

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2007

RECEIVED

2007 MAR 23 P. 6: 12

COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

SERGEANT-AT-ARMS
HOUSE OF
REPRESENTATIVES

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Rep. Cindy Evans	Rep. Clift Tsuji
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Rep. Hermina M. Morita	Rep. Cynthia Thielen
Rep. Alex M. Sonson	

NOTICE OF HEARING

DATE: Tuesday, March 27th, 2007
TIME: 2:00pm
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

A G E N D A

SB 58 ¹ SD2, HD1 (HSCR1372)	RELATING TO DENTISTS. Exempts executors and administrators of a deceased dentist's estate, as well as the legal guardian or authorized representative of an incapacitated dentist from the requirements of chapter 448 related to the practice of dentistry. Effective July 1, 2009. (SB58 HD1)	HLT, CPC, JUD
SB 1161 SD1 (HSCR1233)	RELATING TO DOMESTIC ABUSE. Requires the department of human services to provide a written report to the court and the parties two days prior to a hearing in a case where there are allegations of domestic abuse. (SD1)	HSH, JUD
SB 1444 SD1, HD1 (HSCR1295)	RELATING TO THE PURPOSE OF THE HAWAII YOUTH CORRECTIONAL FACILITY. Clarifies the purpose of committing youth to the Hawaii Youth Correctional Facility. (SB1444 HD1)	HSH, JUD
SB 1047 HD1 (HSCR1361)	RELATING TO HIGHWAY SAFETY. Permits drivers who are at least nineteen years of age to drive commercially. (SB1047 HD1)	TRN, JUD
SB 1528 HD1 (HSCR1428)	RELATING TO TRAFFIC INFRACTIONS. Clarifies that all traffic violations subject to the penalty provisions of section 291C-161, Hawaii Revised Statutes (statewide traffic code; penalties), are treated as civil matters pursuant to chapter 291D (traffic offenses; administrative adjudication. Effective July 1, 2020. (SB1528 HD1)	TRN, JUD

SB 1529 SD2, HD1 (HSCR1433)	RELATING TO TRAFFIC INFRACTIONS. Expands scope of traffic infractions law to include infractions committed by minors. Permits concurrent trials and clarifies requirements. Clarifies citation form requirements. Authorizes use of electronic citations. Effective July 1, 2007. (SB1529 HD1)	TRN, JUD
SB 1709 SD1, HD1 (HSCR1418)	RELATING TO MOPEDS. Exempts certain three-wheeled mopeds from passenger and seating restrictions on the operation of mopeds. Places additional restrictions on three-wheeled mopeds. Effective 7/1/2007. (SB1709 HD1)	TRN, JUD
SB 1654 SD1 (HSCR1373)	RELATING TO CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION. Establishes requirements for condominium management dispute resolution. (SD1)	CPC, JUD
SB 923 (HSCR1227)	RELATING TO CONDOMINIUMS. Amends section 35 of Act 164 SLH 2004 to remove sunset and reenactment of section 514B-146, HRS, relating to assessments and liens with respect condominiums.	CPC, JUD

DECISION MAKING TO FOLLOW

Persons wishing to offer comments are requested to submit **5** copies of their testimony at least **24 hours** prior to the hearing to:

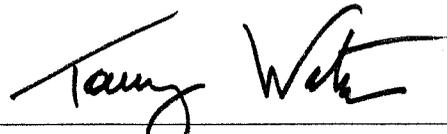
- Room 422 in the State Capitol; OR
- The HOUSE testimony drop off box in the turnaround area of the Capitol Basement parking lot.

Persons wishing to fax comments less than 5 pages in length are requested to transmit their testimony to 586-6501 (Oahu) or 1-800-535-3859 (Neighbor Islands). On the transmittal, please indicate:

- The Committee the comments are directed to;
- The date and time of the hearing; and
- The number of copies the Committee is requesting.

If you require special assistance or auxiliary aids and/or services to participate in the House public hearing process (i.e., sign language interpreter or wheelchair accessibility), please contact the Committee Clerk at **586-6340** at least 24 hours prior to the hearing for arrangements. Prompt requests submitted help to ensure the availability of qualified individuals and appropriate accommodations.

Selected meetings are broadcast live. Check the current legislative broadcast schedule on the "Capitol TV" Web site at www.capitoltv.org OR call 550-8074 for a listing.



Rep. Tommy Waters
Chair

S.B. 58
SD2, HD1

STAND. COM. REP. NO. 1372

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 58
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 58, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DENTISTS,"

begs leave to report as follows:

The purpose of this bill is to provide for the orderly disposition of a licensed dentist's practice in the event of the dentist's unexpected death or incapacity by allowing the executor or administrator of the dentist's estate, or the dentist's legal guardian or authorized representative, to operate the practice for up to one year for the purpose of winding down, transferring, or selling the practice.

Several concerned individuals testified in support of this bill. The Board of Dental Examiners and the Hawaii Dental Association supported this measure with amendments.

The sudden death or incapacitation of a dentist not only affects patients' continuity of care, but also causes the dental practice to rapidly lose value for each day it remains closed. In such situations, the dentist's family may be forced to hurriedly sell the practice before it loses much of its value; the dentist's work staff may suddenly find themselves unemployed; and existing patients may be confused by the abrupt change in the practice's ownership. Your Committee finds that this bill seeks to address these concerns by providing a sufficient transition period for a

SB58 HD1 HSCR CPC HMS 2007-3256



deceased or incapacitated dentist's practice to be closed, transferred, or sold.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 58, S.D. 2, H.D. 1, and recommends that it be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,

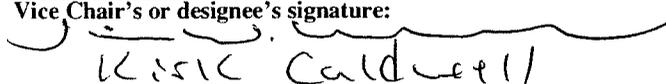


ROBERT N. HERKES, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: SB 58 SD 2, HD 1		Date: March 19, 2007		
Committee Referral: HLT, CPC, JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended <input type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommittal for further consideration				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. HERKES, Robert N. (C)	✓			✓
2. McKELVEY, Angus L.K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	✓			
5. GREEN, Josh, M.D.	✓			
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. MORITA, Hermina M.	✓			
9. SONSON, Alex M.	✓			
10. SOUKI, Joseph M.	✓			
11. TSUJI, Clift	✓			
12. YAMANE, Ryan I.	✓			
13. YAMASHITA, Kyle T.	✓			
14. MARUMOTO, Barbara C.	✓			
15. THIELEN, Cynthia				✓
TOTAL	13			2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:  KIRK CALDWELL				
Distribution: Original (White) – Committee Duplicate (Yellow) – HMSO Duplicate (Pink) – Clerk's Office				

A BILL FOR AN ACT

RELATING TO DENTISTS.

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

1 SECTION 1. Section 448-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§448-1 Dentistry defined; exempted practices.** A person
4 practices dentistry, within the meaning of this chapter, who
5 represents oneself as being able to diagnose, treat, operate or
6 prescribe for any disease, pain, injury, deficiency, deformity,
7 or physical condition of the human teeth, alveolar process,
8 gums, or jaw, or who offers or undertakes by any means or
9 methods to diagnose, treat, operate or prescribe for any
10 disease, pain, injury, deficiency, deformity, or physical
11 condition of the same, or to take impressions of the teeth or
12 jaws; or who owns, maintains, or operates an office for the
13 practice of dentistry; or who engages in any of the practices
14 included in the curricula of recognized and approved dental
15 schools or colleges. Dentistry includes that part of health
16 care concerned with the diagnosis, prevention, and treatment of
17 diseases of the teeth, oral cavity, and associated structures



1 including the restoration of defective or missing teeth. The
2 fact that a person uses any dental degree, or designation, or
3 any card, device, directory, poster, sign, or other media
4 whereby one represents oneself to be a dentist, shall be prima
5 facie evidence that the person is engaged in the practice of
6 dentistry.

7 The following practices, acts, and operations, however, are
8 exempt from the operation of this chapter:

- 9 (1) The rendering of dental relief in emergency cases in
10 the practice of one's profession by a physician or
11 surgeon, licensed as such and registered under the
12 laws of this State, unless one undertakes to reproduce
13 or reproduces lost parts of the human teeth in the
14 mouth or to restore or replace in the human mouth lost
15 or missing teeth;
- 16 (2) The practice of dentistry in the discharge of their
17 official duties by dentists in the United States Army,
18 the United States Navy, the United States Air Force,
19 the United States Public Health Service, or the United
20 States Veterans Administration;
- 21 (3) The practice of dentistry by licensed dentists of
22 other states or countries at meetings of the Hawaii



1 Dental Association or component parts thereof, alumni
2 meetings of dental colleges, or any other like dental
3 organizations, while appearing as clinicians;

4 (4) The use of roentgen and other rays for making
5 radiograms or similar records of dental or oral
6 tissues; ~~and~~

7 (5) The making of artificial restorations, substitutes,
8 appliances, or materials for the correction of
9 disease, loss, deformity, malposition, dislocation,
10 fracture, injury to the jaws, teeth, lips, gums,
11 cheeks, palate, or associated tissues, or parts, upon
12 orders, prescription, casts, models, or from
13 impressions furnished by a Hawaii licensed dentist[-];
14 and

15 (6) The ownership and management of a dental practice by
16 the executor or administrator of a dentist's estate or
17 the legal guardian or authorized representative of a
18 dentist, where the licensed dentist has died or is
19 incapacitated, for the purpose of winding down,
20 transferring, or selling the practice, for a period
21 not to exceed one year from the time of death or from
22 the date the dentist is declared incapacitated;



1 provided that all other aspects of the practice of
2 dentistry are performed by one or more licensed
3 dentists."

4 SECTION 2. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 3. This Act shall take effect on July 1, 2049.



REPORT Title:

Dentists

Description:

Exempts executors and administrators of a deceased dentist's estate, as well as the legal guardian or authorized representative of an incapacitated dentist from the requirements of chapter 448 related to the practice of dentistry. Effective July 1, 2049. (SB58 HD1)



**PRESENTATION OF THE
BOARD OF DENTAL EXAMINERS**

**TO THE HOUSE COMMITTEE ON
JUDICIARY**

**TWENTY-FOURTH LEGISLATURE
Regular Session of 2007**

**Tuesday, March 27, 2007
2:00 p.m.**

TESTIMONY ON SENATE BILL NO. 58, S.D. 2, H.D. 1 - RELATING TO DENTISTS.

**TO THE HONORABLE TOMMY WATERS, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Jeffrey Miyazawa, D.D.S., Chair of the Board of Dental Examiners ("Board"). The Board appreciates the opportunity to testify on S.B. No. 58, S.D. 1, H.D. 1, which exempts executors and administrators of a deceased dentist's estate, as well as the legal guardian or authorized representative of an incapacitated dentist from the requirements of Chapter 448, Hawaii Revised Statutes, related to the practice of dentistry. The Board is in support of this bill, but is opposed to the defective effective date of 2049. The companion measure, H.B. No. 770, was heard by this committee and the Committee on Consumer Protection and Commerce ("CPC"). CPC passed the measure out as an H.D. 1, with an effective date of "upon approval".

H.B. No. 770, H.D. 1 and S.B. No. 58, S.D. 2, H.D. 1 are similar, except that H.B. No. 770, H.D. 1 contains language in section 448-2, Hawaii Revised Statutes, that we feel is unnecessary, and also, the effective date of the bill should be amended. We prefer the substance of S.B. No. 58, S.D. 2, H.D. 1, and request that it be amended to change the effective date to "upon approval".

Thank you for the opportunity to testify on S.B. No. 58, S.D. 2, H.D. 1.

Hawaii State Legislature
State House Judiciary Committee
Regular Session 2007

Tuesday, March 27, 2007

2 pm, room 325

Testimony of the Hawaii Dental Association

TESTIMONY ON SB 58, SD 2, HD 1 RELATING TO DENTIST

**TO THE HONORABLE TOMMY WATERS, CHAIR,
AND MEMBERS OF THE COMMITTEE;**

My name is Dr. Carl Kobayashi, President of the Hawaii Dental Association, representing 950 member dentists and as practicing dentist for over 20 years in the State of Hawaii, I would like to express my organization's **strong support of SB 58, SD 2, HD 1 with the change of effective date to July 1, 2007, rather than July 1, 2049.** This bill provides that the spouse or personal representative for deceased or incapacitated dentist may operate the practice for a limited period to close, sell or wind up the dental practice.

Currently, over 70 percent of the practicing dentists in Hawaii are sole proprietors. As such, they do not have the benefit of the Professional Corporations Act, Chapter 415A, Hawaii Revised Statutes, which provides for the winding down or selling of the professional's business upon his or her death or disability. (See HRS Sec.415A-11 and 415A-15)

As a result, legal issues arise as to how a dental practice is to be handled under the situation where a dentist had died unexpectedly or become incapacitated, as in an accident or stroke. This bill is meant to address the issues, which arise under those circumstances.

This bill is a result of the unfortunate circumstances in which several dentist in the last several years have died unexpectedly, were struck by strokes or were victims of an accident. Licensed dentists, either on a contract or volunteer basis, will conduct any professional services, which may be rendered under this situation.

In discussions with the Board of Dental Examiners, a suggested amendment to the language of this bill was agreed upon as a better solution to the current version of the bill.

I respectfully request that SB 58, SD 2, HD 1 be passed out of this committee with the effective date changed to effective on July 1, 2007 rather than July 1, 2049.

Thank you for this opportunity to testify in support of this bill.



Darrell T Teruya, DDS

Phone: (808) 949-1325
FAX: (866) 293-1653
email: teruyadt@att.net

House Judiciary Committee

Tuesday, March 27, 2007

2:00 PM

TESTIMONY on Senate Bill 58 SD2 HD1

Honorable Tommy Waters, Chair
Honorable Blake K. Oshiro, Vice Chair
and members of the committee

TESTIMONY

My name is Darrell Teruya. I am currently the president-elect of the Hawaii Dental Association and am in support of SB 58 which allows for the orderly transfer of a dental practice immediately following the death or incapacitation of the dentist.

The sudden passing or incapacitation of a dentist is a double misfortune for the immediate family of the dentist. The patients lose any semblance of continuity of care and the practice loses value each day it isn't open. This bill allows for the continuation of the dental practice for up to a year allowing adequate time for the orderly transition of the practice.

With a sufficient timetable the staff is allowed to continue in gainful employment, any outstanding bills have an opportunity of being paid and the practice maintains a higher percentage of it's value.

Unfortunately the recent modification of the original bill places an effective date of 2049 for its implementation. This undermines any timeliness of this measure. If it is possible, could a more reasonable effective date be implemented?

Thank you for the opportunity to submit testimony in favor of this measure.

Darrell Teruya, DDS

S.B. 1161
SD1

STAND. COM. REP. NO.

