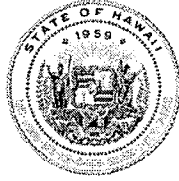


HB 1978



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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ACTING DIRECTOR

RODNEY A. MAILE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2010

Tuesday, March 23, 2010
9:45 a.m.

**WRITTEN COMMENTS ONLY ON HOUSE BILL NO. 1978 H.D. 2, S.D. 1 -- RELATING
TO TOWING.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to provide these comments on House Bill No. 1978, H.D. 2, Relating to Towing. My name is Stephen Levins, and I am the Executive Director of the Department's Office of Consumer Protection ("OCP").

Although the Department is not opposed to the proposed amendments offered by House Bill No. 1978, H.D. 2, S.D. 1 relating to hours of operation and insurance coverage, the Department believes that the proposed amendment relating to payment of services should be clarified. Pursuant to section 290-11 (b)(4) towing companies are

currently required to accommodate payment by the owner for charges by cash and by either credit card or ATM located on the premises. While S.D. 1 appears to expand the method of payment to include debit card, credit card, insurance company check, or commercial check issued by a licensed towing company dispatched by the registered or legal owner or insurer it is unclear to the Department how this amendment will be reconciled with current law. In view of this, if the Committee is inclined to expand the accepted method of payment the Department believes that the amendment would be clearer if the language were added to current statutory section governing the method of payment, Section 290-11(b)(4) of the Hawaii Revised Statutes. In this regard, the following language may achieve the desired result.

(4) Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine locate on the premises.

“If the registered owner, legal owner, insurer, or a designated representative dispatches a licensed towing company to pick up a vehicle, payment may be made by cash, debit card, credit card, insurance company check, or commercial check “

Thank you for this opportunity to provide these comments on House Bill No. 1978, H.D. 2, S.D. 1.



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

TIMOTHY M. DAYTON, CPCU, GENERAL MANAGER
711 Kapiolani Blvd., Suite 300 ■ Honolulu, HI 96813-5238 ■ Email: tdayton@geico.com
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Senate Commerce and Consumer Protection Committee
Conference Room 229, State Capitol
Tuesday, March 23, 2010, 9:45 a.m.
HB 1978 – Relating to Towing

Chair Baker, Vice Chair Ige & Members of the CPN Committee:

My name is Timothy Dayton, General Manager of GEICO in Hawaii.

GEICO is Hawaii's largest motor vehicle insurer. **GEICO supports HB 1978**

HD2 SD1.

I very much appreciate the opportunity to submit this testimony

Timothy M. Dayton, CPCU

TESTIMONY ON H.B. NO. 1978, H.D. 2, S.D.1 ("HB1978")
RELATING TO TOWING

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Sen. Rosalyn H. Baker, Chair

Sen. David Y. Ige, Vice Chair

Tuesday, March 23, 2010, 9:45 a.m.

State Capitol, Conference Room 229

WRITTEN TESTIMONY

AAA Hawaii, LLC ("AAA Hawaii") supports HB1978, but respectfully requests this Committee to consider our proposed amendments, which clarify the difference between consent and nonconsent tows and ensures that Hawaii law addresses nonconsent tows. Our proposal is attached, and proposed changes are indicated as highlighted text.

AAA Hawaii has 130,000 members on the islands and provides numerous services, including emergency roadside assistance at the request of members, auto and home insurance, vehicle repair and purchasing programs, travel services, and more. In addition, we represent motorists' interests in areas ranging from traffic safety to congestion relief to consumer protections. We were formed over 100 years ago to serve motorists and to improve the experience of owning and operating automobiles, and we have had a presence in Hawaii since 1921. Our towing services are handled by private local towing companies contracted by AAA Hawaii or by our own fleet of tow trucks. We exclusively provide consent towing services for our members.

