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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Judiciary
Wednesday, February 11, 2020
2:00 p.m.
State Capitol, Conference Room 325**

**On the following measure:
H.B. 2162, H.D. 1, RELATING TO TOWING**

Chair Lee and Members of the Committee:

My name is Stephen Levins, and I am the Executive Director of the Department of Commerce and Consumer Affairs' (Department) Office of Consumer Protection (OCP). The Department supports this bill.

The purpose of this bill are to: (1) clarify the fees tow companies may charge; (2) clarify the duties of tow companies when vehicle owners arrive on the scene while their vehicles are in the process of being hooked up; (4) require tow and storage companies to accept credit cards; (5) subject violators of the towing statute to the penalties and remedies under the State's unfair or deceptive acts or practices law; and (6) add definitions for clarity.

H.D. 1 addresses several deficiencies in the current towing law that hinder the OCP's ability to protect consumers. In pertinent part, H.D. 1 will improve the current towing laws by: adding definitions that will address current ambiguities; mandating the acceptance of credit cards; making the penalty provisions consistent with other

consumer protection statutes; and removing logistical barriers emanating from a strict interpretation of the term “vehicle owner.”

Definitions

First, the bill adds definitions to HRS section 290-11 to remove any uncertainty over how vehicles are towed. The definition of a “vehicle parked without authorization” addresses current ambiguities regarding when a vehicle is authorized to park in a prepaid stall. Consumers have reported to the OCP that their vehicles were towed merely because they placed their proof of payment in a different location on the windshield than the one required by the parking location, such as placing the receipt on the passenger’s side dashboard instead of on the driver’s side. This bill removes this unreasonable restriction by allowing the receipt, placard, or permit to be placed in any visible location.

Second, the bill removes ambiguities from what constitutes the “scene.” Defining “scene,” or the location of the vehicle when it is being hooked up, clarifies the obligation of the tow company to release a vehicle pursuant to subsection (b)(2) on page 4, lines 9 to 18. Heated exchanges between vehicle operators and tow companies are not unusual when the tow company refuses to drop the vehicle, even when it was moved only a few feet from the parking space. In these instances, tow companies have unreasonably claimed that the vehicle is no longer at the “scene,” and therefore, the vehicle is no longer eligible to be dropped. By establishing an objective standard as to what constitutes the “scene,” this enhanced certainty will reduce unnecessary conflict.

Third, the bill clarifies the definition of a “vehicle owner.” Retrieving a vehicle from a tow company is often the most stressful part of a tow because of pointless barriers that tow companies place on consumers who wish to recover a towed vehicle. The most problematic example is where the tow company allows only the legally registered vehicle owner to recover the vehicle. This restriction prevents a child from recovering a parent’s car that he or she has borrowed, as well as a lessee from recovering a car rental’s vehicle. To address these recurring issues, the definition of “vehicle owner” in this bill includes anyone having permission of the registered owner to operate the vehicle, including car rental lessees or family members possessing the

vehicle key or remote keyless ignition system. This expanded definition will allow authorized operators of towed vehicles to retrieve those vehicles from a tow yard or to instruct a tow truck operator to drop the vehicle at the scene.

Credit Cards

Current law does not require tow companies to accept credit cards if they have an ATM on the premises. This is problematic for consumers who do not have sufficient funds in their accounts. Mandating the acceptance of credit cards, which virtually everyone has, will make it easier for consumers to recover their vehicles in a timelier fashion.

Releasing Vehicles

The OCP has received consumer complaints that tow companies require the owner of a vehicle with expired tags to register the vehicle, obtain insurance, and obtain a new safety check before the vehicle can be released. However, it is nearly impossible for consumers to satisfy the tow company's vehicle registration requirement if the owner cannot take the vehicle to a certified safety inspection site. The amendments to releasing the vehicle will help remedy these problems.

Penalty Provisions

Current law does not explicitly make a violation of the towing law an unfair or deceptive trade practice. Adopting the penalties of HRS section 480-13 will bring violations of what is essentially a consumer protection statute in conformity with other consumer protection laws.

Abandoned Vehicles

This bill facilitates the processing of abandoned vehicles. Vehicles not recovered within 30 days by their vehicle owners are considered abandoned and can be sold or junked by the tow company if proper notice is provided to the legal owner. If a vehicle is sold, the authorized seller is entitled to the proceeds to cover any customary and reasonable charges for towing, handling, storage, as well as notice and advertising costs. The bill's two amendments to the sale of abandoned vehicles ensure that the remaining balance from the proceeds from the sale and the transfer of title of the sold vehicle will be handled properly.

First, the amendment to subsection (d) on page 8, lines 3 to 8 clarifies that the authorized seller must send any remaining balance from the sale of an unrecovered vehicle to the registered owner's address on record with the Department of Transportation or county Finance Department or, if no address is available, deposit the remaining balance into the State's Unclaimed Property Program administered by the Department of Budget and Finance. This amendment ensures that the monies from the sale of an unrecovered vehicle will go to the appropriate place when a vehicle owner cannot be found, after proper notice is given by the tow company.

Second, the amendment to subsection (e) on page 8, lines 12 to 17 clarifies that whenever an unrecovered vehicle is sold and title is transferred by operation of law, the provisions under HRS section 286-52(f), relating to transfers of title by operation of law, should be followed.

For the forgoing reasons, the Department strongly supports this bill. Its provisions will improve the towing statute and will diminish ambiguities that create additional and unreasonable barriers for vehicle owners whose vehicles have been towed.

Thank you for the opportunity to testify on this bill.

