

SB2857

RELATING TO TOWING



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

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION
TO THE SENATE COMMITTEES ON TRANSPORTATION AND ENERGY
AND
COMMERCE, CONSUMER PROTECTION, AND HEALTH
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016
THURSDAY, FEBRUARY 11, 2016
2:48 P.M.

TESTIMONY ON SENATE BILL NO. 2857, RELATING TO TOWING.

TO THE HONORABLE LORRAINE R. INOUE AND ROSALYN H. BAKER, CHAIRS,
AND TO THE HONORABLE MIKE GABBARD AND MICHELLE N. KIDANI,
VICE CHAIRS, AND MEMBERS OF THE COMMITTEES:

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

Senate Bill No. 2857 is an Administration Bill that seeks to address several deficiencies in the current towing law which hinder the capability of the OCP to protect consumers from recurring problems with the towing industry. These include 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.

Senate Bill No. 2857 offers several amendments to section 290-11 of the Haw. Rev. Stats. to correct these flaws. In particular, it attempts to resolve them through the following means:

- 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.

All of these amendments are being proposed to address deficiencies in the current law that have become apparent over the years based on the nature and number of complaints filed with the OCP. They will improve the state of the towing law and will diminish ambiguities that create additional and unreasonable difficulties for those individuals subject to towing. 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. I am available for any questions you may have regarding this Bill.

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

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE DI-GR

February 11, 2016

The Honorable Lorraine R. Inouye, Chair
and Members
Committee on Transportation and Energy
The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce, Consumer Protection,
and Health
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Inouye and Baker and Members:

SUBJECT: Senate Bill No. 2857, Relating to Towing

I am Darren Izumo, 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. 2857, Relating to Towing.

The passage of this bill will clarify the rights for citizens, tow operators, and law enforcement
involved when an unattended vehicle is towed.

The HPD urges you to support Senate Bill No. 2857, Relating to Towing.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Izumo".

Darren Izumo, Major
Traffic Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".

Louis M. Kealoha
Chief of Police

ACE TOWING SERVICE

1040 Makepono Street | Honolulu, Hawaii 96819

T: 808.847.7811 | F: 808.845.0894 | E: 8477811@Hawaii.RR.com

February 10, 2016

Senator Lorraine R. Inouye, Chair
Senator Mike Gabbard, Vice Chair
Committee on Transportation and Energy

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair
Committee on Commerce, Consumer Protection and Health
State Capitol, Room 229
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 Inouye, Chair Baker, Vice Chair Gabbard, Vice Chair Kidani 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.

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

ACE TOWING SERVICE

1040 Makepono Street | Honolulu, Hawaii 96819

T: 808.847.7811 | F: 808.845.0894 | E: 8477811@Hawaii.RR.com

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.”

ACE TOWING SERVICE

1040 Makepono Street | Honolulu, Hawaii 96819

T: 808.847.7811 | F: 808.845.0894 | E: 8477811@Hawaii.RR.com

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

KUNI'S AUTOMOTIVE & TOWING
820 Isenberg Street
Honolulu, HI 96826
Tel. (808) 944-0009, Fax (808) 949-0333

February 10, 2016

Senator Lorraine R. Inouye, Chair
Senator Mike Gabbard, Vice Chair
Committee on Transportation and Energy

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair
Committee of Commerce, Consumer Protection and Health
State Capitol, Room, 229
Honolulu, HI 96813

Re: **SB 2857, Relating to Towing**
Hearing Date: Thursday, February 11, 2016, 2:48 p.m.
Hearing Place: Conf. Rm. 229, State Capitol, 415 S. Beretania St.

Dear Chairs Inouye and Baker, Vice Chairs Gabbard and Kidani and Members of the Committees.

Thank you for allowing me to present testimony regarding SB 2857.

My name is Brian Kunishige, and I am the President of Kuni's Enterprises, Inc., (KUNI'S), a full service towing and recovery operation, that provides both City tow sub-contract services as well as private tow services across most of Oahu.

For the definition of "Scene" this bill seeks to adopt a 50 ft. radius of the location of the hook up. Fifty feet is approximately 2 ½ car lengths. The bill is encouraging a motorist who has already parked unlawfully, and was cited by HPD, to run into the active traffic lanes to chase after the tow truck for 50 ft. to retrieve his or her vehicle. Instead of trying to determine distance from where the vehicle was parked, a better and more accurate and a more sensible measure of the "Scene" would be the stall in which the vehicle was parked. Once the vehicle is removed in its entirety from the stall in which it was parked, it will be considered to have left the "Scene". At that point, we will have no motorist chasing the vehicle down in traffic and no safety or traffic hazard is being created.

"Hook up" should be described as when the vehicle to be towed is securely attached to the tow vehicle and is safely able to be moved without falling off the tow truck.

February 10, 2016

Page 2

“Vehicle Owner” should be defined as the legal owner, registered owner, lien holder, renter or authorized driver on a rental agreement. If the Vehicle Owner is unable to pick-up the vehicle from the tow yard, a notarized letter, power of attorney or a letter on hospital letter head signed by a doctor indicating the vehicle owner is incapacitated and authorizing some other than the legal or registered owner to pick-up the vehicle may be acceptable.

