address practices related to the HRS § 290-11 requirement that a vehicle be released to a vehicle owner if the vehicle owner arrives before their car is towed without charging a

“drop fee” to do so. It also proposes a means for tow truck drivers to be able to provide proof that the requirements of the statute have been complied with.

Per HRS § 290-11, OCP receives towing complaints from consumers. Since 2007, when the Legislature banned drop fees, OCP has received over fifty complaints of tow truck drivers charging drop fees, or refusing to drop the tow. This bill will assist OCP in its enforcement activities by clarifying certain areas of the statute.

This bill adds a definition of “vehicle owner” to broaden the types of individuals eligible to instruct a tow operator to release a vehicle. These changes will assist tourists who have rented vehicles, as well as permissive users, such as family members who are using a vehicle but who are not owners of the vehicle, and will allow them to act as the vehicle owner to obtain a vehicle release before a vehicle is towed.

In addition, the bill’s definitions of “hooked up” and “scene” will help close a loophole in which a tow operator will partially hook up the vehicle and moving it in order to argue that the vehicle is no longer “on the scene”. These amendments will hopefully result in the use of safer and better industry practices in securing vehicles.

Thank you for the opportunity to offer comments in support of S.B. 16. The matters of drop fees and the related issue concerning who has a right to recover a vehicle from tow yards has been an area where OCP has had difficulty resolving complaints since the 2007 amendments to HRS § 290-11, and we appreciate solutions from the Legislature as to how to address these problems. I would be happy to answer any questions members of the committee may have.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE CT-GR

January 27, 2015

The Honorable Clarence K. Nishihara, Chair  
and Members  
Committee on Transportation  
State Senate  
Hawaii State Capitol  
Conference Room 229  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 16, Relating to Towing

I am Calvin Tong, 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. 16, Relating to Towing.

The passage of this bill will help the Honolulu Police Department settle disputes between the towing companies and the motorists. The current statute specifies release to the owner, which creates a problem for the operators of rented or borrowed vehicles. We believe that allowing the release to the person who is legally in possession of the vehicle at the time of the tow is in keeping with the true spirit of eliminating "unhooking" fees.

The HPD urges you to support Senate Bill No. 16, Relating to Towing.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Calvin Tong" with a stylized flourish at the end.

CALEVIN TONG, Major  
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa" with a stylized flourish at the end.

LOUIS M. KEALOHA  
Chief of Police

## **Ace Towing Service**

1040 Makepono Street  
Honolulu, HI 96819  
Phone: (808) 847-7811  
Fax: (808) 842-7605

January 26, 2015

Senator Clarence K. Nishihara, Chair  
Senator Breene Harimoto, Vice Chair  
Committee On Transportation  
State Capitol, Room 229  
Honolulu, HI 96813

**RE: SB16 Relating To Towing. Establishes definitions of “hooked up”, “scene”, and “vehicle owner” to clarify when a vehicle must be released by a towing company. Establishes date and time stamped photo as proof of vehicle being hooked up.**

Dear Chair Nishihara, Vice Chair Harimoto and Members of the Committee:

In regards to SB 16, we agree that clarification regarding the “scene”, “hooked up” and “vehicle owner” is needed. However, we as a company working closely with customers in our industry have a different idea as to what the definitions should be.

Scene, “means the stall where the vehicle is parked.” Where the vehicle is not parked in a marked stall the scene “shall be the immediate area where the vehicle was parked.” Adding the immediate vicinity or stall still makes the definition vague. The towing company will argue that the vehicle was removed from the stall and the owner of the vehicle will argue that the vehicle was still in the immediate vicinity. Where a vehicle is towed from a public street, removing a vehicle from a stall puts the tow truck in traffic, even though the vehicle is still in the immediate vicinity. The tow truck is not able to stop in the middle of traffic to release a vehicle.

Hooked Up definition is fine.

Vehicle Owner means the legal or registered owner of a vehicle or renter in the case of a rental car. The person should have “proof of ownership” by showing their certificate of title or current vehicle registration and/or rental agreement. Having the key or remote keyless ignition system to the vehicle does “not” prove ownership or that permission was given to operate the vehicle. We have experienced where our employee made an error and did not check the appropriate documents and released the vehicle to the person with the key. Two hours later the legal owner, with the certificate of title, came to our tow yard to pick up this vehicle. We have also experienced where a married couple was in the process of a divorce and the vehicle was registered to only the wife and the husband had possession of the vehicle. We towed the vehicle and the wife was finally able to retrieve her vehicle and was so thankful to us for not releasing the vehicle to her husband. The police department has issued warnings to towing companies in the past about releasing vehicles to persons other than the legal or registered owner. By allowing persons with just the key or keyless ignition system to retrieve a vehicle is doing an injustice to the motoring public.

Senator Clarence K. Nishihara, Chair  
Senator Breene Harimoto, Vice Chair  
Committee On Transportation  
January 26, 2015  
Page 2 of 2

Having a date and time stamped photograph of the vehicle hooked up is not necessary. If the owner of the vehicle appears on the scene the towing company must release the vehicle to the owner of the vehicle. What is the reason for having a photograph? We feel that this part, "provided that a date and time stamped photograph of the hooked up vehicle at the scene, showing the license plate of the vehicle, shall be evidence that the vehicle is hooked up as defined in this section," should be clarified. Does having the picture of the hooked up vehicle allow the towing company to tow the vehicle despite the fact that the vehicle owner appeared on the scene? It appears that the purpose of having a date and time stamped photograph of the hooked up vehicle on the scene provides evidence that the vehicle is now hooked up for a tow. The bill should be amended to provide that the "vehicle shall be towed and a towing fee is due and payable."