1233

Honolulu, Hawaii

March 16, 2007

RE: S.B. No. 1161
S.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Human Services & Housing, to which was referred S.B. No. 1161, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC ABUSE,"

begs leave to report as follows:

The purpose of this bill is to provide a timely exchange of information with regard to domestic abuse cases by requiring the Department of Human Services (DHS) to provide an oral or written report to the Family Court on a disposition of a referral and requiring the Family Court, when possible, to notify parties at least two days prior to the hearing date.

The Legal Aid Society of Hawaii testified in support of this bill. DHS supported the intent of this measure.

As affirmed by the record of votes of the members of your Committee on Human Services & Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1161, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

SB1161 SD1 HSCR HSH HMS 2007-3027



Respectfully submitted on
behalf of the members of the
Committee on Human Services &
Housing,



MAILE SHIMABUKURO, Chair





Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1161
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 1161 entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC ABUSE,"

begs leave to report as follows:

The purpose of this measure is to require the Department of
Human Services to provide a written report to the court, which the
court must then provide to the parties two days prior to a hearing
in a case where there are allegations of domestic abuse.

Your Committee received testimony in support of the bill from
the Department of Human Services. The Judiciary and Legal Aid
Society of Hawaii took no position on the bill but offered
comments.

Your Committee finds that requiring the court to provide a
report to the parties on the disposition on the referral forty
eight hours prior to the hearing. Accordingly, your Committee
amended the bill to provide that written or oral disposition be
provided two days prior to the hearing if possible. Your
Committee also amended the bill to provide that the report of the
disposition be noted on the court order.

As affirmed by the record of votes of the members of your
Committee on Judiciary and Labor that is attached to this report,
your Committee is in accord with the intent and purpose of S.B.
No. 1161, as amended herein, and recommends that it pass Third
Reading in the form attached hereto as S.B. No. 1161, S.D. 1.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
 Committee on Judiciary and Labor
 JDL

Bill / Resolution No.:* SB1161	Committee Referral: HSP, JDL	Date: 3/1/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	/			
KOKUBUN, Russell S. (VC)	/			
INOUE, Lorraine R.	/			
NISHIHARA, Clarence K.				/
GABBARD, Mike	/			
TOTAL	4			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">Russell S. Kohl</div>				
Distribution: <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">Original File with Committee Report</div> <div style="text-align: center;">Yellow Clerk's Office</div> <div style="text-align: center;">Pink Drafting Agency</div> </div>				

*Only one measure per Record of Votes

A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE.

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

1 SECTION 1. Section 586-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§586-10.5 Reports by the department of human services.**

4 In cases where there are allegations of domestic abuse involving
5 a family or household member who is a minor or an incapacitated
6 person as defined in section 560:5-102, the employee or
7 appropriate nonjudicial agency designated by the family court to
8 assist the petitioner shall report the matter to the department
9 of human services, as required under chapters 350 and 587, and
10 shall further notify the department of the granting of the
11 temporary restraining order and of the hearing date. The
12 department of human services shall provide the family court with
13 an oral or written report [~~of the investigation's progress on~~
14 ~~or~~] on the disposition of the referral, which the court shall
15 provide to the parties at least two days before the hearing
16 date[-], if possible. The report by the department of human



1 services shall be noted in the order dismissing the petition or
2 granting the restraining order."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Department of Human Services; Domestic Abuse

Description:

Requires the department of human services to provide a written report to the court and the parties two days prior to a hearing in a case where there are allegations of domestic abuse. (SD1)



A BILL FOR AN ACT

RELATING TO DOMESTIC ABUSE.

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

1 SECTION 1. Section 586-10.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§586-10.5 Reports by the department of human services.**

4 In cases where there are allegations of domestic abuse involving
5 a family or household member who is a minor or an incapacitated
6 person as defined in section 560:5-102, the employee or
7 appropriate nonjudicial agency designated by the family court to
8 assist the petitioner shall report the matter to the department
9 of human services, as required under chapters 350 and 587, and
10 shall further notify the department of the granting of the
11 temporary restraining order and of the hearing date. The
12 department of human services shall provide the family court with
13 an oral or written report [~~of the investigation's progress on~~
14 er] on the disposition of the referral, which the court shall
15 provide to the parties at least two days before the hearing
16 date[-], if possible. The report by the department of human



1 services shall be noted in the order dismissing the petition or
2 granting the restraining order."

3 SECTION 2. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Department of Human Services; Domestic Abuse

Description:

Requires the department of human services to provide a written report to the court and the parties two days prior to a hearing in a case where there are allegations of domestic abuse. (SD1)



S.B. 1444
SD1, HD1

STAND. COM. REP. NO. 1295

Honolulu, Hawaii
March 20, 2007

RE: S.B. No. 1444
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Human Services & Housing, to which was referred S.B. No. 1444, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE PURPOSE OF THE HAWAII YOUTH CORRECTIONAL FACILITY,"

begs leave to report as follows:

The purpose of this bill is to clarify the goals of the Hawaii Youth Correctional Facilities (HYCF) to focus on rehabilitation and reentry services.

The Office of Youth Services, Attorney General, Hawaii Youth Services Network, Community Alliance on Prisons, and American Civil Liberties Union of Hawaii testified in support of this bill.

Your Committee has amended this bill by:

- (1) Making a corresponding amendment to the law pertaining to the family courts by changing the term "incarceration" to "custody"; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Human Services & Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1444, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1444, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Human Services &
Housing,



MALLE SHIMABUKURO, Chair





A BILL FOR AN ACT

RELATING TO THE PURPOSE OF THE HAWAII YOUTH CORRECTIONAL FACILITY.

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

1 SECTION 1. Section 352-2.1, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) This chapter creates within the department of human
4 services, and to be placed within the office of youth services
5 under the supervision of the director and such other
6 subordinates as the director shall designate, the Hawaii youth
7 correctional facilities, [~~in order~~] to provide for the
8 [~~incarceration, punishment,~~] custody, rehabilitation, and
9 institutional care and services to [~~reintegrate~~] prepare for
10 reentry into their communities and families, [~~children~~] youth
11 committed by the courts of the State."

12 SECTION 2. Section 571-48, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§571-48 Decree, if informal adjustment or diversion to a**
15 **private or community agency or program has not been effected.**

16 When a minor is found by the court to come within section 571-
17 11, the court shall so decree and in its decree shall make a



1 finding of the facts upon which the court exercises its
2 jurisdiction over the minor. Upon the decree the court, by
3 order duly entered, shall proceed as follows:

4 (1) As to a child adjudicated under section 571-11(1):

5 (A) The court may place the child on probation:

6 (i) In the child's own home; or

7 (ii) In the custody of a suitable person or
8 facility elsewhere, upon conditions
9 determined by the court.

10 When conditions of probation include
11 [~~incarceration~~] custody in a youth correctional
12 facility, the [~~incarceration~~] custody shall be
13 for a term not to exceed one year, after which
14 time the person shall be allowed to reside in the
15 community subject to additional conditions as may
16 be imposed by the court;

17 (B) The court may vest legal custody of the child,
18 after prior consultation with the agency or
19 institution, in a Hawaii youth correctional
20 facility, in a local public agency or
21 institution, or in any private institution or
22 agency authorized by the court to care for



1 children; or place the child in a private home.
2 If legal custody of the child is vested in a
3 private agency or institution in another state,
4 the court shall select one that is approved by
5 the family or juvenile court of the other state
6 or by that state's department of social services
7 or other appropriate department; or

8 (C) The court may fine the child for a violation
9 which would be theft in the third degree by
10 shoplifting if committed by an adult. The court
11 may require the child to perform public services
12 in lieu of the fine;

13 (2) As to a child adjudicated under section 571-11(2):

14 (A) The court may place the child under protective
15 supervision, as hereinabove defined, in the
16 child's own home, or in the custody of a suitable
17 person or agency elsewhere, upon conditions
18 determined by the court; or

19 (B) The court may vest legal custody of the child,
20 after prior consultation with the agency or
21 institution, in a local governmental agency or
22 institution licensed or approved by the State to



1 care for children, with the exception of an
2 institution authorized by the court to care for
3 children. If legal custody of the child is
4 vested in a private agency or institution in
5 another state, the court shall select one that is
6 approved by the family or juvenile court of the
7 other state or by that state's department of
8 social services or other appropriate department;
9 provided that the child may not be committed to a
10 public or private institution operated solely for
11 the treatment of law violators;

12 (3) An order vesting legal custody of a minor in an
13 individual, agency, or institution under section 571-
14 11(2) shall be for an indeterminate period but shall
15 not remain in force or effect beyond three years from
16 the date entered, except that the individual,
17 institution, or agency may file with the court a
18 petition for renewal of the order and the court may
19 renew the order if it finds such renewal necessary to
20 safeguard the welfare of the child or the public
21 interest. The court, after notice to the parties, may
22 conduct a hearing on the petition. Renewal may be



1 periodic during minority, but no order shall have any
2 force or effect beyond the period authorized by
3 section 571-13. An agency granted legal custody shall
4 be subject to prior approval of the court in any case
5 in which the child is to reside without the
6 territorial jurisdiction of the court and may be
7 subject to prior approval in other cases. An
8 individual granted legal custody shall exercise the
9 rights and responsibilities personally unless
10 otherwise authorized by the court;

11 (4) Whenever the court commits a child to the care of the
12 director of human services or executive director of
13 the office of youth services, or vests legal custody
14 of a child in an institution or agency, it shall
15 transmit with the order copies of the clinical
16 reports, social study, and other information pertinent
17 to the care and treatment of the child, and the
18 institution or agency shall give to the court any
19 information concerning the child that the court may at
20 any time require. An institution or agency receiving
21 a child under this paragraph shall inform the court
22 whenever the status of the child is affected through



1 temporary or permanent release, discharge, or transfer
2 to other custody. An institution to which a child is
3 committed under section 571-11(1) or (2) shall not
4 transfer custody of the child to an institution for
5 the correction of adult offenders, except as
6 authorized in this chapter and under chapter 352;

7 (5) The court may order, for any child within its
8 jurisdiction, whatever care or treatment is authorized
9 by law;

10 (6) In placing a child under the guardianship or custody
11 of an individual or of a private agency or private
12 institution, the court shall give primary
13 consideration to the welfare of the child;

14 (7) In support of any order or decree under section 571-
15 11(1) or (2), the court may require the parents or
16 other persons having custody of the child, or any
17 other person who has been found by the court to be
18 encouraging, causing, or contributing to the acts or
19 conditions which bring the child within the purview of
20 this chapter and who are parties to the proceeding, to
21 do or to omit doing any acts required or forbidden by
22 law, when the judge deems this requirement necessary



1 for the welfare of the child. The court may also make
2 appropriate orders concerning the parents or other
3 persons having custody of the child and who are
4 parties to the proceeding. If such persons fail to
5 comply with the requirement or with the court order,
6 the court may proceed against them for contempt of
7 court;

8 (8) In support of any order or decree for custody or
9 support, the court may make an order of protection
10 setting forth reasonable conditions of behavior to be
11 observed for a specified time, binding upon both
12 parents or either of them. This order may require
13 either parent to stay away from the home or from the
14 other parent or children, may permit the other to
15 visit the children at stated periods, or may require a
16 parent to abstain from offensive conduct against the
17 children or each other;

18 (9) The court may dismiss the petition or otherwise
19 terminate its jurisdiction at any time;

20 (10) In any other case of which the court has jurisdiction,
21 the court may make any order or judgment authorized by
22 law;



1 (11) The court may order any person adjudicated pursuant to
2 section 571-11(1) to make restitution of money or
3 services to any victim who suffers loss as a result of
4 the child's action, or to render community service;

5 (12) The court may order any person adjudicated pursuant to
6 section 571-11(2) to participate in community service;
7 and

8 (13) The court may order the parents of an adjudicated
9 minor to make restitution of money or services to any
10 victim, person, or party who has incurred a loss or
11 damages as a result of the child's action."

12 SECTION 3. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.



S.B. NO. 1444
S.D. 1
H.D. 1

Report Title:

Hawaii Youth Correctional Facility

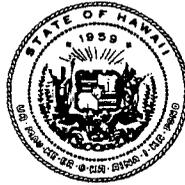
Description:

Clarifies the purpose of committing youth to the Hawaii Youth Correctional Facility. (SB1444 HD1)

SB1444 HD1 HMS 2007-3159







STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
OFFICE OF YOUTH SERVICES
820 Millilani Street, Suite 817
Honolulu, Hawaii 96813

Phone: (808) 587-5700
Fax: (808) 587-5734

March 27, 2007

TO: The Honorable Tommy Waters, Chair
House Committee on Judiciary

FROM: Martha T. Torney, Acting Executive Director

SUBJECT: **SB 1444, SD 1, HD 1, RELATING TO THE PURPOSE OF THE
HAWAII YOUTH CORRECTIONAL FACILITY**

Hearing: Tuesday, March 27, 2007; 2:00 p.m.
State Capitol, Conference Room 325

PURPOSE: The purpose of this bill is to clarify the purpose of committing youth to the Hawaii Youth Correctional Facility.

POSITION:

The Office of Youth Service (OYS) strongly supports this Administration-sponsored proposal, which amends the statutory purpose statement for the Hawaii Youth Correctional Facility (HYCF) to stress the goal of the facility is to provide youth with rehabilitative and reentry services. Section 352-1.2(a), Hawaii Revised Statutes (HRS), currently defines the purpose of HYCF as "to provide for the incarceration, punishment, and institutional care and services to reintegrate into their communities and families, children committed by the courts of the State."

Some of the terminology in the current statutory purpose for HYCF is incompatible with the contemporary objectives of a secure youth facility. Incarceration is most often ordered to protect the community from serious juvenile offenders and to control adjudicate youth who continuously violate court orders, but the activities within the facility are geared towards rehabilitation not punishment. This proposal would

The Honorable Tommy Waters, Chair

March 27, 2007

Page 2

replace the word "punishment" with "rehabilitation" to better reflect facility programs and services that youth are involved with weekly, ranging from general education and vocational training to medical/mental health treatment to sex offender and substance abuse programs. In addition, and in keeping with current terminology used by the Office of Juvenile Justice and Delinquency Prevention, OYS recommends that the word "reintegration" be replaced with "reentry."

While reviewing Section 352-2.1(a), HRS, it was also noted that the use of the word "children" to describe those placed at HYCF was not reflective of the population committed by the family courts. The term "youth" is commonly used to refer to children age 12 years and over, the age group considered for commitment. Therefore, this bill replaces that the word "children" be replaced with "youth."

We support replacing "incarceration" with "custody."

SB 1444 SD1, HD1 is amended to include corresponding amendments to chapter 571-48, Hawaii Revised Statutes as proposed by the Department of the Attorney General and we fully support this amendment.

