

---

---

# A BILL FOR AN ACT

RELATING TO MOTOR VEHICLES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 291C, Hawaii Revised Statutes, is  
2 amended by adding a new section to part XV to be appropriately  
3 designated and to read as follows:

4           "§291C-           Motor vehicle towing and storage; violations.

5           (a) A police officer citing or arresting a driver for any of  
6 the following traffic violations may have the motor vehicle that  
7 the driver was operating at the time of the citation or arrest  
8 towed to a private tow yard and impounded at the registered  
9 owner's expense pursuant to section 291C-165.5(a):

10           (1) Operating a vehicle under the influence of an  
11           intoxicant, pursuant to section 291E-61; and

12           (2) Operating a vehicle after consuming a measurable  
13           amount of alcohol; persons under the age of twenty-  
14           one, pursuant to section 291E-64;

15           provided that the arresting officer has reason to believe the  
16 arrested person is likely to return to the vehicle and continue

1 to drive under the influence of an intoxicant after being  
2 released from custody.

3 (b) Vehicles shall not be towed or impounded pursuant to  
4 this section under any of the following circumstances:

5 (1) The motor vehicle is parked on private property on  
6 which the registered owner or operator is legally  
7 residing, or the property owner does not object to the  
8 motor vehicle being left in the parked location;

9 (2) The registered owner or a passenger present in the  
10 vehicle when the operator is arrested, or when a  
11 summons or citation is issued, has a valid driver's  
12 license and is willing and legally able to operate the  
13 motor vehicle;

14 (3) The motor vehicle is legally parked at a time and  
15 place where the likelihood of it being subject to  
16 theft or vandalism is remote and traffic or public  
17 safety is not impeded; or

18 (4) The motor vehicle is engaged in community caretaking  
19 at the time of the encounter. As used in this  
20 paragraph, "community caretaking" means any situation  
21 in which a law enforcement officer is using the



1           vehicle for a consensual police-citizen encounter that  
2           is unrelated to the investigation or detection of any  
3           criminal activity.

4           (c) No county police department or police officer shall be  
5           responsible for the protection of a motor vehicle left on any  
6           public way or private property after the motor vehicle's  
7           operator has been arrested for a violation listed in subsection  
8           (a)."

9           SECTION 2. Section 291C-165.5, Hawaii Revised Statutes, is  
10          amended to read as follows:

11          "**§291C-165.5 Motor vehicle towing and storage; settlement.**

12          (a) Notwithstanding any other provision of this chapter, any  
13          vehicle identified for removal pursuant to any county ordinance  
14          or section 291C-          ordering or authorizing removal of motor  
15          vehicles by any county police department for traffic violations,  
16          including a vehicle [~~which~~] that constitutes an obstruction or  
17          hazard to traffic, may be towed away at the expense of the  
18          registered owner of the vehicle, as provided by this section.

19          (b) The towing company shall determine the name of the  
20          lien holder and the registered owner of the vehicle from the  
21          department of transportation or the county department of



1 finance. The lien holder and the registered owner shall be  
2 notified by the towing company in writing at the address on  
3 record with the department of transportation or with the county  
4 department of finance by registered or certified mail of the  
5 location of the vehicle, together with a description of the  
6 vehicle, within a reasonable period not to exceed twenty days  
7 following the tow. The notice shall state:

- 8 (1) The maximum towing charges and fees allowed by law;
- 9 (2) The telephone number of the county finance department  
10 that arranged for or authorized the tow; ~~and~~
- 11 (3) That if the vehicle is not recovered within thirty  
12 days after the mailing of the notice, the vehicle  
13 shall be deemed abandoned and will be sold or disposed  
14 of as junk[-]; and
- 15 (4) That the lien holder or registered owner may:
  - 16 (A) Recover possession of the vehicle by paying the  
17 towing and other fees allowed by law and file a  
18 lawsuit for damages with any court of competent  
19 jurisdiction as allowed by law; and
  - 20 (B) Demand an administrative hearing, before or after  
21 the person has recovered possession of the



1                   vehicle pursuant to subparagraph (A), to  
2                   determine whether there was a sufficient factual  
3                   and legal basis for removing the vehicle.