Under existing law, HRS §§ 290-11, 291C-135, and 291C-165.5 seek to protect vehicle owners when their vehicles are towed without their consent (e.g., towing of unattended vehicles on private or public property or police directed tows). The further protections and requirements included in HB1978 are important and needed to protect consumers from unnecessary and inappropriate charges when their vehicles have been towed and stored without their knowledge or consent.

AAA Hawaii tows vehicles solely upon the request of AAA Hawaii's members. These are owner-initiated, or "consent," tows. Unlike nonconsent tows, owner-initiated tows are completed at the request and with the full knowledge and consent of vehicle owners. Therefore, consent tows do not require that the owner be notified regarding the whereabouts of the towed vehicle. Specified towing services are included in membership with AAA Hawaii. Any payments for requested consent towing services that exceed membership limits are already prescribed under the terms of AAA Hawaii's membership and include options to make payments in cash, by check, or with a credit or debit card.

Based on the foregoing, we believe clarification is needed to differentiate between consent and nonconsent tows. Accordingly, our proposal includes a definition of "nonconsent tow" or "nonconsent towing." We also attempt to clarify when nonconsent tows occur in HRS §§ 290-11 and 291C-135.

We would be happy to answer any questions you may have or provide any assistance you may need in this matter. Thank you for this opportunity to submit our comments on this measure.

Respectfully submitted:

Chris Olvera, Regional Manager
AAA Hawaii, LLC
1130 N. Nimitz Hwy. A170
Honolulu, HI 96817
Phone No.: (808)529-5011

PROPOSED CHANGES TO SECTIONS 1 AND 2 OF HB1978, HD2, SD1

SECTION 1. Section 290-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away as a nonconsent tow at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state that the vehicle will be towed and held at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.

As used in this section, “nonconsent tow” or “nonconsent towing” means the removal of any vehicle by a tow truck without the consent of the legal owner or registered owner of the vehicle; provided that:

(1) The vehicle is left unattended on private or public property without the authorization of the owner, occupant, or person in charge of the property and notice has been posted pursuant to this subsection; or

(2) The vehicle is removed by lawful order of police pursuant to section 291C-165.5.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property for a nonconsent tow shall:

(1) Charge not more than \$65 for a tow, or \$75 for a tow using a dolly, plus a mileage charge of \$7.50 per mile towed and \$25 per day or fraction thereof for storage for the first seven days and \$20 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from six o'clock p.m. Friday to six o'clock a.m. Monday, the towing company shall be entitled to an overtime charge of \$15. If the vehicle is in the process of being hooked up or is hooked up to the tow truck and the owner appears on the scene, the towing company shall unhook the vehicle and shall not charge any fee to the owner of the vehicle. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of \$30 shall be applicable;

(2) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed fifteen days following the tow. The notice shall state:

(A) The maximum towing charges and fees allowed by law;

(B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

(C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum

not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit;

- (3) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, the owner with a receipt stating:
 - (A) The maximum towing charges and fees allowed by law; and
 - (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
- (4) Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine located on the premises.

(c) When a vehicle that is subject to a nonconsent tow is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk."

2. By amending subsection (f) to read:

"(f) Notwithstanding any law or ordinance to the contrary, including subsection (g), and section 46-20.5, any towing company engaged in nonconsent towing in a county with a population greater than five hundred thousand ~~[shall not be entitled to any overtime charge under subsection (b)(1) if]~~ shall offer towing services to consumers ~~[are not offered]~~ twenty-four hours per day every day of the week ~~[; provided that a towing company shall file their hours of operation with the police department in a county with a population greater than five hundred thousand.],~~ which services shall include the release of vehicles kept in storage to a registered owner, legal owner, insurer, or a designated representative. Payment of fees for nonconsent towing services and storage of the vehicle may be made in cash or by debit card, credit card, insurance company check, or commercial check issued by a licensed towing company dispatched by the registered owner, legal owner, or insurer."