We therefore recommend passage of this bill. Thank you for the opportunity to present this testimony on this important matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

PETER B. CARLISLE
PROSECUTING ATTORNEY

Douglas S. Chin
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE TOMMY WATERS, CHAIR{PRIVATE }
HOUSE COMMITTEE ON JUDICIARY
Twenty-fourth State Legislature
Regular Session of 2007
State of Hawaii**

March 27, 2007

**RE: S.B. 1444, S.D. 1, H.D. 1; RELATING TO THE PURPOSE OF THE HAWAII
YOUTH CORRECTIONAL FACILITY.**

Chair Waters and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney submits the following comments on S.B. 1444, S.D 1, H.D. 1.

The purpose of this bill is to amend various statutes to clarify the purpose of the Hawaii Youth Correctional Facility (HYCF). We have no objection to these clarifications, however we do have some concerns that these amendments may be understood to restrict a family court judge from sentencing a minor to the custody of HYCF as a punishment. We would therefore ask for some clarification in the committee report that these amendments are not intended to restrict the ability of the court to sentence a minor to the custody of HYCF for punishment as well as rehabilitation.

Thank you for this opportunity to testify.

LATE

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai`i 96817
Phone/E-mail: (808) 533-3454/communityallianceonprisons@hotmail.com



COMMITTEE ON JUDICIARY

Rep. Tommy Waters, Chair

Rep. Blake Oshiro, Vice Chair

Tuesday, March 27, 2007

2:00 PM

Room 325

SB 1444 SD1, HD1 - CLARIFYING PURPOSE OF HYCF STRONG

5 Copies

Aloha Chair Waters, Vice Chair Oshiro and Members of the Committee:

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working on prison reform and criminal justice issues in Hawai`i for almost a decade. I respectfully offer my testimony while remembering that Hawai`i now has more than 6,000 people behind bars, more than 1,900 of whom are serving their sentences abroad, thousands of miles away from their loved ones.

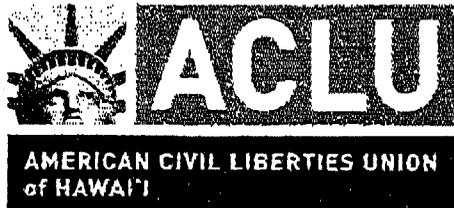
SB 1444 SD1, HD1 clarifies the purpose of committing youth to the Hawai`i Youth Correctional Facility. The HD1 makes a corresponding amendment to the law pertaining to the family courts by changing the term "incarceration" to "custody".

Community Alliance on Prisons stands in strong support of this measure. Changing 'punishment' to rehabilitation, 'incarceration' to 'custody' and 'reintegration' with 'prepare for reentry' is in line with best practices for treating youthful lawbreakers.

This fundamental change is actually a shift in philosophy that can help guide the protocols and practices so important to help our youth receive the services they need.

Please pass SB 1444 SD1, HD1 - its way overdue!

Mahalo for this opportunity to testify.

**BY FAX 586-6501**

Committee: Committee on Judiciary (5 copies)
Hearing Date/Time: Tuesday, March 27, 2007, 2:00 p.m.
Place: Room 325
Re: Testimony of the ACLU of Hawaii in Support of S.B. 1444, SD1, HD1
Relating to the Purpose of the Hawaii Youth Correctional Facility

Dear Chair Waters and Members of the Committee on Judiciary:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in strong support of S.B. 1444, SD1, HD1, which seeks to clarify the purpose of committing youth to the Hawaii Youth Correctional Facility ("HYCF").

As many of the members may be aware, since I began my tenure at the ACLU, I have devoted a significant amount of time to addressing the multitude of problems at HYCF, both informally and through litigation. The conditions at HYCF were best summarized by U.S. District Court Judge Michael Seabright in his February 2006 opinion, which states

Based on a 2004 investigation of the conditions at [HYCF], the United States Department of Justice ("DOJ") found it 'no exaggeration to describe HYCF as existing in a state of chaos.' After reviewing the extensive pleadings filed by the parties and holding an evidentiary hearing, the court finds that the DOJ finding is in fact not exaggerated.

R.G., et al. v. Koller, et al., 415 F.Supp.2d 1129, 1132-33 (D. Haw. 2006).

The widespread public attention on the deficiencies at HYCF as well as the DOJ's launch of a formal investigation led the 2006 Legislature to hold a series of information briefings on the conditions of the facility. These briefings led, amongst other things, to a request for a formal management audit ("Audit"). The recently released Audit may be found at <http://www.state.hi.us/auditor/Reports/2006/06-03.pdf>.

The Audit concluded, *inter alia*, that the Office of Youth Services ("OYS"), which oversees HYCF, "has not clearly communicated whether the facility's mission is primarily rehabilitation or secure incarceration. This ambiguity has caused considerable confusion among facility staff. Statutory direction has also offered minimal guidance to both the office and the facility." *See*

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
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www.acluhawaii.org

Hon. Rep. Waters, JUD Committee
and Members Thereof
Hearing Date: March 27, 2007
Page 2 of 2

Audit Overview. The Audit also recommended statutory changes to clarify the purpose of OYS and HYCF.

From a practical standpoint, these statutory amendments are necessary to provide the legal foundation for the necessary culture-shift at HYCF. Indeed, the largest barrier in negotiating meaningful changes and policies at HYCF to date has been the insistence state employees that HYCF is, at its core, *a correctional facility* for which the primary goal is *punishment*.

Moreover, the additional proposed amendment to H.R.S. § 571-8 is necessary to ensure that the mandate of the Legislature is accurately reflected in the law pertaining to the family courts. Hopefully these statutory amendments will set the stage for additional, meaningful progress at HYCF.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Lois K. Perrin
Legal Director
ACLU of Hawai'i

American Civil Liberties Union of Hawai'i
P.O. Box 3410
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S.B. 1047
HD1

STAND. COM. REP. NO.

1361

Honolulu, Hawaii

Month 22, 2007

RE: S.B. No. 1047
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1047 entitled:

"A BILL FOR AN ACT RELATING TO HIGHWAY SAFETY,"

begs leave to report as follows:

The purpose of this bill is to address the current shortage of commercial drivers within the state by allowing drivers who are 18 years-of-age or older to qualify for a commercial drivers' license (CDL) to transport intrastate commerce.

The Hawaii Transportation Association testified in support of this bill. The Department of Transportation (DOT) and Honolulu Police Department (HPD) testified in opposition to this measure.

Hawaii, like the rest of the nation, faces a shortage of commercial drivers. With increased economic activity resulting in increased freight volume and increased tourism in Hawaii, the situation is expected to worsen. Allowing individuals who are 18 years-of-age or older to qualify for a CDL, with certain restrictions, is an attempt to deal with the need for professional drivers.

However, your Committee understands the safety concerns raised by DOT and HPD regarding the age of CDL drivers and the maturity level needed to operate a commercial vehicle, especially larger trailer-type vehicles, and recognizes that current federal regulations require CDL drivers to be at least 21 years of age.

SB1047 HD1 HSCR TRN HMS 2007-3112



While this idea deserves further discussion and consideration, your Committee believes that the age limit to obtain a CDL under this measure should be raised.

Accordingly, your Committee has amended this bill by:

- (1) Changing the definition of "intrastate driver" to limit it to drivers who are no younger than 19 years; and
- (2) Raising the age limit for obtaining a CDL, with certain restrictions, from 18 years of age to 19 years of age;

Your Committee has further amended this bill by:

- (1) Changing the effective date to July 1, 2012, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1047, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1047, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



A BILL FOR AN ACT

RELATING TO HIGHWAY SAFETY.

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

- 1 SECTION 1. Chapter 286, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
- 4 "§286- Commercial drivers under the age of twenty-one.
- 5 (a) A person is qualified to drive commercially in the state in
6 intrastate commerce if the person:
- 7 (1) Is at least nineteen years of age;
- 8 (2) Is in compliance with 49 Code of Federal Regulations,
9 Part 390-396, Subpart B, except Section 391.11(b)(1)
10 in the case of an intrastate driver involved in
11 intrastate commerce in the state;
- 12 (3) Only operates a type 3 vehicle as defined in section
13 286-102(b)(3);
- 14 (4) Does not transport hazardous materials as defined in
15 section 286-2, nor passengers in a school vehicle as
16 defined in section 286-181; and



- 1 (5) Has had a type 3 state driver's license for the two
- 2 years immediately preceding driving commercially under
- 3 this section, with the following conditions:
- 4 (A) Has not had any license suspended, revoked, or
- 5 canceled; and
- 6 (B) Has not had any conviction for:
- 7 (i) Speeding excessively involving any speed of
- 8 fifteen miles per hour or more above the
- 9 speed limit;
- 10 (ii) Driving recklessly, as defined by state or
- 11 local law or regulation, including but not
- 12 limited to offenses of driving a motor
- 13 vehicle in wilful or wanton disregard for
- 14 the safety of person or property;
- 15 (iii) Making improper or erratic traffic lane
- 16 changes;
- 17 (iv) Following the vehicle ahead too closely; or
- 18 (v) Violating state or local law relating to
- 19 motor vehicle traffic control, excluding
- 20 parking violations, arising in connection
- 21 with a fatal accident."



1 SECTION 2. Section 286-2, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

4 "Intrastate commerce" means trade, traffic, or
5 transportation between two places in the state that originates
6 and terminates within the state.

7 "Intrastate driver" means a driver, not less than nineteen
8 years of age, engaged in intrastate commerce, except in the
9 transportation of passengers in a school vehicle, as defined in
10 section 286-181, or in the transportation of hazardous
11 materials, as defined in section 286-2."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2012.



Report Title:

Transportation; Commercial Drivers Licensing; Age Requirement

Description:

Permits drivers who are at least nineteen years of age to drive commercially. (SB1047 HD1)



S.B. 1528
HD1

STAND. COM. REP. NO. 1428

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1528
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1528 entitled:

"A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS,"

begs leave to report as follows:

The purpose of this bill is to clarify that all traffic infractions subject to the penalty provisions under the statewide traffic code shall be treated as civil traffic violations rather than criminal offenses.

The Judiciary testified in support of this bill.

In 1993, the Legislature decriminalized less serious traffic offenses, treating these offenses as civil matters in an effort to expeditiously adjudicate these cases. However, the default penalty section of the statewide traffic code continues to use the term "conviction" which is only possible in criminal cases. Clarifying that traffic infractions are civil cases will be consistent with the legislative intent in decriminalizing traffic violations.

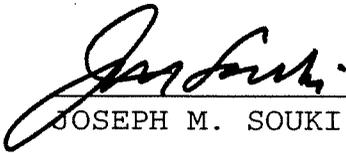
Your Committee has amended this bill by changing the effective date to July 1, 2020, to encourage further discussion.

SB1528 HD1 HSCR TRN HMS 2007-3237



As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1528, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1528, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

HSCR 1428

Record of Votes of the Committee on Transportation

Bill/Resolution No.: SB 1528 (SSCR1003)		Date: MARCH 19, 2007		
Committee Referral: TRN, JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input type="checkbox"/> Pass, unamended <input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommittal for further consideration				
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)	/			
2. NISHIMOTO, Scott Y. (VC)	/			
3. EVANS, Cindy	/			
4. HAR, Sharon E.	/			
5. LEE, Marilyn B.	/			
6. LUKE, Sylvia				/
7. McKELVEY, Angus L.K.	/			
8. NAKASONE, Bob	/			
9. SONSON, Alex M.				/
10. TAKAMINE, Dwight Y.				/
11. TAKUMI, Roy M.	/			
12. MEYER, Colleen Rose	/			
13. PINE, Kymberly Marcos				/
TOTAL	9			4
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:				
Distribution: Original (White) – Committee Duplicate (Yellow) – Clerk's Office				

A BILL FOR AN ACT

RELATING TO TRAFFIC INFRACTIONS.

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

1 SECTION 1. Section 291C-161, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Except as provided in subsections (c) and (d), every
4 person who [~~violates~~] is determined to have violated any
5 provision of this chapter for which another penalty is not
6 provided shall be fined:

7 (1) Not more than \$200 for a first [~~conviction~~] violation
8 thereof;

9 (2) Not more than \$300 for [~~conviction of~~] a second
10 [~~offense~~] violation committed within one year after
11 the date of the first [~~offense~~] violation; and

12 (3) Not more than \$500 for [~~conviction of~~] a third or
13 subsequent [~~offense~~] violation committed within one
14 year after the date of the first [~~offense~~]
15 violation."

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect on July 1, 2020.



Report Title:

Traffic Infractions; Penalties

Description:

Clarifies that all traffic violations subject to the penalty provisions of section 291C-161, Hawaii Revised Statutes (statewide traffic code; penalties), are treated as civil matters pursuant to chapter 291D (traffic offenses; administrative adjudication. Effective July 1, 2020. (SB1528 HD1)





The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth Legislature, 2007 Session

House Committee on Judiciary

The Honorable Tommy Waters, Chair

The Honorable Blake K. Oshiro, Vice Chair

Tuesday, March 27, 2007, 2:00 p.m.

State Capitol, Conference Room 325

by

Judge Russel Nagata

District Court, First Circuit

Bill No. and Title: Senate Bill No. 1528, H. D. 1, Relating to Traffic Infractions.

Purpose: To clarify that the penalty provision for those traffic infractions under the Statewide Traffic Code (HRS Chapter 291 C) for which there is no specific penalty is a civil penalty, not a criminal penalty, in accord with chapter 291D.

Judiciary's Position:

The Judiciary supports Senate Bill No. 1528, H. D. 1, which is part of the Judiciary's 2007 legislative package.

In 1993, the Legislature passed Act 214 (Chapter 291D, HRS) which created a system for expeditiously adjudicating the vast majority of less serious traffic offenses as civil matters. State v. Tarape, 107 Haw. 519 (ICA 2005) affirmed that traffic infractions are civil, not criminal matters – thus a finding of “guilt” is not correct.

However, the Judiciary notes that the default, catch-all penalty provision for the Statewide Traffic Code is Section 291C-161, HRS, which still contains language associated with criminal cases, i.e. “conviction”. This bill replaces “conviction” with “violation” in accord with the civil nature of traffic infractions as established by the legislature and affirmed by the appellate court. In addition to serving housekeeping purposes, the bill would also serve to prevent a challenge that a first, second, third, or subsequent “conviction” is not possible for a traffic infraction. Amending subsections (b) as indicated in the attached proposed bill would be consistent with the legislature's intent in establishing Chapter 291D, Hawaii Revised Statutes.

Thank you for the opportunity to testify on Senate Bill No. 1528, H. D. 1.