4 Any towing company engaged in towing pursuant to this section  
5 shall comply with the requirements of section 291C-135. When  
6 the vehicle is recovered after the tow by the registered owner  
7 or lien holder, the party recovering the vehicle shall pay the  
8 tow and storage charges which shall not exceed the charges as  
9 provided by section 290-11(b) or the rates agreed upon with the  
10 respective counties, whichever is lower, except that tow  
11 operators may charge additional reasonable amounts for  
12 excavating vehicles from off-road locations; provided that if  
13 the notice required by this section was not sent within twenty  
14 days after the tow, neither the registered owner nor the lien  
15 holder shall be required to pay the tow and storage charges. No  
16 notice shall be sent to a legal or registered owner or any  
17 person with any unrecorded interest in the vehicle whose name or  
18 address cannot be determined. A person, including but not  
19 limited to the owner's or driver's insurer, who has been charged  
20 in excess of the charges permitted under this section may sue  
21 for damages sustained, and, if the judgment is for the

1 plaintiff, the court shall award the plaintiff a sum not to  
2 exceed the amount of these damages and reasonable attorney's  
3 fees together with the cost of the suit.

4 (c) The lien holder and the registered owner shall have  
5 ten days after receipt of the notice provided pursuant to  
6 subsection (b) to request in writing an administrative hearing  
7 pursuant to chapter 91 from the county police department that  
8 caused the vehicle to be removed. The administrative hearing  
9 shall be conducted for the sole purpose of allowing the lien  
10 holder or registered owner of an impounded vehicle to contest  
11 the basis given for the impoundment of the vehicle. The hearing  
12 shall be held within five working days of the county police  
13 department's receipt of the written request.

14 [~~(e)~~] (d) When a vehicle is recovered by the owner or lien  
15 holder before written notice is sent by registered or certified  
16 mail, the towing company shall provide the owner or lien holder  
17 with a receipt stating the maximum towing charges and fees  
18 allowed by law and the telephone number of the county finance  
19 department that arranged for or authorized the tow.

20 [~~(d)~~] (e) When a vehicle is not recovered within thirty  
21 days after the mailing of the notice, it shall be deemed



1 abandoned and the owner of the towing company, or the owner of  
2 the towing company's authorized representative, after one  
3 statewide public notice as required in section 1-28.5, may  
4 negotiate a sale of the vehicle or dispose of it as junk.

5        [~~e~~] (f) The authorized seller of the vehicle shall be  
6 entitled to the proceeds of the sale to the extent that  
7 compensation is due the authorized seller for services rendered  
8 in respect to the vehicle, including reasonable and customary  
9 charges for towing, handling, storage, and the cost of the  
10 notices and advertising required by this part. Any remaining  
11 balance shall be forwarded to the registered owner or lien  
12 holder of the vehicle if the registered owner or lien holder is  
13 found. If the registered owner or lien holder cannot be found,  
14 the balance shall be deposited with the director of finance of  
15 the State and shall be paid out to the registered owner or lien  
16 holder of the vehicle if a proper claim is filed therefor within  
17 one year from the execution of the sales agreement. The lien  
18 holder shall have first priority to the funds to the extent of  
19 the lien holder's claim. If no claim is made within the year  
20 allowed, the money shall escheat to the State.



1        ~~[(f)]~~ (g) The transfer of title and interest by sale under  
 2 this section is a transfer by operation of law; provided that if  
 3 the certificate of ownership or registration is unavailable, a  
 4 bill of sale executed by an authorized seller is satisfactory  
 5 evidence authorizing the transfer of the title or interest.

6        ~~[(g)]~~ (h) This section shall not apply to a county that  
 7 has adopted ordinances regulating towing operations."

8        SECTION 3. This Act does not affect rights and duties that  
 9 matured, penalties that were incurred, and proceedings that were  
 10 begun before its effective date.

11        SECTION 4. Statutory material to be repealed is bracketed  
 12 and stricken. New statutory material is underscored.

13        SECTION 5. This Act shall take effect upon its approval.  
 14

INTRODUCED BY:

Cindy Evans

Robbly  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
bo

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
Blushman  
Nicole E. Lowen

Cher Lee<sup>8</sup>





# H.B. NO. 369

**Report Title:**

Motor Vehicles; Violations; Towing; Driving Under the Influence

**Description:**

Authorizes a police officer to cause to be towed a motor vehicle if the operator is arrested or cited for certain intoxicant-related offenses. Provides exceptions. Provides notice and hearing requirements.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

