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TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Tuesday, February 17, 2009
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1518 – RELATING TO MOTOR VEHICLES.

TO THE HONORABLE JON RIKI KARAMATSU, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify in opposition to House Bill No. 1518, Relating to Motor Vehicles. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

House Bill No. 1518 seeks to undercut the application of Hawaii's General Excise Tax ("GET") by making a special exception for Tow Truck operators who tow vehicles pursuant to Section 290-11 of the Hawaii Revised Statutes. Under current Hawaii law, it is illegal to visibly pass on the GET if the price of goods or services is fixed by law.

Consequently, in the instances of insurance commissions or towing charges, businesses cannot add on a tax component which would exceed the statutory rate. By allowing tow companies to pass on Hawaii's GET for Chapter 290 tows, this bill will award the towing industry with a privileged exception to current Hawaii law that no other industry appears to enjoy.

If this proposal were to become law, it would be the third consecutive year in which the Hawaii Legislature has authorized a price increase for Chapter 290 tows. Two years ago, the legislature increased several of the towing fees. Pursuant to Act 269, of the 2007 Legislature, towing fees for a basic tow increased from \$55 to \$65, dolling towing fees increased from \$65 to \$75, daily storage fees increased from \$20 to \$25, and mileage fees increased from \$6.50 per mile to \$7.50 per mile. One year ago in 2008, the towing industry received an increase of \$15. Pursuant to Act 135, of the 2008 Legislature, a \$15 overtime charge was reinstated. House Bill No. 1518 would again increase towing costs on consumers, from 4.2% on the neighbor islands to 4.712% on Oahu. On towing fees of \$200, consumers would be burdened with paying almost another \$10.

Rejecting this proposal does not mean that the towing industry cannot pass on the GET. It is important to note that the current restriction on passing on the GET only applies to those tows subject to Chapter 290 of the Hawaii Revised Statutes, where the

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rates are set by statute. The private tows are not impacted. Consequently, in those instances, the towing companies are free to pass on the GET, like any other business.

In view of the fact that the towing industry has already obtained substantial increases for Chapter 290 tows during the past two years, it is inappropriate to award them a third consecutive increase and, in the process, burden consumers with increased costs.

Thank you for this opportunity to testify on House Bill No. 1518. I will be happy to answer any questions that the members of the Committee may have.

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Committee on Judiciary
State Capitol, Room 325
Honolulu, HI 96813

RE: HB1518, Relating to Motor Vehicles

POSITION: In favor of passage

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

We are before the legislature this year to clean up language that would clearly establish the ability for the tow industry to conduct our business in similar manner as many other businesses in Hawaii do.

An ambiguous interpretation has prevented us from collecting the General Excise Tax **in addition** to tow fees as posted in the Hawaii Revised Statutes.

While we have always considered that we should be able to add and collect the General Excise Tax, we have been reluctant to challenge or test the interpretation due to the anticipated prohibitive costs to our small businesses.

Thank you for your favorable consideration in passage of this bill.

Barnaby Robinson
President
Waialae Chevron and Tow Service

Hawaii State Towing Association

1040 Makepono Street
Honolulu, HI 96819
Phone: (808) 847-7811
Fax: (808) 842-7605

February 16, 2009

Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair
Committee on Judiciary
State Capitol, Room 309
Honolulu, HI 96813

RE: HB1518, Relating to Motor Vehicles

Dear Chair Karamatsu, Vice Chair Ito and Members of the Committee:

As most companies pass on the state General Excise Tax we were advised by the State Office of Consumer Protection we could not, as our fees are set by statute and the statute does not include the General Excise Tax. It should be noted that the statute does not specifically say we can't either. **This is the departments 'interpretation.'** As a small business, we do not have the resources to fight state government and the risk to start adding it to the bill is too much for our small business.

All we are asking for is equity in this very tough business climate and do what every business does—add the General Excise to our fees.

Mahalo for your favorable consideration of this request.

Respectfully Submitted,

Jan Wakaya
President



JOHN WARREN
GOVERNOR

ROBERT A. ALM
DIRECTOR
OF CONSUMER AND
INDUSTRY AFFAIRS

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DEPUTY ATTORNEY

June 30, 1992

ACE TOWING SERVICE
120 ADAMS WAY
HONOLULU, HI 96819

Re: Requirements of Haw. Rev. Stat. § 290-11(c)

Dear Sir/Madam:

As you may be aware, the state legislature amended Haw. Rev. Stat. § 290-11 relating to vehicles left unattended on private and public property and the sale or disposition of abandoned vehicles. Haw. Rev. Stat. §§ 290-11(b) and (c) both require that certain information be given to the affected vehicle owner.

Haw. Rev. Stat. § 290-11(b) requires, among other things, that the towing company provide written notice to the legal and registered owner by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice must also state:

- (1) The maximum towing charges and fees allowed by law, and;
- (2) The telephone number of the consumer information service of the Department of Commerce and Consumer Affairs, and;
- (3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.



ACE TOWING SERVICE

June 30, 1992

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When a vehicle is recovered by the owner before written notice is sent by registered or certified mail, Haw. Rev. Stat. § 290-11(c) requires that the towing company provide the owner with a written receipt which must state:

- (1) The maximum towing charges and fees allowed by law; and
- (2) The telephone number of the consumer information service of the department of commerce and consumer affairs.

It has come to the attention of the Office of Consumer Protection that certain towing companies may be unaware of the correct telephone number to be provided in its written receipts and its written notices to vehicle owners. The telephone number of the consumer information service of the Department of Commerce and Consumer Affairs is:

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At the present time, pursuant to 1992 amendments to the towing law, Haw. Rev. Stat. § 290-11(b) authorizes a maximum charge of \$40.00 for a tow (\$50.00 may be charged when a dolly is used in the tow). In addition, the towing company may charge a mileage charge of \$4.00 per mile towed, and may charge \$10.00 per day or fraction thereof for storage for the first seven days and \$5.00 per day thereafter. When the tow occurs between 6:00 p.m. and 6:00 a.m., the towing company can add an overtime charge of \$10.00. If the vehicle is in the process of being hooked up to the tow truck, and the owner appears on the scene before the vehicle has been towed, the towing company can charge an "unhooking fee" of not more than \$40.00.

NOTE: → Please be advised that these amounts are the maximum amounts which may be charged. You may not add taxes or any other charges if the total charges would exceed the statutory maximum.

If you have any questions about the requirements of the statute, please consult with your attorney.

Very truly yours,



PHILIP DOI

PD/JMU/cd