S.B. 1529
SD2, HD1

STAND. COM. REP. NO. 1433

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1529
S.D. 2
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1529, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO TRAFFIC INFRACTIONS,"

begs leave to report as follows:

The purpose of this bill is to clarify and expedite the processing of traffic infractions by, among other things:

- (1) Clearly establishing that the District Court may adjudicate civil traffic infractions charged against minors;
- (2) Clarifying that confidentiality protections afforded to minors are inapplicable to civil traffic infraction proceedings;
- (3) Consistently applying the civil standard of proof for civil traffic infraction trials;
- (4) Allowing District Courts discretionary scheduling of concurrent proceedings to address difficulties faced in complying with present concurrent scheduling requirements;
- (5) Clarifying the protections afforded to a defendant against self-incrimination;

SB1529 HD1 HSCR TRN HMS 2007-3238



- (6) Promoting consistency in the manner of processing and adjudicating moving and non-moving civil traffic infractions;
- (7) Permitting the use of electronic citations; and
- (8) Requiring that the person who is the lessee of the vehicle at the time of the issuance of a traffic infraction shall be responsible for the summons or citation if the registered owner of record is the lessor of a rental or U-drive motor vehicle.

The Judiciary supported this bill. Catrala-Hawaii supported this measure with amendments.

Currently, a vast majority of lesser traffic offenses can be adjudicated without requiring the defendant's appearance in court. However, some methods used in processing traffic infractions remain unclear, ambiguous, and inconsistent. This measure attempts to address these issues.

Your Committee understands the concerns raised by Catrala-Hawaii and the impact these changes may have on U-drive (also known as rental car) companies. Accordingly, your Committee has amended this bill by:

- (1) Stipulating that in addition to monetary assessments, surcharges, penalties, fines, costs and fees, and other charges that may be imposed by an administrative judge of the court having jurisdiction over the citation or summons who has waived the requirement of providing the name and address of the lessee by the lessor and imposed an administrative fee per citation or summons of five dollars per citation or summons on the lessor, shall not exceed ten dollars;
- (2) Stipulating, in the case of parking citations, that in addition to costs, fees, monetary assessments, surcharges, penalties, fines, and other charges that may be imposed by an administrative judge of the court having jurisdiction over the citation or summons who has waived the requirement of providing the name and address of the lessee by the lessor and imposed an administrative fee of \$5 per parking citation on the lessor, shall not exceed \$10;



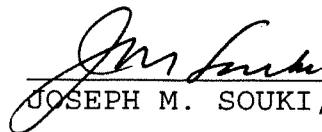
- (3) Clarifying that the lessor of the motor vehicle, as the registered owner of the motor vehicle, may be responsible for fines, costs, penalties, fees, and other charges related to traffic infractions of a motor vehicle, not just parking citations, while being leased or rented to a lessee;
- (4) Allowing the lessor to adopt a policy of charging the lessee for the actual cost of the traffic infraction paid not just to the court, but to other state government agencies, or county governments, as well; and
- (5) Providing that the rental agreement contain language encouraging the lessee to pay all applicable monetary assessments, surcharges, in addition to applicable fines, costs, penalties, fees, and other charges directly to the appropriate court or government agency.

Your Committee has also amended this bill by:

- (1) Changing its effective date to July 1, 2007; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1529, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1529, S.D. 2, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



A BILL FOR AN ACT

RELATING TO TRAFFIC INFRACTIONS.

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

1 SECTION 1. Chapter 291D, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new section to be appropriately designated
4 and to read:

5 "§291D- U-drive vehicles; traffic infractions.

6 Notwithstanding any other law to the contrary, except those
7 pertaining to the care and maintenance of the vehicle, if the
8 registered owner of record is the lessor of a rental or U-drive
9 motor vehicle, as defined in section 286-2, pursuant to a
10 written lease agreement, the lessee at the time of the issuance
11 of the traffic infraction shall be responsible for such summons
12 or citation; provided, however, that said lessor shall be
13 responsible for such summons or citation if the lessor does not
14 provide the court having jurisdiction over the summons or
15 citation the name and address of the lessee within forty-five
16 days after a notice containing the date, time, and location of
17 the violation and the license number of the vehicle; provided
18 further that if requested by the lessor in writing within forty-



1 five days of such notice of violation other than for parking
2 citations, the administrative judge of the court having
3 jurisdiction over the citation or summons shall waive the
4 requirement of providing the name and address of the lessee by
5 the lessor and impose an administrative fee per statute of \$5
6 per citation on the lessor, plus monetary assessments,
7 surcharges, penalties, fines, costs, fees, and other charges not
8 to exceed \$10 in total per violation, notwithstanding section
9 291D-9, 607-4, or other sections of the law, county ordinance,
10 or any rule to the contrary. In the case of parking citations,
11 the administrative judge of the court having jurisdiction over
12 the citation or summons may waive the requirement of providing
13 the name and address of the lessee by the lessor and impose an
14 administrative fee of \$5 per parking citation on the lessor,
15 plus monetary assessments, surcharges, penalties, fines, costs,
16 fees, and other charges not to exceed \$10 in total per such
17 violation, notwithstanding section 291D-9, 607-4, or other
18 sections of the law, county ordinance, or any rule to the
19 contrary."

20 2. By adding three new definitions to be appropriately
21 inserted to section 291D-2 to read:



1 "Concurrent trial" means a trial proceeding held in the
2 district or family court in which the defendant is tried
3 simultaneously in a civil case for any charged traffic
4 infraction and in a criminal case for any related criminal
5 offense, with trials to be held in one court on the same date
6 and at the same time.

7 "Notice of traffic infraction" includes a notice of parking
8 violation.

9 "Related criminal offense" means any criminal violation or
10 crime, committed in the same course of conduct as a traffic
11 infraction, for which the defendant is arrested or charged."

12 3. By amending the definitions of "hearing", "traffic
13 infraction", and "trial" to section 291D-2 to read:

14 "Hearing" means a proceeding conducted by the district
15 court pursuant to section 291D-8 at which [a driver either] the
16 person to whom a notice of traffic infraction was issued either
17 admits to the traffic infraction, contests the notice of traffic
18 infraction, or admits to the traffic infraction but offers an
19 explanation to mitigate the monetary assessment imposed.

20 "Traffic infraction" means all violations of statutes,
21 ordinances, or rules relating to traffic movement and control,
22 including parking, standing, equipment, and pedestrian offenses,



1 for which the prescribed penalties do not include
2 imprisonment[-] and that are not otherwise specifically excluded
3 from coverage of this chapter.

4 "Trial" means a trial conducted by the district court
5 pursuant to the [~~Hawaii Rules of Penal Procedure and~~] rules of
6 the district court[-] and the Hawaii rules of evidence."

7 4. By amending section 291D-3 to read:

8 **"§291D-3 Applicability.** (a) Notwithstanding any other
9 provision of law to the contrary, all traffic infractions,
10 including traffic infractions committed by minors, shall be
11 adjudicated pursuant to this chapter, except as provided in
12 subsection (b). This chapter shall be applied uniformly
13 throughout the [~~State~~] state and in all counties. No penal
14 sanction that includes imprisonment shall apply to a violation
15 of a state statute or rule, or county ordinance or rule, that
16 would constitute a traffic infraction under this chapter. No
17 traffic infraction shall be classified as a criminal offense.

18 (b) [~~No traffic infraction that involves an accident~~
19 ~~resulting in personal injury or property damage~~] Where a
20 defendant is charged with a traffic infraction and the
21 infraction is committed in the same course of conduct as a
22 criminal offense for which the offender is arrested or charged,



1 the traffic infraction shall be adjudicated pursuant to this
2 chapter [~~, but shall be adjudicated by~~]; provided that the court
3 may schedule any initial appearance, hearing, or trial on the
4 traffic infraction at the same date, time, and place as the
5 arraignment, hearing, or trial on the related criminal offense.

6 Notwithstanding this subsection and subsection (c), the
7 court shall not schedule any initial appearance, hearing, or
8 trial on the traffic infraction at the same date, time, and
9 place as the arraignment, hearing, or trial on the related
10 criminal offense where the related criminal offense is a felony
11 or is a misdemeanor for which the defendant has demanded a jury
12 trial.

13 (c) If the defendant requests a trial pursuant to section
14 291D-13, the trial shall be held in the [~~appropriate~~] district
15 [~~or circuit~~] court of the circuit in which the traffic
16 infraction was committed [~~, whichever has jurisdiction pursuant~~
17 ~~to the applicable statute or rules of court~~]. If the court
18 schedules a concurrent trial pursuant to paragraph (1), the
19 concurrent trial shall be held in the appropriate district or
20 family court of the circuit in which the traffic infraction was
21 committed, whichever has jurisdiction over the related criminal



1 offense charged pursuant to the applicable statute or rule of
2 court; provided that:

3 (1) The district or family court, for the purpose of
4 trial, may schedule a civil trial on the traffic
5 infraction on the same date and at the same time as a
6 criminal trial on the related criminal offense
7 charged. The court shall enter a civil judgment as to
8 the traffic infraction and a judgment of conviction or
9 acquittal as to the related criminal offense following
10 such concurrent trial; and

11 (2) If trial on the traffic infraction is held separately
12 from and prior to trial on any related criminal
13 offense, the following shall be inadmissible in the
14 prosecution or trial of the related criminal offense,
15 except as expressly provided by the Hawaii rules of
16 evidence:

17 (A) Any written or oral statement made by the
18 defendant in proceedings conducted pursuant to
19 section 291D-7(b); and

20 (B) Any testimony given by the defendant in the trial
21 on the traffic infraction.



1 Such statements or testimony shall not be deemed a
2 waiver of the defendant's privilege against self-
3 incrimination in connection with any related criminal
4 offense.

5 (d) In no event shall section 701-109 preclude prosecution
6 for a related criminal offense where a traffic infraction
7 committed in the same course of conduct has been adjudicated
8 pursuant to this chapter.

9 ~~[(e)]~~ (e) If the defendant fails to appear ~~[for a traffic~~
10 ~~infraction which is committed in the same course of conduct as a~~
11 ~~criminal offense for which the offender is arrested or charged,]~~
12 at any scheduled court date prior to the date of trial or
13 concurrent trial and:

14 (1) The defendant's civil liability for the traffic
15 infraction has not yet been adjudicated pursuant to
16 section 291D-8, the court shall enter a judgment by
17 default in favor of the State for the traffic
18 infraction unless the court determines that good cause
19 or excusable neglect exists for the defendant's
20 failure to appear~~[-The];~~ or

21 (2) The defendant's civil liability for the traffic
22 infraction has been adjudicated previously pursuant to



1 section 291D-8, the judgment earlier entered in favor
2 of the State shall stand unless the court determines
3 that good cause or excusable neglect exists for the
4 defendant's failure to appear.

5 (f) If the defendant fails to appear at any scheduled
6 court date prior to concurrent trial or fails to appear for
7 concurrent trial scheduled pursuant to subsection (c)(1), the
8 court shall enter a disposition pursuant to the Hawaii rules of
9 penal procedure for the criminal offense."

10 5. By amending section 291D-5 to read:

11 **"§291D-5 Notice of traffic infraction; form; determination**
12 **final unless contested.** (a) The notice of traffic infraction
13 for moving violations shall include the [~~complaint and~~] summons
14 for the purposes of this chapter. Whenever a notice of traffic
15 infraction is issued to the driver of a motor vehicle, the
16 driver's signature, driver's license number, and current address
17 shall be [~~affixed to~~] noted on the notice. If the driver
18 refuses to sign the notice[~~7~~] of traffic infraction, the officer
19 shall record this refusal on the notice and issue the notice to
20 the driver. Individuals to whom a notice of traffic infraction
21 is issued under this chapter need not be arraigned before the
22 court, unless required by rule of the supreme court.



1 (b) The form for the notice of traffic infraction shall be
 2 prescribed by rules of the district court which shall be uniform
 3 throughout the [~~State. Except in the case of traffic~~
 4 ~~infractions involving parking, the~~] state; provided that each
 5 judicial circuit may include differing statutory, rule, or
 6 ordinance provisions on its respective notice of traffic
 7 infraction.

8 (c) A notice of traffic infraction that is generated by
 9 the use of electronic equipment or that bears the electronically
 10 stored image of any person's signature, or both, shall be valid
 11 under this chapter.

12 (d) The notice of traffic infraction shall include the
 13 following:

14 (1) A statement of the specific traffic infraction[~~7~~
 15 ~~including a brief statement of facts,~~] for which the
 16 notice was issued;

17 (2) Except in the case of parking-related traffic
 18 infractions, a brief statement of the facts;

19 ~~[-2-]~~ (3) A statement of the total amount to be paid for
 20 each traffic infraction, which amount shall include
 21 any fee, surcharge, or cost required by statute,
 22 ordinance, or rule, and any monetary assessment,



1 established for the particular traffic infraction
2 pursuant to section 291D-9, to be paid by the
3 driver~~[7]~~ or registered owner of the vehicle, which
4 shall be uniform throughout the ~~[State7]~~ state;

5 ~~[-37]~~ (4) A statement of the options provided in section
6 291D-6(b) for answering the notice and the procedures
7 necessary to exercise the options;

8 ~~[-47]~~ (5) A statement that the person to whom the notice is
9 issued must answer, choosing one of the options
10 specified in section 291D-6(b), within twenty-one
11 days~~[7]~~ of issuance of the notice;

12 ~~[-57]~~ (6) A statement that failure to answer the notice of
13 traffic infraction within twenty-one days of issuance
14 shall result in the entry of judgment by default for
15 the State and may result in the assessment of a late
16 penalty, and, that if the ~~[driver]~~ person to whom the
17 notice was issued fails to pay the total amount
18 specified in the default judgment within an additional
19 thirty days or to otherwise take action to set aside
20 the default, notice shall be sent to the director of
21 finance of the appropriate county ~~[that]~~ :



1 (A) That the person to whom the notice of infraction
2 not involving parking was issued shall not be
3 permitted to renew or obtain a driver's license;
4 or [~~where~~]

5 (B) Where the notice was issued to a motor vehicle,
6 that the registered owner shall not be permitted
7 to register, renew the registration of, or
8 transfer title to the motor vehicle until the
9 traffic infraction is finally disposed of
10 pursuant to this chapter [~~+~~], except as provided
11 in section 291D-10(b);

12 [~~+6+~~] (7) A statement that, at a hearing requested to
13 contest the notice of traffic infraction conducted
14 pursuant to section 291D-8 [~~or in consideration of a~~
15 ~~written statement contesting the notice of traffic~~
16 ~~infraction~~], no officer shall be present unless the
17 driver timely requests the court to have the officer
18 present [~~—The~~], and that the standard of proof to be
19 applied by the court is whether a preponderance of the
20 evidence proves that the specified traffic infraction
21 was committed;



1 ~~[(7)]~~ (8) A statement that, at a hearing requested for the
2 purpose of explaining mitigating circumstances
3 surrounding the commission of the infraction or in
4 consideration of a written request for mitigation, the
5 person shall be considered to have committed the
6 traffic infraction;

7 ~~[(8)]~~ (9) A space in which the ~~[driver's]~~ signature~~[,~~
8 ~~current address, and driver's license number]~~ of the
9 person to whom the notice was issued may be affixed;
10 and

11 ~~[(9)]~~ (10) The date, time, and place at which the ~~[driver]~~
12 person to whom the notice was issued must appear in
13 court, if the ~~[driver]~~ person is required by the
14 notice to ~~[go to]~~ appear in person at the hearing.