Respectfully Submitted,

Jan Wakayama  
President

January 25, 2015

Dear Senate Committee on Transportation & whom it may concern,

I am writing in response to Senate Bill Number 16 (S.B. No. 16). My name is Donovan Pantastico and I am the owner of Solid Towing LLC. My business has an A+ rating with the Hawaii Better Business Bureau and is in good standing with the State of Hawaii Department of Commerce & Consumer Affairs. I have been in the towing business as an owner and a driver for over 10 years; and the majority of that time I have performed trespass towing service for numerous residential and commercial private properties on Oahu.

As a seasoned towing professional, I am obliged to make this committee aware of some concerns that I have regarding S.B. No. 16. Regarding the proposed definition of "scene" as worded in the current H.R.S. 290-11, I feel that the proposed definition which states that the scene "means the property from which the vehicle is being towed, or in the case of a tow from a public street, the stall or immediate vicinity in which the vehicle is parked" – may cause an unsafe situation for vehicle owners, members of the general public, and tow truck operators. Some properties, whether it is a business or residential property, may be hundreds of acres in size; and may include numerous alleyways, services lanes and thoroughfares. As currently written, H.R.S. 290-11 requires a tow truck operator who is in the process of hooking up a vehicle to release the vehicle when the owner appears on the "scene". If the new definition of "scene" as proposed in H.B. No. 16 includes any area of the property that the vehicle is being towed from, then this will cause an unsafe situation when vehicle owners attempt to halt the tow truck already in the process of towing a vehicle and leaving the property. Furthermore, it may be impede traffic causing a dangerous situation if the tow truck operator has to stop the tow truck and un-hook a vehicle in any area of the property where the owner of the vehicle may appear while the driver is already in the process of the tow (meaning the vehicle is hooked-up to the tow truck and the truck is moving). The proposed definition of "scene" will cause people to attempt to stop a moving vehicle, which may result in bodily harm. Also, it may cause an unsafe situation for the tow truck operator/ and or the general public when a vehicle is un-hooked from the tow truck and released in an area of the property other than where the vehicle was originally parked. I do feel that a more clear definition of "scene" is necessary and in my professional opinion, this definition should state that the scene is the stall in which the vehicle is parked. Once the tow truck has moved the vehicle out of the stall in which the vehicle was illegally parked, the vehicle should be towed to the designated storage facility in accordance with the towing contract.

Also, a concern of H.B. No.16 is the proposed definition of "vehicle owner". The proposed definition states that a vehicle owner "means the legal or registered owner of the vehicle, a person renting the vehicle pursuant to chapter 437D, or any person in possession of the key or remote keyless ignition system to the vehicle". To release a vehicle to "any person" who may be in possession of the keys or remote keyless ignition system will cause liability to the towing company. Currently, a vehicle is logged with the police department before it is towed, and as soon as the vehicle is moved from the stall in which it was illegally parked, the towing company assumes liability of the vehicle. The towing company should only release the vehicle to the registered and or legal owner of the vehicle as currently defined in H.R.S. 290-11. Suppose a situation arises where the minor unlicensed child of a vehicle owner has the keys to the vehicle and requests that the towing company release the vehicle to his possession, will the towing company be liable if any damage is caused to the vehicle or bodily harm occurs as a result of the release

of the vehicle to the unlicensed minor? For a towing company to release a vehicle to “any person” who may be in possession of the keys leaves an infinite amount of liabilities upon the towing company. When a vehicle is towed for being illegally parked, the vehicle should only be released to the registered and or legal owner or to a representative of the insurance company of the vehicle. At Solid Towing, we have always allowed for arrangements to be made for the release of a towed vehicle when the registered/ and or legal owner is not able to pick up the vehicle in person. This arrangement includes written permission from the registered/legal owner for us to release the vehicle to a specified third party.

It would be greatly appreciated if this committee would consider the above stated concerns when reviewing H.B. No.16. Unfortunately, I am off island at the present time and will not be able to testify in person at the public hearing scheduled for January 27; however if any member of this committee wishes to contact me with any questions or concerns, you can leave a message with your contact information at my office phone number (808) 620-0656 and I will get back to you immediately.

Thank you for your time and consideration.

Aloha,  
Donovan Pantastico  
Owner  
Solid Towing LLC

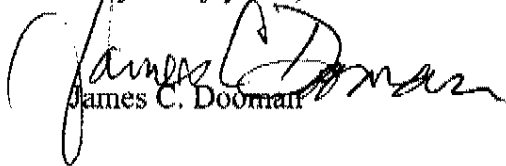


TO: The Senate Committee on Transportation  
FROM: James C. Dooman  
DATE: January 27, 2015  
RE: S.B. 16, Relating to Towing  
ATTN: Senator Clarence Nishihara  
Senator Breene Harimoto  
Members of the Transportation Committee

From February 2004 until I retired on December 1, 2013, I was an investigator for the DCCA Office of Consumer Protection. In that capacity I was assigned to investigate many complaints against towing companies pursuant to HRS 290-11. It has been my experience that some towing companies look for ambiguous wording in the law to use to their advantage in an effort to maximize their fees. One of the more common examples is their interpretation of the word "owner" as applied to the requirement to drop the car without fee if the owner appears on the scene. The tow operators choose to define "owner" as the registered or legal owner. Thus if a driver of a rental car or family member of the registered owner appears on the scene the tow operator will not release the car. This has caused considerable hardship to the family members as well as visiting tourists. I believe that this is circumventing the intent of the law and that this ambiguity can be easily clarified by adding wording to more clearly define the meaning of the word "owner".

Thank you for your attention to this matter

Very truly yours,

  
James C. Dooman