

SB 2846



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2846, RELATING TO ADMINISTRATIVE LICENSE REVOCATION.

BEFORE THE:

SENATE COMMITTEE ON
TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENT AFFAIRS

DATE: Wednesday, February 3, 2010 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Mark K. Miyahira, Deputy Attorney General

Chair English and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill would permit habitual offenders whose driver's license has been administratively revoked for life to seek reinstatement of the license after only ten years.

Habitual offenders who have repeatedly endangered lives by driving while impaired should never be allowed to drive again. Yet this bill would allow habitual offenders who have been convicted of driving impaired at least four times in a ten-year period, and whom the State previously determined to be so dangerous that *lifetime* license revocation was warranted, back onto the streets.

Additionally, the bill fails to specify the grounds upon which a habitual offender's application for reinstatement should be granted. Although the bill sets forth what must be included in an application for consent to apply for a new license, it does not provide for a hearing on the matter, nor any standards for review and decision-making on the application.

Moreover, this bill would allow a habitual offender whose license was revoked for life after four offenses to be treated

as a first-time offender for purposes of administrative revocation of license, if the habitual offender commits yet another offense after the reinstatement. Thus, a *five-time* (or more) offender would be subject to the *minimum* revocation period.

It should be noted that this bill is intended to address offenders who already have been sanctioned with lifetime revocation or will be sanctioned by January 1, 2011. On January 1, 2011, the amendments to section 291E-41, Hawaii Revised Statutes, made by Act 171, Session Laws of Hawaii 2008, and Act 88, Session Laws of Hawaii 2009, will become effective. As of that date, repeat offenders will no longer face lifetime revocation. Instead, the ignition interlock device will be implemented to address public safety concerns.

We respectfully request that this bill be held.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Transportation, International and Intergovernmental Affairs

The Honorable J. Kalani English, Chair
The Honorable Mike Gabbard, Vice Chair

Wednesday, February 3, 2010, 2:05 p.m.
State Capitol, Conference Room 224

by
Ronald Sakata
Chief Adjudicator
Administrative Driver's License Revocation Office (ADLRO)

Bill No. and Title: Senate Bill No. 2846, Relating to Administrative License Revocation

Purpose: Permits driver whose license has been administratively revoked for life to seek reinstatement of the license after 10 years have passed since the occurrence of the lifetime revocation. Requires driver to have had no arrests or convictions for driving while license revoked and to be free from dependency or abuse of alcohol and drugs. Effective 7/1/11.

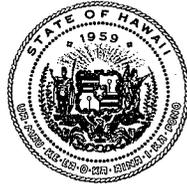
Judiciary's Position:

The Judiciary does not take a position on the intent of Senate Bill No. 2846. Our only concern is that there will be an, as yet not possible to determine, impact on the current ADLRO case and hearing load. Accordingly, since this measure is silent regarding the hearing procedures to be imposed, save for the general reference to §291E-45, we request that language be inserted in the measure which would allow ADLRO to set the hearing, if granted due to the preliminary assessment, within sixty (60) days from the date of receipt of the request.

In addition, we respectfully request that there be no exemption, for any reason, from the payment of the \$50 hearing request fee.

Thank you for the opportunity to testify on this measure.

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
INTERIM DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 3, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2846

COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS

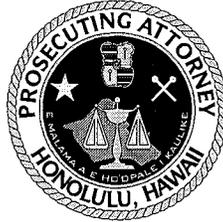
The Department of Transportation opposes this bill, as we believe a person who repeatedly places others on the road in grave danger, should have their license revoked for life, which is consistent with HB 2752 that proposes the final recommendations of the Ignition Interlock Law.

It was known that these offenders, even with their license revoked, would continue to drive without being detected by police. This was the reason why the Ignition Interlock Law was created, to prevent drivers who have been drinking from driving and putting others at risk. We believe that the ignition interlock will prevent the drinking driver from getting behind the wheel. These people can continue to drive provided they do not have any alcohol in their system.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
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**THE HONORABLE J. KALANI ENGLISH, CHAIR
SENATE TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS COMMITTEE**

**Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i**

February 3, 2010

RE: S.B. 2846; RELATING TO ADMINISTRATIVE LICENSE REVOCATION.

