



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2024**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1577, H.D. 1, S.D. 1, RELATING TO MOTOR VEHICLE TOWING FEES.

**BEFORE THE:**

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**DATE:** Thursday, April 4, 2024 **TIME:** 10:45 a.m.

**LOCATION:** State Capitol, Room 229 and Videoconference

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Stuart N. Fujioka,  
Deputy Attorney General, at 587-2992)

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Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments on this bill.

The purposes of this bill are to:

(1) Amend section 290-11(b)(1)(A), (B), and (C), Hawaii Revised Statutes (HRS), by amending the maximum towing charges for services on private property based on the time of the weekday that the tow occurs (section 1, page 2, lines 9-15, page 3, lines 1-5);

(2) Amend section 290-11(b)(5), HRS, to prohibit towing companies from directing vehicle owners to use an on-site automated teller machine in lieu of accepting payment by credit card and debit card (section 1, page 5, line 18, to page 6, line 2);

(3) Add section 290-11(i), HRS, to establish a maximum charge for parking control or the placement or removal of a vehicle immobilization device, provide for various acceptable manners of payment, and prohibit the insistence of cash payment (section 1, page 8, lines 8 to 17);

(4) Add section 290-11(j), HRS, to require a minimum of twelve hours to pass before a towing company or parking management may issue a fine and commence a tow of a motor vehicle for any violation occurring in a legal parking stall open to the public (section 1, page 8, line 18, to page 9, line 2); and

(5) Amend section 291C-165.5(b), HRS, to allow tow operators to charge additional amounts under section 290-11(b), HRS, for overturned vehicles (section 2, page 12, lines 5-7); however, the proposed amendment to section 290-11(b)(1), HRS, that would have authorized a towing company to be entitled to an additional amount for towing an overturned vehicle left unattended on private property has been deleted.

The Department is concerned that the provisions described in items (1)-(4), above, which were added to the bill in Senate Draft 1 (S.D. 1), may not survive judicial scrutiny, if challenged, because they appear to fall outside the scope of the purpose of the original bill in violation of article III, section 15, of the Hawai'i Constitution, especially where, as described in item (5), above, the original wording of this bill has been deleted.

In its original draft, and as described in Senate Standing Committee Report No. 3339 dated March 22, 2024, the purpose of the bill is to authorize tow operators to charge an additional amount for overturned vehicles. In its current draft, the S.D. 1, the bill no longer provides for additional fees for towing of overturned vehicles, but instead (1) provides for different towing charges during weekdays, based on the time of day; (2) requires various options of payment for towing services; (3) limits charges for parking control or related to immobilization devices; and (4) prescribes a waiting period for citation and towing of certain parking violations.

In *League of Women Voters of Honolulu v. State*, 150 Hawai'i 182, 205, 499 P.3d 382, 405 (2021), the Hawai'i Supreme Court held that article III, section 15, of the Hawai'i Constitution places an implicit "germaneness" limitation on the types of amendments that may be added to bills during the legislative process. *League of Women Voters* holds that, when a non-germane amendment is added to a bill, the new material added via the non-germane amendment does not get the benefit of any readings that occurred before the amendment was added. *See id.*

There does not appear to be a "common tie" or "close allegiance" between the original, now-deleted provision and the new provisions. Accordingly, in the event of a legal challenge, a court could find that under *League of Women Voters, id.*, the new material added to the S.D. 1 is not germane to the original purpose of the bill, and the process must "begin anew" with three readings in both the House and the Senate.

To remain in compliance with *League of Women Voters, id.*, and allow for full debate, the Department recommends that the new provisions be removed from this bill, and the original provisions related to tow operators charges for towing overturned vehicles be reinstated in the bill. Alternatively, the current version of the bill -- including the new provisions -- should pass three new readings in each house.

On a technical note, if S.D. 1 remains as is, the reference to additional amounts allowed under section 290-11(b), HRS, for overturned vehicles (section 2, page 12, lines 5-7) should be deleted because the proposed amendments to section 290-11(b) contain no such wording.

Thank you for the opportunity to provide these comments.



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**Testimony of the Department of Commerce and Consumer Affairs**

**Office of Consumer Protection**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Thursday, April 4, 2024  
10:45 a.m.  
Via Videoconference  
Capitol Room 229**

**On the following measure:  
H.B. 1577, H.D. 1, S.D. 1, RELATING TO MOTOR VEHICLE TOWING FEES**

Chair Keohokalole and Members of the Committee:

My name is Mana Moriarty, and I am the Executive Director of the Department of Commerce and Consumer Affairs (Department) Office of Consumer Protection (OCP).

The Department supports the following consumer friendly provisions in this bill:

- towing and parking management companies must accept payment by cash, credit, and debit card; and
- no tow company or parking management company shall direct an individual to an on-site automated teller machine in lieu of accepting payment by credit card and debit card.

The Department takes no position on whether the Legislature should increase the amounts a tow company may collect for tows, tows using a dolly, overtime, storage fees, or tows involving an overturned vehicle. It is essential, however, that the

Legislature adopt a ceiling for each charge that a towing company is authorized to collect. In OCP's experience, a clear ceiling is needed to combat abusive charges by a towing company that enjoys a superior bargaining position compared to an individual whose vehicle is towed.

Drivers who have their overturned vehicles towed are not in a position to know what a reasonable charge for the service is because they are not familiar with the towing company's costs for towing an overturned vehicle. By capping the fees tow companies can charge for towing overturned vehicles, this bill would protect drivers from being exploited and ensure that towing costs are reasonable and fair.

OCP routinely receives complaints that towing companies continue to demand payment in cash, despite the statutory mandate that they accept payment by cash, credit, and debit card, as evidenced by the legislative history of the 2020 amendments. OCP also routinely receives reports that towing companies require individuals to use on-site automated teller machines, which subjects individuals to out-of-network fees. This practice is clearly intended to circumvent the requirement that companies accept payment by cash, credit card, and debit card, and may result in consumer harm when individuals incur out-of-network payment fees or pay total fees exceeding the amounts authorized by law.

OCP also supports regulating devices intended to immobilize vehicles in lieu of towing as set forth on page 8, lines 6-8 of this S.D. 1. An individual is vulnerable to abusive conduct in trade or commerce when their vehicle is rendered inoperable by an immobilization device and the individual relies on the vehicle for day-to-day and emergency transportation. Recent reports about immobilizer devices known as barnacles revealed that companies that use immobilizer devices demand cash payment. This practice is contrary to the spirit of the consumer protections that the Legislature has adopted with respect to towing companies.

Companies that elect to use immobilizer devices should be subject to a requirement that they accept payment by "cash, credit, and debit card," and that they do not direct individuals to automated teller machines, which may lead to additional consumer charges.

Thank you for the opportunity to testify on this bill.