LATE



Young Progressives Demanding Action
P.O. Box 11105
Honolulu, HI 96828

February 10, 2020

TO: House Judiciary Committee
RE: Testimony in support of HB2162

Aloha Chair, Vice Chair, and members of the committee, The Young Progressives Demanding Action (YPDA), represents advocates for public policies that reflect the values of young people throughout the State of Hawai‘i, and we are in STRONG SUPPORT of SB2639 relating to towing.

The reasons why we support this bill are directly correlated with the unethical behavior of Towing companies, who take advantage of unsuspecting vehicle owners through Legal loopholes, and lack of enforcement that allows for current predatory towing practices to take place.

Towing is supposed to be there when you need it, when your car breaks down in the middle of the highway, when cars get into accidents, and when cars are illegally parked and there’s no one around to move the vehicle from the premises. Towing is useful and supposed to be used to help people, not to wait for the next driver to make a mistake, or find an excuse to tow a car to earn money and maximize profits for the company.

Current Towing laws have allowed for legal loopholes, through vague language such as “Scene” and “Vehicle Owner”, which are not clarified in current laws. SB2639 is a bill that clarifies these terms, so there will be no loopholes, so misunderstandings will not be present, and enforcement measures in accordance with Adopting penalties consistent with unfair practices per section 480-13 of Hawaii Revised Statutes.

Current laws do not have an effective countermeasure to ensure that state laws are followed, and allow towing companies to abuse their current power to partake in unethical behavior, notably the seizure of cars towed off private parking lots, at the vehicle owner’s expense, even if it is their car. There are no measures to ensure that towing companies are using their service for public good, instead of maximizing profit through such towing practices.

Towing companies in Hawaii only take cash, and have ATM Machines nearby, however no other payment method is available for owners to retrieve their vehicles. This poses undue hardships onto those who cannot afford to keep their cars in the towing premises and those who also cannot afford to take their car away to avoid excess fees. If towing companies have a credit card payment option available, this would lift the burden of those who need their cars right away.

A Law for towing companies to accept credit card payments, punishment for wrongful and illegal towing to ensure it does not happen again, and clarification of ambiguous language will greatly improve the business for public good, rather than to allow them to abuse their power to maximize profit due to a lack of enforcement and ambiguity in current laws.

Many who have experience predatory towing practices have been towed out of their own parking stall on private property, in population-dense and business districts of Hawai'i, while tow trucks wait around to tow the next parking meter that turns red. Even with the owners on the scene, while legally required to stop towing, continue to tow away owners' vehicles. This leaves people frustrated, and many who are towed cannot afford the expenses of towing. What does someone have to give up in order to pay for their towing bill? For a 200 dollar towing fee it's a car payment, part of their rent, their groceries for the week, gas for their car, school lunch for the month, a textbook for a college student, or medical bills they can no longer pay. This bill would make companies think twice before towing a car, to think about what is necessary rather than what car they can tow next it make more money, and lift undue hardships off of the people who are affected by predatory towing. By providing measures to enforce the laws, providing a credit card option, and clarifying current language, this bill would be of great benefit to Hawai'i.

In Conclusion, we **STRONGLY SUPPORT** SB2639 because it will be a positive bill to improve the towing process for all involved, and prevent predatory towing from affecting lower-income communities unfairly and prevent undue hardships to those who have been affected by it.

Thank you for allowing the Young Progressives Demanding Action the opportunity to Testify.

Charessa Fryc
Kalihi Resident, District 29
954 Akepo Ln
Honolulu, HI 96817
IN STRONG SUPPORT



TO: HOUSE COMMITTEE JUDICIARY
RE: HB 2162 RELATING TO TOWING

Aloha Chair Lee, Vice Chair Buenaventura, and members of the JUD committee, My name is Charessa Fryc and I am a Constituent of the Kalihi District, 29 and I am in STRONG SUPPORT of this measure.

On a Wednesday night in the beginning of July, my mother's car was towed from her own parking stall in Kalihi. This is not a rare occurrence in Kalihi, specifically in her apartment complex where her neighbors have been wrongfully towed in the past, leaving them frustrated. On the night my mother's car was towed, supposedly it was towed because her parking pass "was not showing" when in fact, it was on her dashboard instead of her usual mirror. After parking in the same stall for seven months, the entire neighborhood had recognized that the black car in that stall was my mother's. Another neighbor's car was towed because his registration had expired. Lucky for him, his towing fee was reimbursed but not everyone had the same luck. My mother, on the other hand stood in the towing lot, struggling to find the money she needed to get her car back, and she could not use her credit card, since towing companies don't accept credit cards.

As I think about my mother's struggle to find the money she needed to get her car back, I reflected on the hardship other families face, when their car is wrongfully towed. What do families have to give up because they don't have the money to get their car back? Do they sacrifice a day or two of work because their car is far away, or do they have to give up a week of groceries to pay for their car back? Predatory towing poses undue hardships on disadvantaged communities and disproportionately affect areas such as Kalihi where many are living in affordable housing and poor neighborhoods. Currently, we don't have laws to prevent these damaging business practices that place the most vulnerable in our communities in the most difficult situations.

Towing companies are supposed to be there when you need them, when cars are parked illegally, abandoned vehicles need to be moved, and your car is stuck in the middle of the freeway. Not lurking in the dark to see which car can they tow next to make money. Towing companies need to be regulated, which is why I support this measure.

In Hawaii, our towing laws are little known and towing companies are constantly breaking laws, because there is no way to enforce them. Along with breaking laws, towing

companies are not paying the consequences they deserve due to the lack of common knowledge of Hawaii's Towing Laws, and because lawsuits are too expensive to make it worth the time and effort to get justice served. The state of Hawaii has little regulation over towing companies which enable predatory towing practices, which is why I strongly Support this measure.

With all this said, I **STRONGLY SUPPORT** HB 2162, and urge you to pass this bill through your committee.