15 ~~[(e)]~~ (e) In the case of traffic infractions involving
16 parking~~[,~~ or equipment, where the motor vehicle is found parked
17 or stopped without a driver, the notice shall be affixed
18 conspicuously to the vehicle as provided in section 291C-167 and
19 shall include the information required by paragraphs (1) and (3)
20 to ~~[(8)]~~ (9) of subsection ~~[(b)-]~~ (d)."

21 6. By amending subsections (a) and (b) of section 291D-6
22 to read:



1 "(a) A person who receives a notice of traffic infraction
2 shall answer the notice within twenty-one days of the date of
3 issuance of the notice. There shall be included with the notice
4 of traffic infraction a preaddressed envelope directed to the
5 traffic violations bureau of the applicable district court.

6 (b) ~~[In]~~ Provided that the notice of traffic infraction
7 does not require an appearance in person at hearing as set forth
8 in section 291D-5(b)(10), in answering a notice of traffic
9 infraction, a person shall have the following options:

10 (1) Admit the commission of the infraction in one of the
11 following ways:

12 (A) By mail or in person, by completing the
13 appropriate portion of the notice of traffic
14 infraction or preaddressed envelope and
15 submitting it to the authority specified on the
16 notice together with payment of the total amount
17 stated on the notice of traffic infraction.
18 Payment by mail shall be in the form of a check,
19 money order, or by an approved credit or debit
20 card. Payment in person shall be in the form of
21 United States currency, check, money order, or by
22 an approved credit or debit card; or



1 (B) Via the Internet or by telephone, by submitting
2 payment of the total amount stated on the notice
3 of traffic infraction. Payment via the Internet
4 or by telephone shall be by an approved credit or
5 debit card;

6 (2) Deny the commission of the infraction and request a
7 hearing to contest the infraction by completing the
8 appropriate portion of the notice of traffic
9 infraction or preaddressed envelope and submitting it,
10 either by mail or in person, to the authority
11 specified on the notice. In lieu of appearing in
12 person at a hearing, the person may submit a written
13 statement of grounds on which the person contests the
14 notice of traffic infraction, which shall be
15 considered by the court as a statement given in court
16 pursuant to section 291D-8(a); or

17 (3) Admit the commission of the infraction and request a
18 hearing to explain circumstances mitigating the
19 infraction by completing the appropriate portion of
20 the notice of traffic infraction or preaddressed
21 envelope and submitting it, either by mail or in
22 person, to the authority specified on the notice. In



1 lieu of appearing in person at a hearing, the person
2 may submit a written explanation of the mitigating
3 circumstances, which shall be considered by the court
4 as a statement given in court pursuant to section
5 291D-8(b)."

6 7. By amending section 291D-7 to read:

7 "**§291D-7 Court action after answer or failure to answer.**

8 (a) When an admitting answer is received, the court [~~shall~~
9 ~~review the driver's abstract. The court~~] shall enter judgment
10 in favor of the State in the total amount specified in the
11 notice of traffic infraction. If the total amount is not
12 submitted with the answer, the court [~~shall~~] may take action as
13 provided in section 291D-10.

14 (b) When a denying answer is received, the court shall
15 proceed as follows:

16 (1) In the case of a traffic infraction [~~that does not~~
17 ~~involve parking~~] where the person requests a hearing
18 at which the person will appear in person to contest
19 the infraction, the court shall notify the person in
20 writing of the date, time, and place of hearing to
21 contest the notice of traffic infraction. The notice
22 of hearing shall be [~~sent~~] mailed to the address



1 stated in the denying answer, or if none is given, to
2 the address stated on the notice of traffic
3 infraction. The notification also shall advise the
4 person that, if the person fails to appear at the
5 hearing, the court shall enter judgment by default in
6 favor of the State, as of the date of the scheduled
7 hearing, that the total amount specified in the
8 default judgment must be paid within thirty days [~~from~~
9 ~~notice~~] of entry of default [~~7~~] judgment, and, if it is
10 not paid, that the court shall take action as provided
11 in section 291D-10;

12 ~~[(2) In the case of a traffic infraction that involves~~
13 ~~parking, the court shall notify the person or~~
14 ~~registered owner or owners in writing of the date,~~
15 ~~time, and place of hearing to contest the notice of~~
16 ~~traffic infraction. The notice of hearing shall be~~
17 ~~sent to the address stated in the denying answer or,~~
18 ~~if none is given, to the address at which the vehicle~~
19 ~~is registered. The notification also shall advise the~~
20 ~~person that, if the person fails to appear at the~~
21 ~~hearing, the court shall enter judgment by default in~~
22 ~~favor of the State, as of the date of the scheduled~~



1 ~~hearing, that the total amount specified in the~~
2 ~~default judgment shall be paid within thirty days from~~
3 ~~notice of default, and, if it is not paid, that the~~
4 ~~court shall take action as provided in section~~
5 ~~291D-10,] and~~

6 [(3)] (2) When a denying answer is accompanied by a written
7 statement of the grounds on which the person contests
8 the notice of [the] traffic infraction, the court
9 shall proceed as provided in section 291D-8(a) and
10 shall notify the person of its decision, including the
11 total amount assessed, if any, by mailing [it] the
12 notice of entry of judgment within [~~thirty~~] forty-five
13 days of the postmarked date of the answer to the
14 address provided by the person in the denying answer,
15 or if none is given, to the address given when the
16 notice of traffic infraction was issued or, in the
17 case of parking violations, [~~to the address stated in~~
18 ~~the denying answer or, if none is given,~~] to the
19 address at which the vehicle is registered. The
20 [~~decision~~] notice of entry of judgment also shall
21 advise the person, if it is determined that the
22 infraction was committed[~~,~~] and judgment is entered in



1 favor of the State, that the person has the right,
2 within thirty days~~[,]~~ of entry of judgment, to request
3 a trial and shall specify the procedures for doing so.
4 The notice of ~~[decision]~~ entry of judgment shall also
5 notify the person, if an amount is assessed by the
6 court for ~~[fines,]~~ monetary assessments, fees,
7 surcharges, or costs ~~[, or monetary assessments]~~, that
8 if the person does not request a trial~~[,]~~ within the
9 time specified in this paragraph, the total amount
10 assessed shall be paid within thirty days~~[,]~~ of entry
11 of judgment. The notice of entry of judgment shall
12 ~~[warn]~~ inform the person that if the total amount is
13 not paid within thirty days, the court shall take
14 action as provided in section 291D-10.

15 (c) When an answer admitting commission of the infraction
16 but seeking to explain mitigating circumstances is received, the
17 court shall proceed as follows:

18 (1) In the case of a traffic infraction ~~[which does not~~
19 ~~involve parking]~~ where the person requests a hearing
20 at which the person will appear in person to explain
21 mitigating circumstances, the court shall notify the
22 person in writing of the date, time, and place of



1 hearing to explain mitigating circumstances. The
2 notice of hearing shall be [~~sent~~] mailed to the
3 address stated in the answer, or if none is given, to
4 the address stated on the notice of traffic
5 infraction. The notification also shall advise the
6 person that, if the person fails to appear at the
7 hearing, the court shall enter judgment by default in
8 favor of the State, as of the date of the scheduled
9 hearing, that the total amount stated in the default
10 judgment [~~shall~~] must be paid within thirty days [~~from~~
11 ~~notice~~] of entry of default[~~,~~] judgment, and, if it is
12 not paid, that the court shall take action as provided
13 in section 291D-10;

14 [~~(2) In the case of a traffic infraction which involves~~
15 ~~parking, the court shall notify the person in writing~~
16 ~~of the date, time, and place of the hearing. The~~
17 ~~notice shall be sent to the address at which the~~
18 ~~vehicle is registered. The notice of hearing on~~
19 ~~mitigating circumstances shall advise the person that~~
20 ~~the court shall enter judgment for the State and the~~
21 ~~hearing shall be limited to an explanation of the~~
22 ~~mitigating circumstances. The notice of hearing also~~



1 ~~shall state that if the person fails to appear at the~~
2 ~~hearing, the total amount specified in the default~~
3 ~~judgment shall be paid within thirty days of the~~
4 ~~scheduled hearing. The notice of hearing shall warn~~
5 ~~the person that if the total amount is not paid within~~
6 ~~thirty days, the court shall take action as provided~~
7 ~~in section 291D-10,] and~~

8 ~~(3)~~ (2) If a written explanation is included with an
9 answer admitting commission of the infraction, the
10 court shall enter judgment for the State and, after
11 reviewing the explanation, determine the total amount
12 of the [~~finer,~~] monetary assessments, fees,
13 surcharges, or costs [~~, or monetary assessments~~] to be
14 assessed, if any. The court shall then notify the
15 person of the total amount to be paid for the
16 infraction, if any. There shall be no appeal from the
17 [~~order.~~] judgment. If the court assesses an amount
18 for [~~finer,~~] monetary assessments, fees, surcharges,
19 or costs [~~, or monetary assessments~~], the court shall
20 also notify the person that the total amount shall be
21 paid within thirty days of [~~the postmarked date of the~~
22 ~~decision.~~] entry of judgment. The notice of entry of



1 judgment also shall [~~warn~~] inform the person that if
2 the total amount is not paid within thirty days, the
3 court shall take action as provided in section
4 291D-10.

5 (d) If the person fails to answer within twenty-one days
6 of issuance of the notice of traffic infraction, the court shall
7 take action as provided in subsection (e).

8 (e) Whenever judgment by default in favor of the State is
9 entered, the court shall mail a notice of entry of default
10 judgment [~~of default~~] to the address provided by the person when
11 the notice of traffic infraction was issued or, in the case of
12 parking [~~violations,~~] infractions, to the address stated in the
13 answer, if any, or the address at which the vehicle is
14 registered. The notice of entry of default judgment shall
15 advise the person that the total amount specified in the default
16 judgment shall be paid within thirty days of entry of default
17 judgment and shall explain the procedure for setting aside a
18 default judgment. The notice of entry of default judgment shall
19 also [~~warn~~] inform the person that if the total amount is not
20 paid within thirty days, the court shall take action as provided
21 in section 291D-10. Judgment by default for the State entered
22 pursuant to this chapter may be set aside pending final



1 disposition of the traffic infraction upon written application
2 of the person and posting of an appearance bond equal to the
3 amount of the total amount specified in the default judgment and
4 any other assessment imposed pursuant to section 291D-9. The
5 application shall show good cause or excusable neglect for the
6 person's failure to take action necessary to prevent entry of
7 judgment by default. Upon receipt of the application[7] and
8 required appearance bond, the court shall take action to remove
9 the restriction placed on the person's driver's license or the
10 motor vehicle's registration and title imposed pursuant to
11 section 291D-10. Thereafter, the court shall determine whether
12 good cause or excusable neglect exists for the person's failure
13 to take action necessary to prevent entry of judgment by
14 default. If so, the application to set aside default judgment
15 shall be granted, the default judgment shall be set aside, and
16 the notice of traffic infraction shall be disposed of pursuant
17 to this chapter. If not, the application to set aside default
18 judgment shall be denied, the appearance bond shall be forfeited
19 and applied to satisfy amounts due under the default judgment,
20 and the notice of traffic infraction shall be finally disposed.
21 In either case, the court [~~7, within thirty days,~~] shall determine



1 the existence of good cause or excusable neglect and notify the
2 person of its decision on the application in writing."

3 8. By amending section 291D-8 to read:

4 "**§291D-8 Hearings.** (a) In proceedings to contest [the
5 ~~issuance of~~] a notice of traffic [~~infractions-~~] infraction where
6 the person to whom the notice was issued has timely requested a
7 hearing and appears at such hearing:

8 (1) In lieu of the personal appearance by the officer who
9 issued the notice of traffic infraction, the court
10 shall consider the notice of traffic infraction and
11 any other written report made by the officer, if
12 provided to the court by the officer, together with
13 any oral or written statement by the [~~driver,~~] person
14 to whom the notice of infraction was issued, or in the
15 case of traffic infractions involving parking[~~7~~] or
16 equipment, the operator or registered owner of the
17 motor vehicle;

18 (2) The court may compel by subpoena the attendance of the
19 officer who issued the notice of traffic infraction
20 and other witnesses from whom it may wish to hear;

21 (3) The standard of proof to be applied by the court shall
22 be whether, by a preponderance of the evidence [~~proves~~



1 ~~that~~], the court finds that the traffic infraction was
2 committed; and
3 (4) After due consideration of the evidence and arguments,
4 if any, the court shall determine whether commission
5 of the traffic infraction has been established. Where
6 the commission of the traffic infraction has not been
7 established, [~~an order~~] judgment in favor of the
8 defendant, dismissing the notice of traffic infraction
9 or any count therein with prejudice, shall be entered
10 in the [~~records~~] record. Where it has been
11 established that the traffic infraction was committed,
12 the court shall enter judgment [~~for~~] in favor of the
13 State and [~~may~~] shall assess a monetary assessment
14 pursuant to section 291D-9[-], together with any fees,
15 surcharges, or costs. The court also shall inform the
16 person of the right to request [~~within thirty days~~],
17 a trial pursuant to section 291D-13. If the person
18 requests a trial at the time of the hearing, the court
19 shall provide the person with the trial date
20 [~~forthwith. If trial is elected, arraignment and plea~~
21 ~~shall be held at the time of trial.~~] as soon as
22 practicable.



1 (b) In proceedings to explain mitigating circumstances [÷]
2 where the person to whom the notice of traffic infraction was
3 issued has timely requested a hearing and appears at such
4 hearing:

5 (1) The procedure [~~shall be informal and~~] shall be limited
6 to the issue of mitigating circumstances. A person
7 who requests to explain the circumstances shall not be
8 permitted to contest the [~~issuance of~~] the notice of
9 traffic infraction; [~~and~~]

10 (2) After the court has received the explanation, the
11 court shall enter judgment [~~for~~] in favor of the State
12 and may assess a monetary assessment [÷] pursuant to
13 section 291D-9 [÷~~and~~], together with any fees,
14 surcharges, or costs;

15 (3) The court, after receiving the explanation, may vacate
16 the admission and [~~dismiss~~] enter judgment in favor of
17 the defendant, dismissing the notice of traffic
18 infraction or any count therein with prejudice, where
19 the explanation establishes that the infraction was
20 not committed; and

21 (4) There shall be no appeal from the [~~order.~~] judgment.



1 (c) If a person for whom a hearing has been scheduled, to
2 contest the notice of traffic infraction or [~~a hearing~~] to
3 explain mitigating circumstances, fails to appear at the
4 hearing, the court shall enter judgment by default for the State
5 and take action as provided in section 291D-7(e). If the total
6 amount of the monetary assessment, fees, surcharges, or costs is
7 not paid within thirty days [~~7~~] of entry of default judgment, the
8 court shall take action as provided in section 291D-10."

