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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
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Monday, February 11, 2019
1:15 p.m.
State Capitol, Room 225

S.B. 110
RELATING TO MOTOR VEHICLES.

Senate Committee on Transportation

The Department of Transportation **supports** S.B. 110.

This bill will put into effect a strict penalty for driving without an insurance card and could improve safety on the public roads. This should be a strong deterrent to motor vehicle owners that are allowing their motor vehicle to be driven without proper insurance.

However, this bill may unfairly burden the registered owner that does in fact have insurance but may have simply failed to replace their expired insurance card with their renewed insurance card in their motor vehicle. Section 286-116 (a), HRS, allows a person to be cleared of the citation for not being able to present proof of insurance on demand if they appear in court and present proof of insurance.

The bill also places all expense and risk on the owner and removes any consequences to the tow company or storage lot for damage to the vehicle while in the tow company's possession. This will put the owner of the vehicle at a disadvantage by having no recourse to take should there have been negligence involved.

Thank you for the opportunity to provide testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 110, RELATING TO MOTOR VEHICLES.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION

DATE: Monday, February 11, 2019

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Reuel S. Toyama, Deputy Attorney General

LATE

Chair Inouye and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but respectfully provides the following comments.

This bill provides for seizure by the police and sale by the counties of a motor vehicle when the person fails to display a valid motor vehicle or liability insurance identification card upon demand by a police officer as required under section 286-116(a), Hawaii Revised Statutes.

The seizure of private property must satisfy due process requirements as guaranteed by the Fifth Amendment to the United States Constitution and Article I, section 5 of the Hawai'i State Constitution. *Stypmann v. City and County of San Francisco*, 557 F.2d 1338, 1342 (9th Cir. 1977) (due process protections apply to the detention of private automobiles because the private interest in the uninterrupted use of an automobile is substantial).

In general, due process requires notice and an opportunity to be heard before government deprives a person of property or liberty. *Brown v. Thompson*, 91 Hawai'i 1, 10, 979 P.2d 586, 595 (1999) (adequate notice must inform the affected parties of the action to be taken against them and of procedures available for challenging that action). As written, the bill requires posting "a notice upon the motor vehicle" prior to seizure, but this likely does not provide adequate notice to the registered owner or any lien holder who may be deprived of the property seized.

The bill further provides that the vehicle may be sold by the county if not redeemed within ten days of seizure “after giving ten days’ notice to the general public in the county and by posting notices in at least three public places in the district where the vehicle was seized” but this may not provide sufficient notice and opportunity to be heard. If the owner is out-of-state, out-of-county, ill, incarcerated, or otherwise unavailable, the ten days’ notice may be insufficient time for the owner to redeem the vehicle before being permanently deprived of the property. The bill also lacks specificity as to what constitutes notice in the county and fails to define public places in the district. Thus, “notice to the general public in the county and by posting notices in at least three public places in the district where the vehicle was seized” may be insufficient notice because of the lack of specificity and the limitation of the notice.

The bill also provides for waiver of the public auction requirements and disposal if the appraised value of the motor vehicle is less than \$250, thus depriving the owner of the property permanently without adequate notice and without meaningful opportunity to be heard. The bill does not provide any procedures for how the value determination will be made, whether the appraised value includes the contents of the vehicle (some of which may be invaluable and difficult to replace or of personal value or irreplaceable), whether the determination will be made by an independent appraiser, and procedures for contesting this determination. There are similar concerns where the bill provides for forthwith release “if the interest of justice so requires” but does not specify what factors would satisfy this requirement, how this determination will be made, and who makes this determination. Again, the lack of procedures could be challenged for failure to provide procedural due process.

We note that the bill allows an owner to secure return of the vehicle. If that happens, then the deprivation is temporary. But even for a temporary deprivation, due process still requires that the owner be afforded the opportunity to be heard at a meaningful time and in a meaningful manner to contest the seizure, storage, auction, or other disposition of the vehicle, or the imposition of all other charges incident to the seizure and disposition on the owner. The United States Supreme Court addressed this specific issue in *City of Los Angeles v. David*, 538 U.S. 715 (2003). In that case the

vehicle owner redeemed a towed vehicle but sought to challenge the tow and the assessment of related charges. The Supreme Court held that a hearing was required, even for a temporary deprivation, though the timing of the hearing was not as critical once the vehicle was redeemed. Here the bill lacks any procedures for a hearing and could be challenged on that basis.

In addition, seizure and disposition of the vehicle of an active duty servicemember may violate the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. § 537, which would require a court order before foreclosure or enforcement of any lien on the property of an active duty servicemember. *Gordon v. Pete's Auto Service of Denbigh, Inc.*, 837 F. Supp. 2d 581 (4th Cir. 2011) (defendant liable for towing and auctioning active duty servicemember's motor vehicle without court order).

We would also note that the following terms should be defined or clarified: "applicable county," "tampers with or disturbs," "sealed," "place of seizure," and "surplus" to address lack of notice challenges. In addition, the bill does not mention towing or clarify where the vehicle will be stored.

We respectfully ask the Committee to hold this bill.