SECTION 2. Section 291C-135, Hawaii Revised Statutes, is amended to read as follows:

"§291C-135 Tow trucks; signage and insurance requirements. (a) Notwithstanding any other law to the contrary, the registered owner or lessee of a tow truck shall:

- (1) Permanently affix on each door of the truck a sign with the name and telephone number of the tow business. The letters and numbers used in the sign shall be no less than two inches in height; and
- (2) Maintain insurance ~~[coverage sufficient]~~ in the following amounts:
 - (A) Bodily injury of not less than \$500,000;
 - (B) Property damage of not less than \$200,000;
 - (C) On-hook coverage of not less than \$175,000; or
 - (D) A combined single limit of liability of not less than \$1,000,000,

to protect owners of towed vehicles in the event of vehicle loss or damage due to towing[-] or bodily injury in the course of towing; provided that the tow operator engages in nonconsent towing. If a ~~[tow]~~ nonconsent towing operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is obtained by the plaintiff, the court shall award the plaintiff a sum of not less than \$1,000 or threefold damages sustained by the plaintiff, whichever sum is greater, and reasonable attorney's fees and costs.

This section shall not apply to a county that has adopted ordinances regulating towing operations.

(b) As used in this section, or "nonconsent towing" means the removal of any vehicle by a tow truck without the consent of the legal owner or registered owner of the vehicle; provided that:

- (1) The vehicle is left unattended on private or public property without the authorization of the owner, occupant, or person in charge of the property and notice has been posted pursuant to section 290-11(a); or
- (2) The vehicle is removed by lawful order of police pursuant to section 291C-165.5."

Hawaii State Towing Association

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

March 22, 2010

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair
Committee on Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, HI 96813

RE: HB1978 HD2 SD1, Relating to Motor Vehicles

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

Oh behalf of the Hawaii State Towing Association, we endorse this bill as consumers have encountered problems in obtaining the release of vehicles from other towing companies. We also have been asked to transfer the vehicle to an auto body shop for repair work and have been denied. We understand the consumer has also had to wait to pick up his vehicle after it has been towed as no one is at the storage lot to release it. This inconvenience means more storage fees to the consumer.

SD1 has proposed additional options regarding payment of fees. As section HRS 290-11(4) also provides for payment of fees and reads as follows:

HRS290-11(4) "Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine located on the premises."

It is suggested that the items included in SD1 not in HRS 290-11(4) be amended into it or that SD1 be amended to include "automated teller machines located on the premises" be added as an option. We've had years of experience with consumers who arrive late at night or on weekends and appreciate that we have an automated teller machine on site and do not have to go out and look for especially if they have already been dropped off by a taxi.

As to the mandate to require insurance which is stated in the current law but has no minimum amount. We would propose the amount for bodily injury be not less than \$500,000, property damage not less than \$200,000 and on hook coverage of not less than \$175,000 or a combined limit of \$1,000,000. With cost being what they are and the consumer and or his vehicle being at risk this amount of insurance is a small price to pay to cover the potential accident that may occur during a tow.

With these changes to the bill we support its passage. Mahalo for your favorable consideration.
Respectfully Submitted,

Jan Wakaya
President



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce and Consumer Protection

From: Samuel Sorich, Vice President

Re: **HB 1978 HD2 SD1 – Towing**
PCI Position: Support

Date: Tuesday, March 23, 2010
9:45 a.m.; Conference Room 229

Aloha Chair Baker and Committee Members:

The Property Casualty Insurers Association of American (PCI) supports HB 1978 HD2 SD1 which would make some important improvements in the laws relating to tow truck operators. The bill improves access to damaged vehicles by both owners and other parties such as insurance companies. Timely access allows the vehicle to be repaired in a timelier manner and also reduces storage costs. Allowing access by insurance companies and other appropriate third parties allows insurance companies to pick up the car to be repaired without added inconvenience for the consumer.

PCI supports HB 1978 HD2 SD1.