9 9. By amending section 291D-12 to read:

10 "**\$291D-12 Powers of the district court judge sitting in**
11 **the traffic division.** A district court judge sitting in the
12 traffic division and hearing cases pursuant to this chapter
13 shall have all the powers of a district court judge under
14 chapter 604, including the following powers:

- 15 (1) To conduct traffic infraction hearings and to impose
16 monetary assessments;
- 17 (2) To permit deferral of monetary assessment or impose
18 community service in lieu thereof;
- 19 (3) To dismiss a notice of traffic infraction, with or
20 without prejudice, or to set aside a judgment for the
21 State;



- 1 (4) To order temporary driver's license suspension or
2 driver's license reinstatement;
- 3 (5) To order the director of finance not to issue or renew
4 the driver's license, or to register, renew the
5 registration of, or issue title to a motor vehicle, of
6 any person who has not paid a monetary assessment
7 [~~e~~], has not performed community service in lieu
8 thereof[+], or has not otherwise satisfied a judgment
9 for the State entered pursuant to this chapter;
- 10 (6) To approve the issuance or renewal of a driver's
11 license or instruction permit pursuant to section
12 286-109(c);
- 13 (7) To issue penal summonses and bench warrants and
14 initiate contempt of court proceedings in proceedings
15 conducted pursuant to section 291D-13; [~~and~~]
- 16 (8) To issue penal summonses and bench warrants and
17 initiate failure to appear proceedings in proceedings
18 conducted pursuant to section 291D-5(d)(10); and
- 19 [~~+8~~] (9) To exercise other powers the court finds
20 necessary and appropriate to carry out the purposes of
21 this chapter."
- 22 10. By amending section 291D-13 to read:



1 "§291D-13 Trial[-] and concurrent trial. (a) There shall
2 be no right to trial unless the defendant contests the notice of
3 traffic infraction pursuant to section 291D-8. If, after
4 proceedings to contest the notice of traffic infraction, a
5 determination is made that [~~a person~~] the defendant committed
6 the traffic infraction, [~~the person~~] judgment shall enter in
7 favor of the State. The defendant may request [~~, within thirty~~
8 ~~days of the determination,~~] a trial pursuant to the [~~rules of~~
9 ~~penal procedure~~] Hawaii rules of evidence and the rules of the
10 district court [~~, provided that arraignment and plea for such~~
11 ~~trial shall be held at the time of trial.~~]; provided that any
12 request for trial shall be made within thirty days of entry of
13 judgment. If, after appearing in person at a hearing to contest
14 the notice of traffic infraction, the person requests a trial at
15 the conclusion of the [~~proceedings to contest the notice of~~
16 ~~traffic infraction,~~] hearing, the court shall provide the person
17 with the trial date [~~forthwith. A notice of traffic infraction~~
18 ~~shall not be adjudicated pursuant to this section until~~
19 ~~proceedings pursuant to section 291D-8 have been completed.~~] as
20 soon as practicable.

21 (b) [~~The result of the final determination or any~~
22 ~~admission made pursuant to section 291D-6 shall not be~~



1 ~~admissible in any trial conducted pursuant to section 291D-13.]~~

2 At the time of trial, the State shall be represented by a
3 prosecuting attorney of the county in which the infraction
4 occurred. The prosecuting attorney shall orally recite the
5 charged civil traffic infraction in court prior to commencement
6 of the trial. Proof of the defendant's commission of the
7 traffic infraction shall be by a preponderance of the evidence.

8 (c) If trial on the traffic infraction is held prior to
9 trial on any related criminal offense, the following shall be
10 inadmissible in the subsequent prosecution or trial of the
11 related criminal offense:

12 (1) Any written or oral statement made by the defendant in
13 proceedings conducted pursuant to section 291D-7(b);
14 and
15 (2) Any testimony given by the defendant in the traffic
16 infraction trial.

17 The statement, testimony, or both, shall not be deemed a waiver
18 of the defendant's privilege against self-incrimination in
19 connection with any related criminal offense.

20 (d) In any concurrent trial, the State shall be
21 represented by a prosecuting attorney of the county in which the
22 infraction and related crime occurred. Proof of the defendant's



1 commission of the infraction shall be by a preponderance of the
2 evidence, and proof of the related criminal offense shall be by
3 proof beyond a reasonable doubt. The concurrent trial shall be
4 conducted pursuant to the rules of the appropriate court, the
5 Hawaii rules of evidence, and the Hawaii rules of penal
6 procedure."

7 11. By amending section 291D-14 to read:

8 "[~~f~~]§291D-14[~~}]~~ **Rules.** (a) The supreme court may adopt
9 rules of procedure for the conduct of all proceedings pursuant
10 to this chapter.

11 (b) Chapter 626 shall not apply in proceedings conducted
12 pursuant to this chapter, except for the rules governing
13 privileged communications, and proceedings conducted under
14 section 291D-13.

15 (c) Notwithstanding section 604-17, while the court is
16 sitting in any matter pursuant to this chapter, the court shall
17 not be required to preserve the testimony or proceedings, except
18 proceedings conducted pursuant to section 291D-13 [~~-~~] and
19 proceedings in which the traffic infraction is heard on the same
20 date and time as any related criminal offense.

21 (d) The prosecuting attorney shall not participate in
22 traffic infraction proceedings conducted pursuant to this



1 chapter, except proceedings pursuant to section 291D-13~~[-]~~ and
2 proceedings in which a related criminal offense is scheduled for
3 arraignment, hearing, or concurrent trial.

4 (e) Chapter 91 shall not apply in proceedings before the
5 court.

6 (f) Except as otherwise provided in section 291D-3,
7 chapter 571, and the Hawaii family court rules shall not apply
8 in any proceedings conducted pursuant to this chapter."

9 12. By amending section 437D-17.5 to read:

10 "[~~4~~] §437D-17.5 [~~7~~] Rental agreements; unpaid [parking
11 Citations] traffic infractions. Pursuant to section [~~291C-~~
12 168.5,] 291D- , or other sections of the law and except for
13 summons, citations, or violations relating to the care and
14 maintenance of a rental motor vehicle, the lessor, as the
15 registered owner of the rental motor vehicle, may be responsible
16 for fines [~~or~~], costs, penalties, fees, or other charges related
17 to [parking citations.] traffic infractions of a motor vehicle
18 while being leased or rented to a lessee. The lessor may adopt
19 a policy of charging the lessee the actual [~~cost of the parking~~
20 ~~citation]~~ amount paid for such traffic infractions to the court
21 or other state government agency or county government plus an
22 administrative fee not to exceed [~~\$20~~] out-of-pocket expenses



1 documentd by receipts plus up to four hours of work multiplied
2 by Hawaii's prevailing minimum wage relating to research of
3 files and communications with the court, county government or
4 governmental agencies and lessee; provided, however, that every
5 rental agreement of a lessor adopting the policy must disclose,
6 at a minimum, in plain language and in at least ten-point bold
7 typeface print:

8 (1) The maximum estimated amount of the administrative fee
9 to be charged; and

10 (2) Language encouraging the lessee to pay directly to the
11 court, county government or other appropriate
12 government agency the [parking citation directly.]
13 applicable fines, costs, monetary assessments,
14 penalties, fees, surcharges, or other charges."

15 13. By repealing section 291-C.

16 ~~["§291C-168.5 Liability of lessee for parking citation.~~
17 ~~Notwithstanding any other law to the contrary, if the registered~~
18 ~~owner of record is the lessor of a rental or U drive motor~~
19 ~~vehicle, as defined in section 286-2 pursuant to a written lease~~
20 ~~agreement, the lessee at the time of the issuance of the parking~~
21 ~~citation shall be responsible for such summons or citation;~~
22 ~~provided, however, said lessor shall be responsible for such~~



1 ~~summons or citation if the lessor does not provide the court~~
2 ~~having jurisdiction over the summons or citation the name and~~
3 ~~address of the lessee within forty five days after a notice~~
4 ~~containing the date, time, and location of the violation and the~~
5 ~~license number of the vehicle is sent to lessor; provided~~
6 ~~further that the administrative judge of the court having~~
7 ~~jurisdiction over the citation or summons may waive the~~
8 ~~requirement of providing the name and address of the lessee by~~
9 ~~the lessor and impose an administrative fee of five dollars per~~
10 ~~citation on the lessor."]~~

11 SECTION 2. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect on July 1, 2007.



REPORT Title:

Traffic Infractions; Concurrent Trial; Citation Form

Description:

Expands scope of traffic infractions law to include infractions committed by minors. Permits concurrent trials and clarifies requirements. Clarifies citation form requirements. Authorizes use of electronic citations. Effective July 1, 2007. (SB1529 HD1)





The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth Legislature, 2007 Session

House Committee on Judiciary

The Honorable Tommy Waters, Chair

The Honorable Blake K. Oshiro, Vice Chair

Tuesday, March 27, 2007, 2:00 p.m.

State Capitol, Conference Room 325

by

Judge Russel Nagata

District Judge, First Circuit

Bill No. and Title: Senate Bill No. 1529, S. D. 2, H. D. 1, Relating to Traffic Infractions.

Purpose: The bill expands the scope of the traffic infractions law to include infractions committed by minors. It also permits concurrent trials and clarifies requirements. It also clarifies citation form requirements and authorizes the use of electronic citations.

Judiciary's Position:

The Judiciary strongly **SUPPORTS** this bill. This bill would provide clear, unambiguous and consistent methods of processing traffic infractions in a more expedient and less burdensome manner while insuring protections against self-incrimination for defendants

Senate Bill No. 1529, S. D. 2, H. D. 1 in its current form would amend various provisions of HRS Chapter 291D governing the adjudication of civil traffic infractions to:

- (1) Clearly establish that the district court may adjudicate civil traffic infractions charged against minors and clarify that confidentiality protections afforded to minors under HRS Chapter 571 are inapplicable to such infraction proceedings;
- (2) Consistently apply the civil standard of proof for civil traffic infraction trials;
- (3) Remedy difficulties currently encountered by certain district courts in complying with concurrent scheduling requirements under HRS § 291D-3(b) and permit discretionary scheduling of concurrent proceedings;



Senate Bill No. 1529, S. D. 2, H. D. 1, Relating to Traffic Infractions
House Committee on Judiciary
Monday, March 27, 2007
Page 2

- (4) Incorporate clear and unambiguous language that will protect a defendant's privilege against self-incrimination;
- (5) Promote consistency in the manner of processing and adjudicating moving and non-moving civil traffic infractions; and
- (6) Permit the usage of electronic citations, which may be implemented in the future.

The Judiciary would like to respectfully request that the effective date be amended to **January 1, 2008** to allow sufficient time to print new citation books that include new statutory amendments.

Thank you for the opportunity to testify on this matter.

S.B. 1709
SD1, HD1

STAND. COM. REP. NO. 1418

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1709
S.D. 1
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred S.B. No. 1709, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MOPEDS,"

begs leave to report as follows:

The purpose of this bill is to promote the use of specially-designed three-wheeled mopeds by exempting three-wheeled mopeds designed to carry a driver and passenger seated side-by-side from certain prohibitions on the operation of mopeds.

Shamrock Importers, LLC, supported this bill. The Department of Transportation and Hawaii Bicycling League opposed this measure. The Department of Customer Services of the City and County of Honolulu submitted comments.

Your Committee finds that three-wheeled mopeds may provide a safer alternative to two-wheeled mopeds for residents and visitors who desire the low cost, convenience, and high gas mileage of mopeds, but who are nervous or unsure of driving a two-wheeled moped.

However, your Committee also recognizes concerns raised regarding the safety of incorporating the three-wheeled moped in actual traffic conditions with much larger automobiles and trucks, as well as the impact the operation of these vehicles in bicycle lanes would have on bicyclists. Accordingly, your Committee has

SB1709 HD1 HSCR TRN HMS 2007-3239



amended this bill by placing additional restrictions on the operation of three-wheeled mopeds, including requiring that these vehicles:

- (1) Be operated only on roadways with posted speed limits of 35 mph or less;
- (2) Only be operated on the right lane of a roadway;
- (3) Be prohibited from being operated in bicycle lanes; and
- (4) Requiring the drivers of these vehicles to have bodily injury and property damage insurance but not personal injury protection insurance.

Your Committee has also amended this measure by:

- (1) Changing its effective date to July 1, 2007; and
- (2) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1709, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1709, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



A BILL FOR AN ACT

RELATING TO MOPEDS.

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

1 SECTION 1. Section 291C-195, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§291C-195 **Driving of mopeds.** (a) No person less than
4 fifteen years of age shall drive a moped on a highway, street,
5 roadway, or any other public property in the State. No person
6 less than eighteen years of age shall drive a moped unless the
7 person wears a safety helmet securely fastened with a chin
8 strap. The safety helmet shall meet the specifications and
9 requirements established by rules adopted by the director.

10 (b) No person shall drive a moped except while sitting
11 astride the seat, facing forward, with one leg on each side of
12 the moped.

13 (c) No person shall drive a moped which is carrying any
14 other person nor shall any person other than the driver ride
15 upon a moped.

16 (d) Subsections (b) and (c) do not apply to three-wheeled
17 mopeds designed to carry a driver and passenger seated side by
18 side; provided that three-wheeled mopeds shall:



1 (1) Be operated only on roadways with posted speed limits
2 of 35 mph or less;

3 (2) Be operated only on the right lane of a roadway;

4 (3) Be prohibited from being operated in bicycle lanes;

5 and provided further that:

6 (4) The driver of a three-wheeled moped shall have bodily
7 injury and property damage insurance but shall not be
8 required to have personal injury protection
9 insurance."

10 SECTION 2. New statutory material is underscored.

11 SECTION 3. This Act shall take effect on July 1, 2007.



Report Title:

Moped

Description:

Exempts certain three-wheeled mopeds from passenger and seating restrictions on the operation of mopeds. Places additional restrictions on three-wheeled mopeds. Effective 7/1/2007.
(SB1709 HD1)



S.B. 1654
SD1

STAND. COM. REP. NO.

1373

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 1654

S.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which
was referred S.B. No. 1654, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUM MANAGEMENT DISPUTE
RESOLUTION,"

begs leave to report as follows:

The purpose of this bill is to provide a less-expensive,
quicker means of resolving condominium disputes by reinstating the
Condominium Dispute Resolution Pilot Project (Pilot Project)
established by Act 164, Session Laws of Hawaii (SLH) 2004.

The Department of Commerce and Consumer Affairs (DCCA),
Hawaii Independent Condominium & Cooperative Owners, Hawaii
Legislative Action Committee of the Community Associations
Institute, Hawaii Council of Associations of Apartment Owners, and
a concerned individual testified in support of this bill.