The proposed amendment of “Vehicle Owner” to any person in possession of the key or remote keyless entry ignition system to the vehicle, creates multiple problems with liability in releasing a vehicle to any person with the key. This definition allows for persons not related to or with no association with the actual owner, to pick-up the vehicle. Moreover, every time the definition of Vehicle Owner is expanded, there is a potential liability created for the unlawful release of a vehicle. If the State of Hawaii will accept liability and hold the tow companies harmless for releasing vehicles, we will need that in the bill also or a written release of liability. Numerous times a **FRIEND** of the driver attempts to pick up a vehicle. The friend may not have any documentation relating them to the vehicle, the vehicle owner or the vehicle lien holder. If we release that vehicle and later that afternoon the registered owner comes to pick up the vehicle that he has keys to, title to, registration for, a safety check and an insurance card for, we are liable to that owner for possible unlawful action under bailment law for that vehicle. Further amendment to this provision or the deletion of this provision or a hold harmless clause may be appropriate.

Kuni’s objects to SB 2857 in its present form and respectfully requests that this legislation be amended or be held in committee.

Sincerely,

/s/ Brian S. Kunishige

Brian S. Kunishige
President

DATE: February 8, 2016

TO: Senator Lorraine R. Inouye, Chair
Senator Mike Gabbard, Vice Chair
Committee on Transportation and Energy

Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair
Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol, Room 229
Honolulu, Hawaii 96813

FROM: Patricia S. Martin
P.O. Box 31162
Honolulu, Hawaii 96820-1162

RE: Senate Bill No. 2857
Relating To Towing

I am a citizen and resident of the State of Hawaii. I am a property owner who has for many years a contract with a towing company to lawfully remove any unauthorized vehicles from my private property.

Although I provide all required notification to persons who illegally park on my property, there are frustrating circumstances when such persons deliberately and willfully abuse the parking privileges of authorized vehicle owners. These legally parked vehicle owners and I are the victims of an intolerable situation.

If this proposed Senate Bill No. 2857, Relating To Towing, cannot correct and control the definition of "vehicle owner" and allow for proper charges and assessments of towing costs, we (all property owners; authorized vehicle owners; towing companies and public enforcement authorities) will be left in an untenable situation.

By not allowing towing companies to charge and assess "hooked up" and all other pertinent fees to individuals that abuse and disregard posted signs and proper notification, there is little or no recourse for law abiding property owners to correct this injustice.

The proposed Senate Bill No. 2857 that amends Section 290-11, Hawaii Revised Statutes, attempts to provide a definition of "vehicle owner". Such definition as stated:

"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, 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."

The proposed definition of "vehicle owner" as "...any person in possession of the key or remote keyless ignition system to the vehicle" may include any and all of the following:

- 1) The thief of a stolen vehicle.
- 2) A person who accidentally, or intentionally, acquires "the key or remote keyless ignition system to the vehicle".
- 3) The unauthorized spouse, offspring, or other related person or persons who are "in possession of the key or remote keyless ignition system to the vehicle".
- 4) The unauthorized friend, neighbor, or any person or group of persons, including a thief, who is "in possession of the key or remote keyless ignition system to the vehicle".
- 5) Any and all persons who are "in possession of the key or remote keyless ignition system to the vehicle". This may include multiple persons with multiple sets of keys and multiple remote keyless ignition systems to the vehicle in question.

The proposed amended definition of "vehicle owner" is too broad, too ambiguous, and much too vague. It does not clarify and precisely define "vehicle owner". Disputed claims of "ownership" may occur when there are several sets of keys and remote keyless ignition systems in possession of several persons.

The hypothetical scenario that I have described on previous occasions, depicting a stranger (or a familiar person) passing someone's office desk and simply taking the key or remote keyless ignition system to this person's vehicle, may well become reality.

Legal and proper registration of ownership provides the only valid proof of ownership of vehicle by the vehicle owner. **Would we define a home owner or home renter as a person who is in possession of the key to the home?** Definitely not! Then why do we define "vehicle owner" as a "person in possession of the key or remote keyless ignition system of the vehicle"? The vehicle is often the second, if not the first, most valuable possession after a house.

Rather than add clarity and conciseness, the proposed definition of "vehicle owner" allows for confusion and chaos to an already conflicting towing situation. Any law relating to such a definition of "vehicle owner" will be difficult to enforce and jurisdicit, as well as be subject to various interpretations.

I would like to thank Chair Inouye, Chair Baker, Vice Chair Gabbard, Vice Chair Kidani and Members of the Committees, and their staff and assistants, for giving me this opportunity to express my sincere concerns over this Senate Bill No. 2857 (Relating To Towing). I would like to express my gratitude to all for doing your due diligence to research, review and recognize the many different nuances and interpretations that definitions of legal terminology may have.

Please take all I have stated under strong consideration and full advisement. The impact of each and every law that passes through the Legislature will have great affect and repercussion for many years to come. Please take your time and think hard and long before casting your vote.

Thank you in advance for your thoughtful consideration.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'PSM', with a long, sweeping underline that extends to the right.

Patricia S. Martin