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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2016

MONDAY, FEBRUARY 29, 2016  
10:05 P.M.

TESTIMONY ON SENATE BILL NO. 2857 S.D. 1, RELATING TO TOWING.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of Consumer Protection (“OCP”) supports Senate Bill No. 2857 S.D. 1, Relating to Towing. My name is Stephen Levins and I am the Executive Director of the OCP.

Senate Bill No. 2857 S.D. 1 is an Administration Bill that seeks to address problems that people experience when they come on to the scene of a tow and request that their vehicle be “dropped” and difficulties involving the right to retrieve borrowed or rented vehicles from the towing companies tow yard. In particular:

- It includes within the definition of “vehicle owner” any person in possession of the vehicle key. This would apply to anyone having permission of the registered owner to operate the vehicle, such as, family members or lessees

- of car rentals. Delineating the definition in this manner would resolve a chronic problem of non-registered owners being deprived the right to retrieve a towed vehicle from a tow yard or getting a tow truck operator to drop the vehicle at the scene;
- It provides clarity to the term “scene” and eliminates unnecessary ambiguity as to when a tow truck driver would be required to drop a tow. Over the years the conflicting interpretation over what constitutes the “scene” has been the source of numerous consumer complaints to the OCP;
  - It defines “hooked up” in a manner that enhances the tow truck driver’s operation of safely attaching or fastening a vehicle to the tow truck;
  - It defines a “difficult hookup” as one being in a multilevel parking facility; and
  - It makes a violation of the towing law, an unfair or deceptive trade practice in violation of section 480-2.

If adopted, this measure will help eliminate the times where a son or daughter borrowing a parent’s car have to roust their parent from bed at midnight to retrieve a towed car from a tow yard merely because they are not the registered owner. This measure will also prevent the situations where a consumer is unreasonably told that since their car was moved a few feet out of the parking spot it is no longer at the “scene” and, thus, the car is no longer eligible to be dropped under the towing laws.

Thank you for the opportunity to testify in support of Senate Bill No. 2857 S.D. 1. I am available for any questions you may have regarding this Bill.

# ACE TOWING SERVICE

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February 26, 2016

Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Committee on Judiciary and Labor  
State Capitol, Room 016  
Honolulu, Hi 96813

**Re: SB2857 Relating To Towing.** Defines “vehicle owner”, “scene” and “hooked up” for the purposes of towing unattended vehicles. Makes clarifying amendments. Specifies that violations of the section shall be per se violations of section 480-2, Hawaii Revised Statutes and repeals prior fine provisions.

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

Thank you for the opportunity to present testimony regarding SB 2857 which seeks to amend sections of Haw. Rev. Stat. section 290-11 that regulates the towing of “Vehicles left unattended on private and public property. This bill is designed to define the “vehicle owner”, “scene” and “hooked up”. We agree that definitions are needed to make the law less ambiguous. However, we as a towing company working closely with customers in our industry have a real-world idea as to what the definitions should be and we are in opposition of this bill.

I am offering this testimony on behalf of Ace Towing Service, Inc., a towing company operating within the boundaries of the City and County of Honolulu. Our company has a clientele of many private and commercial property owners and the federal, state and city and county government.

S.B. 2857 proposes to add a definition for “Vehicle Owner” to subsection (a) of Haw. Rev. Stat. Section 290-11. As proposed, the definition of “Vehicle Owner” would mean:

... any person, other than the towing company, who has possession of or any other interest in the vehicle, including but not limited to the legal or registered owner of the vehicle, the person renting the vehicle pursuant to chapter 437D, and any person in possession of the key or remote keyless ignition system to the vehicle.

That amendment appears to be expanding the definition of “Vehicle Owner.” That definition will expand the categories of persons who: may recover a vehicle from the tow companies’ yard (proposed Haw. Rev. Stat. § 290-11(c)(4) and (5); and may ask the tow company to “unhook” the car that is “in the process of

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being hooked” (proposed Haw. Rev. Stat. § 290-11(c)(2);)

Although Ace Towing Service, Inc. has no objections to the expansion of who may be deemed by this body to be a “Vehicle Owner,” it has concerns.

As a tow company, Ace Towing Service, Inc. is liable under the common laws of bailment for negligence for any motor vehicle while under its control or storage and for damages incurred by the legal owner of motor vehicle that had been towed.