Chair English and members of the Senate Committee on Transportation, International and Intergovernmental Affairs Committee, the Department of the Prosecuting Attorney submits the following comments in opposition of S.B. 2846.

The purpose of this bill is to permit persons who have had their driver's licenses administratively revoked for life for repeatedly driving while intoxicated to request a reinstatement of the license if: 1) 10 years or more have passed since revocation; 2) the person provides written proof that the person is not in need of substance abuse treatment; and 3) there is a sworn statement containing information that the respondent no longer poses a real and serious danger to the safety and welfare of the people of the state. In addition, the bill requires denial of the application if the respondent has been arrested, adjudicated or convicted for any traffic infraction in this or another jurisdiction.

Impaired driving is an extremely serious problem in our state. According to statistics provided by Mothers Against Drunk Driving, Hawaii had 140 traffic deaths in 2005 and 51% or 71 of these were alcohol related. Recognizing that impaired driving has resulted in needless death and injury to the public, the state has previously passed laws which require the lifetime

revocation of driver's licenses for persons who have been found driving impaired four or more times in a ten year period. We believe this is sound policy given that drivers with prior convictions are over represented in fatal crashes and have a greater risk of having a fatal crash. We also believe if the people are permitted to request a reinstatement from previously imposed lifetime revocation, it would impair the deterrent effect of lifetime revocation. The threat of an absolute lifetime revocation was intended to make it clear to people who chose to drink and had been previously found to be driving impaired, that they could and should not continue to drink and then drive.

We do realize that the Ignition Interlock Task Force has proposed legislation which has a minimum of five year to ten year license revocation period for those who previously received a lifetime revocation; the reduction in the license revocation period from lifetime revocation to a minimum of five years to ten years will go into effect on January 1, 2011 and will apply to those persons who commit their repeat offense on or after January 1, 2011. We do have reservations about the reduction in the lifetime revocation period proposed in the ignition interlock task force legislation and this bill due to concerns that if the revoked driver gets reinstated but then has another impaired driving offense, that offense may not result in another lifetime revocation. Under the current law, lifetime revocation only occurs when a driver four or more prior impaired driving offenses during a ten year period preceding the last notice of administrative revocation. If the person reoffends after reinstatement, it is possible that one or more of the prior impaired driving offenses will now be beyond the ten year period and thus the person who previously had a lifetime revocation will be considered a first, second or third offender all over again and could have multiple opportunities to obtain the privilege to drive.

We also note that this bill requires denial of the application if the respondent has been arrested, adjudicated or convicted for any traffic infraction in this or another jurisdiction. Traffic infractions, as defined in Hawaii Revised Statute (HRS) section 291D-2 means "all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment and that are not otherwise specifically excluded from coverage of this chapter." Traffic infractions do not include more serious traffic and criminal offenses such as impaired driving, reckless driving, excessive speeding, fleeing the scene, negligent homicide in the first, second or third degree or negligent injury in the first or second degree. It seems nonsensical to require the denial of application for an infraction such as an illegal right turn but not for commission of a more serious traffic offense that carries a possible term of imprisonment.

For these reasons, we oppose the passage of S.B. 2846. Thank you for the opportunity to testify.

IRON WORKERS STABILIZATION FUND

Fax: 586-6659 – Sergeant of Arms

February 2, 2010

Hon. J. Kalani English, Chair
Senate Committee on Transportation, International & Intergovernmental Affairs
State Capitol – Room 205

Iron Workers Stabilization Fund – T. George Paris, Managing Director

Hearing Date – February 3, 2010, 2:05 p.m.

Support of SB 2846, Relating to Administrative License Revocation

Under the present law, an individual who has had his or her driver's license revoked for life is prohibited from applying for a new driver's license. Although we are fully in accord with the intent of the present law, we believe that such an individual should be given a chance to apply for a new driver's license, if such an individual has demonstrated that he or she has overcome the substance abuse that led to the lifetime revocation in the first instance. We believe that this measure sets up a reasonable process wherein such an individual is accorded the opportunity to apply for a new driver's license.