Your Committee finds that the Pilot Project provided an
administrative hearing process under DCCA for disputes failing
mediation under section 514A-121.5, Hawaii Revised Statutes (HRS).
The Pilot Project, including the mediation process under section
514A-121.5, HRS, was repealed on June 30, 2006, leaving several
pending cases unresolved.

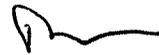
SB1654 SD1 HSCR CPC HMS 2007-3258



Although a similar dispute resolution process was established by Act 277, SLH 2006, that process, scheduled to sunset on June 30, 2009, only applies to condominiums created after July 1, 2006, and governed by chapter 514B, HRS, pursuant to section 514B-21, HRS, unless the condominium owners amend their governing documents pursuant to 514B-23, HRS, and adopt chapter 514B, HRS. This bill reenacts the Pilot Project to provide a condominium dispute resolution process for cases involving condominiums governed by chapter 514A, HRS, including cases pending before DCCA that were dismissed due to the repeal of the Pilot Project.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1654, S.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



HSCR 1373

State of Hawaii
House of Representatives
The Twenty-fourth Legislature

Record of Votes of the Committee on Consumer Protection & Commerce

Bill/Resolution No.: SB 1654 SD 1		Date: March 19, 2007		
Committee Referral: CPC, JUD		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended <input type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommitment for further consideration				
CPC Members	Ayes	Ayes (WR)	Nays	Excused
1. HERKES, Robert N. (C)				<input checked="" type="checkbox"/>
2. McKELVEY, Angus L.K. (VC)	<input checked="" type="checkbox"/>			
3. CALDWELL, Kirk	<input checked="" type="checkbox"/>			
4. EVANS, Cindy	<input checked="" type="checkbox"/>			
5. GREEN, Josh, M.D.	<input checked="" type="checkbox"/>			
6. ITO, Ken	<input checked="" type="checkbox"/>			
7. LUKE, Sylvia	<input checked="" type="checkbox"/>			
8. MORITA, Hermina M.	<input checked="" type="checkbox"/>			
9. SONSON, Alex M.	<input checked="" type="checkbox"/>			
10. SOUKI, Joseph M.	<input checked="" type="checkbox"/>			
11. TSUJI, Clift	<input checked="" type="checkbox"/>			
12. YAMANE, Ryan I.	<input checked="" type="checkbox"/>			
13. YAMASHITA, Kyle T.	<input checked="" type="checkbox"/>			
14. MARUMOTO, Barbara C.	<input checked="" type="checkbox"/>			
15. THIELEN, Cynthia				<input checked="" type="checkbox"/>
TOTAL	13			2
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature:  Kirk Caldwell				
Distribution: Original (White) – Committee Duplicate (Yellow) – HMSO Duplicate (Pink) – Clerk's Office				

STAND. COM. REP. NO.

868

Honolulu, Hawaii

MAR 02 2007

RE: S.B. No. 1654
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and
Affordable Housing, to which was referred S.B. No. 1654 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUM MANAGEMENT DISPUTE
RESOLUTION,"

begs leave to report as follows:

The purpose of this measure is to establish a process for
condominium dispute resolution for condominiums governed by
chapter 514A, Hawaii Revised Statutes (HRS).

Specifically, this measure seeks to reenact section 28 of Act
164, Session Laws of Hawaii 2004 (Act 164), which created the
Condominium Dispute Resolution Pilot Project within the Office of
Administrative Hearings of the Department of Commerce and Consumer
Affairs (Office of Administrative Hearings).

Your Committee received testimony in support of this measure
from the Office of Administrative Hearings, the Hawaii Independent
Condominium and Co-op Owners, and the Hawaii Chapter of the
Community Associations Institute.

Your Committee finds that section 28 of Act 164, Session Laws
of Hawaii 2004, created the Condominium Dispute Resolution Pilot
Project within the Office of Administrative Hearings for
condominiums created under chapter 514A, HRS. This pilot project
was repealed on June 30, 2006.



Your Committee further finds that while a new condominium dispute resolution process has been established in chapter 514B, HRS, the process found in chapter 514B, HRS, does not apply to those condominiums still governed by chapter 514A, HRS. This measure seeks to recreate a similar dispute resolution process for those condominiums still governed by chapter 514A, HRS.

Your Committee has amended this measure, based partially upon the testimony of the Office of Administrative Hearings, by:

- (1) Adding a sunset date of June 30, 2009;
- (2) Allowing cases that were before the Office of Administrative Hearings under the Condominium Dispute Resolution Pilot Project, as created by Act 164, on June 30, 2006, to be reinstated and resolved under the provisions of this measure; and
- (3) Making technical, nonsubstantive changes for the purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1654, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1654, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,



BRIAN T. TANIGUCHI, Chair



The Senate
 Twenty-Fourth Legislature
 State of Hawaii

Record of Votes
Committee on Commerce, Consumer Protection and Affordable Housing
CPH

Bill / Resolution No.:* SB 1654	Committee Referral: CPH	Date: 2/27/7		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IGE, David Y. (VC)				✓
ESPERO, Will	✓			
IHARA, Jr., Les	✓			
SAKAMOTO, Norman				✓
SLOM, Sam	✓			
TOTAL	4			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Will Espero</i>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes

A BILL FOR AN ACT

RELATING TO CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION.

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

1 SECTION 1. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§514A- Mediation; condominium management dispute
5 resolution; request for hearing; hearing. (a) If an apartment
6 owner or the board of directors requests mediation of a dispute
7 involving the interpretation or enforcement of the association
8 of apartment owners' declaration, bylaws, or house rules, the
9 other party in the dispute shall be required to participate in
10 mediation. Each party shall be wholly responsible for its own
11 costs of participating in mediation; unless at the end of the
12 mediation process, both parties agree that one party shall pay
13 all or a specified portion of the mediation costs. If an
14 apartment owner or the board of directors refuses to participate
15 in the mediation of a particular dispute, a court may take this
16 refusal into consideration when awarding expenses, costs, and
17 attorney's fees.



1 (b) If a dispute is not resolved by mediation as provided
2 in subsection (a), in addition to any other legal remedies that
3 may be available, any party that participated in the mediation
4 may file a request for a hearing with the office of
5 administrative hearings, department of commerce and consumer
6 affairs, as follows:

- 7 (1) The party requesting the hearing must be a board of
8 directors of a duly registered association of
9 apartment owners, or an apartment owner that is a
10 member of a duly registered association;
- 11 (2) The request for hearing must be filed within thirty
12 days from the final day of mediation;
- 13 (3) The request for hearing must name one or more parties
14 that participated in the mediation as an adverse party
15 and identify the statutory provisions in dispute; and
- 16 (4) The subject matter of the hearing before the hearing
17 officer may include any matter that was the subject of
18 the mediation pursuant to subsection (a).

19 (c) For the purposes of this section, the office of
20 administrative hearings for the department of commerce and
21 consumer affairs shall accept no more than thirty requests for a
22 hearing per fiscal year under this section.



1 (d) The party requesting the hearing shall pay a filing
2 fee of \$25 to the department of commerce and consumer affairs,
3 and the failure to do so shall result in the request for hearing
4 being rejected for filing. All other parties shall file a
5 response, accompanied by a filing fee of \$25 to the department
6 of commerce and consumer affairs, within twenty days of being
7 served with the request for hearing.

8 (e) The hearings officer appointed by the director of
9 commerce and consumer affairs pursuant to section 26-9(f) shall
10 have jurisdiction to review any request for hearing filed under
11 subsection (b). The hearings officer may issue subpoenas,
12 administer oaths, hear testimony, find facts, make conclusions
13 of law, and issue written decisions that shall be final and
14 conclusive, unless a party adversely affected by the decision
15 files an appeal in the circuit court under section 91-14.

16 (f) Chapter 16-201, Hawaii Administrative Rules, shall
17 govern all proceedings brought under this section. The burden
18 of proof, including the burden of producing the evidence and the
19 burden of persuasion, shall be upon the party initiating the
20 proceeding. Proof of a matter shall be by a preponderance of
21 the evidence.



1 (g) Hearings to review and make determinations upon any
2 requests for hearings filed under subsection (b) shall commence
3 within sixty days following the receipt of the request for
4 hearing. The hearings officer shall issue written findings of
5 fact, conclusions of law, and an order as expeditiously as
6 practicable after the hearing has been concluded.

7 (h) Each party to the hearing shall bear the party's own
8 costs, including attorney's fees, unless otherwise ordered by
9 the hearings officer.

10 (i) Any party to a proceeding under this section who is
11 aggrieved by a final decision of a hearings officer may apply
12 for judicial review of that decision pursuant to section 91-14;
13 provided that any party seeking judicial review pursuant to
14 section 91-14 shall be responsible for the costs of preparing
15 the record on appeal, including the cost of preparing the
16 transcript of the hearing.

17 (j) The department of commerce and consumer affairs may
18 adopt rules and forms, pursuant to chapter 91, to effectuate the
19 purpose of this section and to implement its provisions."

20 SECTION 2. Cases that were pending before the office of
21 administrative hearings of the department of commerce and
22 consumer affairs as part of the condominium dispute resolution



1 pilot project established by section 28 of Act 164, Session Laws
2 of Hawaii 2004, on June 30, 2006, that may have been dismissed
3 due to the repeal of section 28 of Act 164, Session Laws of
4 Hawaii 2004, shall be reinstated and subject to section 1 of
5 this Act.

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval;
8 provided that sections 1 and 2 shall be repealed on June 30,
9 2009.



Report Title:

Condominium Management Dispute Resolution

Description:

Establishes requirements for condominium management dispute resolution. (SD1)



A BILL FOR AN ACT

RELATING TO CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION.

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

1 SECTION 1. Chapter 514A, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§514A- Mediation; condominium management dispute
5 resolution; request for hearing; hearing. (a) If an apartment
6 owner or the board of directors requests mediation of a dispute
7 involving the interpretation or enforcement of the association
8 of apartment owners' declaration, bylaws, or house rules, the
9 other party in the dispute shall be required to participate in
10 mediation. Each party shall be wholly responsible for its own
11 costs of participating in mediation; unless at the end of the
12 mediation process, both parties agree that one party shall pay
13 all or a specified portion of the mediation costs. If an
14 apartment owner or the board of directors refuses to participate
15 in the mediation of a particular dispute, a court may take this
16 refusal into consideration when awarding expenses, costs, and
17 attorney's fees.



1 (b) If a dispute is not resolved by mediation as provided
2 in subsection (a), in addition to any other legal remedies that
3 may be available, any party that participated in the mediation
4 may file a request for a hearing with the office of
5 administrative hearings, department of commerce and consumer
6 affairs, as follows:

- 7 (1) The party requesting the hearing must be a board of
8 directors of a duly registered association of
9 apartment owners, or an apartment owner that is a
10 member of a duly registered association;
- 11 (2) The request for hearing must be filed within thirty
12 days from the final day of mediation;
- 13 (3) The request for hearing must name one or more parties
14 that participated in the mediation as an adverse party
15 and identify the statutory provisions in dispute; and
- 16 (4) The subject matter of the hearing before the hearing
17 officer may include any matter that was the subject of
18 the mediation pursuant to subsection (a).

19 (c) For the purposes of this section, the office of
20 administrative hearings for the department of commerce and
21 consumer affairs shall accept no more than thirty requests for a
22 hearing per fiscal year under this section.



1 (d) The party requesting the hearing shall pay a filing
2 fee of \$25 to the department of commerce and consumer affairs,
3 and the failure to do so shall result in the request for hearing
4 being rejected for filing. All other parties shall file a
5 response, accompanied by a filing fee of \$25 to the department
6 of commerce and consumer affairs, within twenty days of being
7 served with the request for hearing.

8 (e) The hearings officer appointed by the director of
9 commerce and consumer affairs pursuant to section 26-9(f) shall
10 have jurisdiction to review any request for hearing filed under
11 subsection (b). The hearings officer may issue subpoenas,
12 administer oaths, hear testimony, find facts, make conclusions
13 of law, and issue written decisions that shall be final and
14 conclusive, unless a party adversely affected by the decision
15 files an appeal in the circuit court under section 91-14.

16 (f) Chapter 16-201, Hawaii Administrative Rules, shall
17 govern all proceedings brought under this section. The burden
18 of proof, including the burden of producing the evidence and the
19 burden of persuasion, shall be upon the party initiating the
20 proceeding. Proof of a matter shall be by a preponderance of
21 the evidence.



1 (g) Hearings to review and make determinations upon any
2 requests for hearings filed under subsection (b) shall commence
3 within sixty days following the receipt of the request for
4 hearing. The hearings officer shall issue written findings of
5 fact, conclusions of law, and an order as expeditiously as
6 practicable after the hearing has been concluded.

7 (h) Each party to the hearing shall bear the party's own
8 costs, including attorney's fees, unless otherwise ordered by
9 the hearings officer.

10 (i) Any party to a proceeding under this section who is
11 aggrieved by a final decision of a hearings officer may apply
12 for judicial review of that decision pursuant to section 91-14;
13 provided that any party seeking judicial review pursuant to
14 section 91-14 shall be responsible for the costs of preparing
15 the record on appeal, including the cost of preparing the
16 transcript of the hearing.

17 (j) The department of commerce and consumer affairs may
18 adopt rules and forms, pursuant to chapter 91, to effectuate the
19 purpose of this section and to implement its provisions."

20 SECTION 2. Cases that were pending before the office of
21 administrative hearings of the department of commerce and
22 consumer affairs as part of the condominium dispute resolution



1 pilot project established by section 28 of Act 164, Session Laws
2 of Hawaii 2004, on June 30, 2006, that may have been dismissed
3 due to the repeal of section 28 of Act 164, Session Laws of
4 Hawaii 2004, shall be reinstated and subject to section 1 of
5 this Act.

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act shall take effect upon its approval;
8 provided that sections 1 and 2 shall be repealed on June 30,
9 2009.



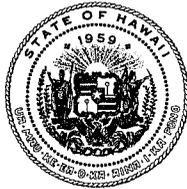
Report Title:

Condominium Management Dispute Resolution

Description:

Establishes requirements for condominium management dispute resolution. (SD1)





LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

MARK E. RECKTENWALD
DIRECTOR
LAWRENCE M. REIFURTH
DEPUTY DIRECTOR

TO THE
HOUSE COMMITTEE ON JUDICIARY

TWENTY-FOURTH STATE LEGISLATURE
2007 REGULAR SESSION

MARCH 27, 2007
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 1654, S.D. 1 RELATING TO CONDOMINIUM
MANAGEMENT DISPUTE RESOLUTION

TO THE HONORABLE TOMMY WATERS, CHAIR
AND MEMBERS OF THE COMMITTEE

My name is Rod Maile, and I am the Senior Hearings Officer, of the Office of Administrative Hearings ("OAH"), Department of Commerce and Consumer Affairs ("DCCA"). We appreciate the opportunity to testify in support of Senate Bill No. 1654, S.D. 1 relating to condominium management dispute resolution.