As drafted, the standards set forth in SB 2857 puts the towing company in peril of civil liability if it returns a motor vehicle to a person with a key who is not the legal or registered owner. Pursuant to the proposed amendment, the tow company is required to return the vehicle to that person absent proof that the person has been validly entrusted with the car by the legal and/or registered owner. The tow company needs proof that once it has the car, it has properly discharged its custodial obligations under the laws of bailment to the legal or registered owner. Possible solutions include: (1) add a section to absolve Ace Towing Service, Inc. from any liability for damages and lawsuits to claims by the legal and/or registered owner that may arise from turning over the motor vehicle to the key holder and give the towing companies an increase to cover the possible liability cost; or (2) require the key holder to show written proof that he/she has been entrusted with the motor vehicle by the legal and/or registered owner; or (3) delete this exception and continue with the practice of only recognizing the legal and/or registered owner.

With those same considerations, the expansive category for rental vehicles should be amended to read: “the person renting the vehicle pursuant to chapter 437D [who can show proof that he/she is the person on the rental contract for that vehicle; . . .”

Finally, as drafted, the definition of “Vehicle Owner” is vague in its reference to a person who has “possession or any other interest” and should only provide for specific categories of persons considered to be a “Vehicle Owner” for the purpose of Haw. Rev. Stat. Section 290-11. The “general definitions” make it difficult if not impossible for a tow company to determine who qualifies as the tow company is attempting to discharge its legal duty under the laws of bailment to the legal or registered owner. It should be amended to state:

“Vehicle Owner” means any person, other than the towing company, ~~who has possession of or any other interest in the vehicle,~~ including but not limited to the legal or registered owner of the vehicle, . . . “

In regards to the vehicle being in the process of hooking up and the vehicle owner appears on the scene the proposed bill says that, “...the towing company shall release the vehicle to the vehicle owner at a location that ensures the safety of all persons and property involved and, regardless of whether the release occurs on the scene or if the vehicle must be removed from the scene to be safely released, no fee will be charged to the vehicle owner.”

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To require an unhooking without an unhooking charge is not fair. If towing companies were given a raise in fees to cover the additional costs imposed by such laws we would be more inclined to accept such a law.

We are a necessary service to the motoring public please do not widen our exposure and increase our cost of doing business by passing this bill.

Thank You,

Jan Wakayama  
Ace Towing Service

# TESTIMONY ON SB 2857 SD1- RELATING TO TOWING

**POSITION:** Opposed to current language definition of “On scene”, and “Releasing vehicle to any key holder”.

PRESENTATION OF  
BARNABY ROBINSON, OWNER WAIALAE TOWING

THE SENATE  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2016

[COMMITTEE ON JUDICIARY AND LABOR](#)  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 29, 2016

I want to thank the legislature for addressing several nagging problems concerning illegally parked vehicles.

The definition of “Hook up”, “On Scene” (requiring “free” unhooking), and “Vehicle Owner” language for release of illegally parked vehicles to vehicle owners has been problematic since its inception in 2008.

The language in SB 2857 proposes that once we have hooked up the illegally parked vehicle and the vehicle owner shows up, that we are required to release the vehicle “free” of charge if the owner arrives while we are within a 50 foot radius of the pick-up location.

**This 50 foot radius is unacceptable**, as it creates an arbitrary situation where a tape ruler or some other measuring device to be involved. Additionally, there is a negative safety factor involved as we will be required to conduct this lengthy measurement in the middle of the very road we are trying to clear for traffic ease, causing further delay and congestion.

Further proposed complicating language would require us to travel in excess of the 50 foot radius to find a safe place to unhook, which may be several blocks if not miles away.

We recommend that once we are hooked up to the illegally parked vehicle, that this “free” unhooking work be limited to a **ONE FOOT RADIUS**.

**Releasing a vehicle to anyone in possession of a key or remote keyless is also unacceptable**. Releasing an illegally parked vehicle in our care and custody needs to be to either to the registered or legal owner only, and in the case of a rented vehicle, proof of a valid rental agreement. We need some sort of verification that we are releasing the vehicle to its proper owner, and vehicle registration or rental agreement validates a person trying to claim the vehicle.

Parking enforcement is a necessity in society, both on public land and private property. Reaching across the aisle to our legislators and regulatory agencies is vital to helping maintain order, protecting property rights, and clearing roadways for the motoring public. Please favorably consider our requests to properly manage parking enforcement.

Barnaby Robinson

Waialae Towing Service