Under this measure, the following criteria must first be met before such an individual will be permitted to apply for a new driver's license:

1. The application shall be made no sooner than fifteen years after the lifetime revocation was imposed.
2. The application must be accompanied by written proof that said individual, within 90 days immediately preceding the application, has been assessed by a certified substance abuse counselor and determined not to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index or its successor.
3. The application must be in a form of a sworn statement approved by the director of courts, provided said statement shall contain information demonstrating that said individual no longer poses a real and serious danger to the safety and welfare of the people of this state.

The application shall be denied if (1) it does not meet all of the requirements as set forth above, or, (2) if, after the issuance of the lifetime revocation, it has been found

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that said individual has been arrested, convicted, or adjudicated for any traffic infraction in Hawaii or in another state.

As we have set forth above, we believe that such an individual should be accorded a second chance to apply for a new driver's license if said individual has demonstrated that he or she has overcome the substance abuse that led to the lifetime revocation in the first instance.

Additionally, we would like to point out that many or most of the approximate 1,600 individuals who are presently banned for life are gainfully employed. Should an additional condition be necessary, we suggest that these individuals be permitted to drive only from home to work and back. We believe that these individuals should be accorded the opportunity to apply for a new driver's license.

Based on the above, we respectfully request that SB 2846 be passed and sent to the committee on judiciary.

IRON WORKERS STABILIZATION FUND

Fax No: 586-6650⁹

February 2, 2010

Hon. J. Kalani English, Chair
Senate Committee on Transportation, International & Intergovernmental Affairs
State Capitol – Room 205

Iron Workers Stabilization Fund – T. George Paris, Managing Director

Hearing Date – February 3, 2010, 2:05 p.m.

Support of SB 2846, Relating to Administrative License Revocation

This is supplemental to our testimony submitted at 8:27 a.m., today.

Although we do not know the exact figures, we believe that a good number of the 1,600 individuals who are banned for life are construction workers presently employed. We strongly advocate that these construction workers be given the opportunity to drive to and from work to feed their families. Again, although we are not certain, we believe that there are construction workers in this category who are driving without licenses and not insured. Needless to say, should these individuals cause an accident resulting in physical injuries to citizens who are properly insured, these citizens would have to resort to their own policies to obtain medical care and services. We want to take these individuals off the uninsured rolls to relieve insured citizens who may be injured by said individuals.

Again, we urge the passage of this measurer.



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February 3, 2010

To: Senator J. Kalani English, Chair – Senate Committee on Transportation,
International, and Intergovernmental Affairs; Senator Mike Gabbard, Vice Chair;
and members of the committee

From: Arkie Koehl — Chairman, Operations Council, MADD Hawaii

Re: Senate Bill 2846 – Relating to Administrative License Revocation

I am Arkie Koehl, offering testimony on behalf of the Hawaii members of Mothers Against Drunk Driving on SB 2846, relating to administrative license revocation. This bill provides the criteria and procedures for a program to allow OVUII offenders, who have been given the sanction of a life-time drivers license revocation after having four or more alcohol or drug law enforcement contacts, to regain their driving privilege.

The Hawaii Ignition Interlock Implementation Task Force has addressed the issue of lifetime drivers license revocation once ignition interlocks become available in our state. The Task Force decided to recommend that from January 1, 2011 on, respondents with four or more OVUII law enforcement contacts will be given a five to ten year driver's license revocation rather than a lifetime revocation. During the revocation period, the person will be required to drive an ignition interlock equipped vehicle. The Task Force determined not to address the issue of retroactivity – along with several other issues - until the basic interlock system has been implemented and has shown to be working well. At some later time other issues, such as this one, can be reconsidered.

MADD, as a member of the Task Force agrees that the lifetime revocation penalty should remain in place for respondents who have been issued a lifetime revocation before January 1st, 2011. Therefore, MADD is not in support of SB 2846 at this time.

Thank you for this opportunity to testify.