Senate Bill No. 1654, S.D. 1 proposes to reenact Section 28 of Act 164, 2004 Session Laws of Hawai'i, which created the Condominium Dispute Resolution ("CDR") Pilot Program within OAH, and amended Hawai'i Revised Statutes ("HRS") §514A-121.5 to allow certain kinds of disputes to be heard through an administrative hearings process. Act 164 specifically applied to condominiums created under HRS Chapter 514A. Part V, Section 35(3) of Act 164 contained a sunset provision that repealed the CDR Pilot Program on June 30, 2006.

Act 92, 2005 Session Laws of Hawai'i, amended HRS §514A-121.5(b) to allow any matter that was the subject of mediation, to be submitted to the CDR Pilot

Program. However, Act 92 did not extend the June, 2006 sunset date applicable to the CDR Pilot Program provisions established by Section 28 of Act 164.

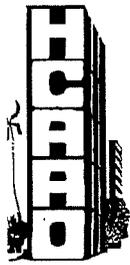
Act 277, 2006 Session Laws of Hawai'i, created a new condominium management dispute resolution process ("CMDRP") comparable to the one created in Section 28 of Act 164 (HRS §514A-121.5). This new process had a sunset date of June 30, 2009. The new CMDRP specifically applied to condominiums created after July 1, 2006. Pursuant to HRS §514B-23, Act 277 also applies to condominiums created before July 1, 2006, if the condominium owners amend their governing documents and adopt HRS Chapter 514B instead of HRS Chapter 514A. Once again, however, Act 277 did not extend the CDR Pilot Program provisions of Section 28 of Act 164.

Consequently, pursuant to Section 35(3) of Act 164, the CDR Pilot Program and HRS §514A-121.5, were repealed on June 30, 2006.

DCCA believes that Senate Bill No. 1654, S.D. 1 is necessary to clearly reinstate the opportunity for contested case hearings for apartment owners or boards of directors of condominiums created under HRS Chapter 514A, and such hearings would not be limited to be to events and circumstances occurring on or after July 1, 2006, because of the restrictions contained in the provisions HRS §514B-22.

Senate Bill No. 1654, S.D. 1 also includes a sunset date to make it clear that the CDR contested case hearings process will be a Pilot Program, as well as a provision to reinstate cases that were pending with the CDR Pilot Program at the time Act 164 was repealed.

Thank you again for the opportunity to testify in support of this bill.



Hawaii Council of Associations Of Apartment Owners

3454 Waiialae Ave., Ste. 6, Honolulu, HI 96816 737-2021 Fax: 739-1815

March 25, 2007

Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice-Chair
House Judiciary Committee

Re: Testimony in Support of SB1654, SD1,
Re Condominium Management Dispute Resolution
Hearing: Tuesday, March 27, 2007, 2:00 p.m. Conf. Rm. #325

Chair Waters, Vice-Chair Oshiro and Members of the Committee:

I am Jane Sugimura, President of the Hawaii Council of Associations of Apartment Owners (HCAAO). HCAAO supports this bill and urges you to pass it.

This bill would reinstate the condominium dispute resolution ("CDR") pilot program that was passed in 2005 and amended in 2006. As a result of the inadvertent repeal of HRS 514A last year, this provision is no longer a part of the condo law.

HCAAO supported the passage of the CDR pilot project in the hopes that it would provide a cheaper, quicker alternative to dispute resolution among condominium owners, board members and others in the condominium community.

Thank you for allowing me to testify on this bill.

A handwritten signature in cursive script that reads "Jane Sugimura".

Jane Sugimura
President



HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

March 27, 2007

Representative Tommy Waters, Chair
Committee on Judiciary

**Testimony on SB 1654, SD 1
Relating to Condominium Management Dispute Resolution**

Dear Representative Waters:

Thank you for this opportunity to testify in strong support of SB 1654, SD 1 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

SB 1654, SD 1 ensures that the alternative dispute resolution process will continue as the 2006 Hawaii State Legislature intended. Some cases have not been able to proceed because of ambiguity in the law approved in 2006. Therefore, we ask that the approval of this bill be placed on a fast track with the hope that final approval can be obtained prior to the end of this legislative session so that current cases will not go unresolved.

We urge your committee to approve SB 1654, SD 1.

Sincerely,

Richard Port

Richard Port, Chair
Legislative Committee

S.B. 923

STAND. COM. REP. NO. 1227

Honolulu, Hawaii

March 16, 2007

RE: S.B. No. 923

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 923 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this bill is to assist condominium associations in collecting delinquent maintenance fees by making permanent the law allowing condominium associations to assess delinquent maintenance fees against a person who, in a foreclosure proceeding, purchases an apartment to which the fees are attached.

The Real Estate Commission, Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, and Hawaii Legislative Action Committee of the Community Associations Institute testified in support of this bill. The Hawaii Bankers Association submitted comments.

Your Committee finds that section 514B-146(g), Hawaii Revised Statutes, includes a temporary provision allowing a condominium association to recover up to \$1,800 of the last six months of delinquent maintenance fees from the purchaser of a delinquent apartment in a foreclosure sale, or subsequent purchaser. This bill removes the provision's sunset date of December 31, 2007.

SB923 HSCR CPC HMS 2007-3048



1227

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 923 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair





Honolulu, Hawaii

MAR 01 2007

RE: S.B. No. 923

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committee on Commerce, Consumer Protection, and
Affordable Housing, to which was referred S.B. No. 923 entitled:

"A BILL FOR AN ACT RELATING TO CONDOMINIUMS,"

begs leave to report as follows:

The purpose of this measure is to remove the December 31, 2007, sunset date of section 514B-146, Hawaii Revised Statutes (HRS), relating to delinquent condominium association maintenance fees.

Specifically, this measure removes the sunset date from Act 164, Sessions Laws of Hawaii (SLH) 2004, as amended by Act 93, SLH 2005, as amended by Act 273, SLH 2006.

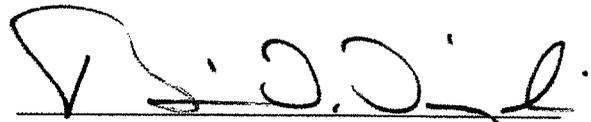
Your Committee received testimony in support of this measure from the Real Estate Commission of the Department of Commerce and Consumer Affairs, the Hawaii Independent Condominium and Co-op Owners, the Hawaii Council of Associations of Apartment Owners, and the Hawaii Chapter of the Community Associations Institute. The Hawaii Bankers Association submitted comments on this measure.

Your Committee finds that section 514B-146, HRS, provides a reasonable and fair process to assist condominium associations with the problem of collecting unpaid maintenance fees from apartment owners. The intent of this measure is to remove the sunset date of December 31, 2007, in order to allow this section to continue to provide relief to condominium associations in collecting delinquent maintenance fees, especially in cases where an apartment owner is undergoing foreclosure proceedings.



As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Affordable Housing that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 923 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Affordable
Housing,


BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Commerce, Consumer Protection and Affordable Housing
CPH

Bill / Resolution No.:* SB 923	Committee Referral: CPH	Date: 2/21/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input checked="" type="checkbox"/> Pass, unamended 2312 <input type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IGE, David Y. (VC)	✓			
ESPERO, Will	✓			
IHARA, Jr., Les				✓
SAKAMOTO, Norman				✓
SLOM, Sam	✓			
TOTAL	4			✓
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center; font-family: cursive; font-size: 1.2em;">David Y. Ige</div>				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes



JAN 19 2007

A BILL FOR AN ACT

RELATING TO CONDOMINIUMS.

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

1 SECTION 1. Act 164, Session Laws of Hawaii 2004, as
2 amended by Act 93, Session Laws of Hawaii 2005, as amended by
3 Act 273, Session Laws of Hawaii 2006, is amended by amending
4 section 35 to read as follows:

5 "SECTION 35. This Act shall take effect on July 1, 2006;
6 provided that:

7 ~~[-(1) The text of section 146 in part I of this Act~~
8 ~~shall be repealed on December 31, 2007, and reenacted~~
9 ~~in the form in which it read, as section 514A-90,~~
10 ~~Hawaii Revised Statutes, on the day before the~~
11 ~~approval of Act 39, Session Laws of Hawaii 2000, but~~
12 ~~with the amendments to section 514A-90, Hawaii Revised~~
13 ~~Statutes, made by Act 53, Session Laws of Hawaii 2003;~~

14 ~~[-(2)]~~ (1) Section 28 of this Act shall take effect on
15 July 1, 2004, and shall be repealed on June 30, 2006;
16 and



S.B. NO. 923

1 [~~+3~~] (2) Sections 30 to 33 of this Act shall take effect
 2 on July 1, 2004."

3 SECTION 2. Statutory material to be repealed is bracketed
 4 and stricken. New statutory material is underscored.

5 SECTION 3. This Act shall take effect upon its approval.

6

INTRODUCED BY: Will Evers

Carol Fukushima
Clemente & Reichert
Frederick
Suzanne Chun Oakland

Robert...



Report Title:

Condominiums; Association of Apartment Owners; Liens

Description:

Amends section 35 of Act 164 SLH 2004 to remove sunset and reenactment of section 514B-146, HRS, relating to assessments and liens with respect condominiums.





HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the
House Committee on Judiciary
Tuesday, March 27, 2007 at 2:00pm Room325

SB 923 Relating to Condominiums

Representative Tomy Water, Chair
and members of the Committee:

I am Rodney R. Shinkawa, Executive Vice President of the Hawaii Bankers Association ("HBA"). HBA is a trade organization whose membership includes all commercial banks and thrift institutions doing business in Hawaii.

HBA has no objection to the passage of Senate Bill 923.

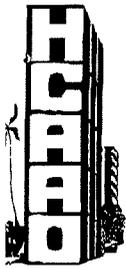
The purpose of SB 923 is to repeal the December 31, 2007 sunset date that applies to section 514B-146 Hawaii Revised Statutes, relating to liens for common area assessments. This statute allows a condominium association to collect, prior to a lien for a recorded mortgage, up to six months of maintenance fees to a maximum of \$1,800 as a result of the foreclosure of an apartment.

This law was established in 2000 as a result of an agreement between association of apartment owners and mortgage lenders with an original sunset date of December 31, 2003. In 2003 the sunset date was extended to December 31, 2007.

We have no objection to the removal of the sunset date of December 31, 2007. However, in the future, we would oppose any efforts to change the period of six months and the maximum of \$1,800, especially if our loan to value (LTV) increases in a declining market.

Thank you for the opportunity of presenting these comments for your consideration.

Rodney R. Shinkawa
Executive Vice President



Hawaii Council of Associations Of Apartment Owners

3454 Waiialae Ave., Ste. 6, Honolulu, HI 96816 737-2021 Fax: 739-1815

March 25, 2007

Rep. Tommy Waters, Chair
Rep. Blake Oshiro, Vice-Chair
House Judiciary Committee
State Capitol
Honolulu, Hawaii 96813

Re: **Testimony in Support of SB 923 Relating to Condominiums**
Hearing on Tuesday, March 27, 2007, 2:00 p.m. Conf. Rm. #325

Chair Waters, Vice-Chair Oshiro and members of the Committee:

The Hawaii Council of Associations of Apartment Owners (HCAA) represents 103 apartment associations with over 28,000 individual apartments. HCAA supports this bill and urges you to pass it.

This bill would eliminate the sunset provision in Act 39 which allows associations to recover the lesser of 6 months of maintenance fees or \$1,800 in a foreclosure action and eliminates the requirement that associations must file a lien in order to recover under the Act.

In a foreclosure, the defaulting owner does not pay the maintenance fee while continuing to enjoy all common benefits, (e.g., electricity, cable and water). What results in that situation is that the other owners, in effect, are subsidizing the defaulting owner as to payment of their pro-rata share of common expenses. This is not fair to the owners who pay their maintenance fees in a timely manner. Many of the owners are retired and on fixed incomes and it is very burdensome for them to have to pay that expense, usually in the form of increased maintenance fees.

SB 923, Re Condominiums
March 25, 2007
Page 2 of 2

This bill helps condominium associations in a foreclosure by giving them a lien priority equal to an amount equal to 6 months of maintenance fees or \$1,800, whichever is less. This amount partially sets off the amounts that should have been paid by the defaulting owner.

Thank you for allowing me to testify on this bill.



Jane Sugimura
President



HAWAII INDEPENDENT CONDOMINIUM & COOPERATIVE OWNERS
1600 ALA MOANA BLVD. - APT. 3100 - HONOLULU - HAWAII 96815

March 27, 2007

Representative Tommy Waters, Chair
Committee on Judiciary

Testimony on SB 923 Relating to Condominiums

Dear Representative Waters:

Thank you for this opportunity to testify in strong support of SB 923 on behalf of the Hawaii Independent Condominium and Co-op Owners (HICCO).

SB 923 repeals the sunset date from 514B-146. If the sunset date is not repealed, all condominiums in the state of Hawaii will lose up to \$1,800 on each and every foreclosure of a condominium unit.

Most individuals who purchase units in condominiums begin with a mortgage and also pay maintenance fees to the Association. If they stop paying their mortgage, they generally stop paying their maintenance fees as well. The condominium Board is then held hostage until the bank takes foreclosure action. Bank mortgages generally take precedence over maintenance fees owed to condominium associations.

Banks are slow to take action on mortgage defaults, almost always leaving associations with losses that the association cannot recap. Under the current statute, which is about to expire, an association is allowed to obtain up to \$1,800 or six months of maintenance fees, whichever is least. Our request is that the sunset date be removed so that this statute can continue.

HICCO respectfully requests your committee to support SB 923.

Sincerely,

A handwritten signature in black ink that reads 'Richard Port'.

Richard Port, Chair
Legislative Committee

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

TO THE HOUSE COMMITTEE JUDICIARY

TWENTY-FOURTH LEGISLATURE
Regular Session of 2007

Tuesday, March 27, 2007
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 923, RELATING TO CONDOMINIUMS.

TO THE HONORABLE TOMMY WATERS, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Bill Chee and I serve as the Chairperson of the Real Estate Commission's ("Commission") Condominium Review Committee. I thank you for the opportunity to present testimony on Senate Bill No. 923, Relating to Condominiums. Senate Bill No. 923 and the companion bill, House Bill No. 1626, passed unamended in the Senate and the House. The Commission supports Senate Bill No. 923.

Except for technical, non substantive differences, Senate Bill No. 923 and the companion bill, House Bill No. 1626 are substantively identical. The Commission supports either bill but prefers Senate Bill No. 923, due to the clear removal of the sunset date of December 31, 2007, which permanently allows condominium associations to assess delinquent maintenance fees against a person who, in a foreclosure proceeding, purchases an apartment to which the fees are attached.

For these reasons, the Real Estate Commission supports the passage of Senate Bill No. 923. Thank you for the opportunity to testify on this measure.

