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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE  
and JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE  
Regular Session 2009

Thursday, February 26, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1696, H.D. 1 -- RELATING TO MOTOR VEHICLE  
RENTAL INDUSTRY.**

TO THE HONORABLE ROBERT N. HERKES AND JON RIKI KARAMATSUI, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to testify with comments and in opposition to House Bill No. 1696, H.D. 1, Relating to Motor Vehicle Rental Industry. My name is Stephen Levins, and I am the Executive Director of the DCCA's Office of Consumer Protection ("OCP").

House Bill No. 1696, H.D. 1, seeks to amend several provisions of Chapter 437D of the Hawaii Revised Statutes, Hawaii's law governing the motor vehicle rental industry. It replaces the term "collision damage waiver" with "damage waiver", repeals

the requirement to place notices of specific vehicle laws in each rental vehicle, repeals the requirement that DCCA prescribe the form of signage posted at rental locations, repeals the requirement to submit collision damage waiver statistics to the DCCA, and significantly modifies the measure of damages provision. With respect to each of the above enumerated proposals, the DCCA provides the following comments:

Replace the Term "Collision Damage Waiver" with "Damage Waiver".

As long as the industry can provide a rational basis for the change, the DCCA is not opposed to this amendment.

Notice of Laws Within Motor Vehicles.

At this time, the DCCA takes no position on this proposal.

DCCA's Power to Prescribe the Form of Signage.

So long as the conspicuous signage requirement is maintained, the DCCA does not believe that it is necessary at this time for it to dictate the design of the signage used at the rental locations.

Collision Damage Waiver Statistics.

The DCCA is not opposed to removing the current statutory requirement that CDW statistics be automatically submitted to the DCCA for review if the lessors continue to maintain the information and make it available to the DCCA upon DCCA's request.

Measure of Damages.

The DCCA is opposed to any modification of the measure of damages provision

contained in section 437D-15 of the Hawaii Revised Statutes. As proposed, House Bill No. 1696, H.D. 1, would allow a lessor to charge lessees responsible for damaging a rental vehicle the cost of repairing the vehicle, even if the vehicle is not repaired. This is not a proper measure of damages. In those instances in which a vehicle is not repaired current law mandates that the true value of damages is the diminution in value of the vehicle. Calculating diminution in value is ordinarily not complicated and is established by applicable law. It is the difference between the value of the property before the harm and value after the harm. *State v. Pardee*, 86 Haw 165, (1997), quoting The Restatement (Second) of Torts section 928 (1977). In view of this, amending this provision is neither in the interest of consumer protection nor consistent with current law.

Thank you for this opportunity to testify on House Bill No. 1696, H.D. 1. I will be happy to answer any questions that the members of the Committees may have.

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**MEMORANDUM**

**TO:** Representative Robert Herkes  
Chair, House Committee on Consumer Protection & Commerce  
  
Representative Jon Riki Karamatsu  
Chair, House Committee on Judiciary  
  
**Via e-mail: CPCtestimony@capitol.hawaii.gov**

**FROM:** Gary Slovin/Chris Pablo/Anne Horiuchi

**DATE:** February 25, 2009

**RE:** **H.B. 1696, HD1 relating to Motor Vehicle Rental Industry**  
**Hearing: Thursday, February 26, 2009 at 2:00 p.m., Room 325**

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Dear Chairs Herkes and Karamatsu and Members of the Joint Committees:

I am Anne Horiuchi, testifying on behalf of Enterprise Rent-A-Car Company of Hawaii and Vanguard Car Rental USA, Inc., dba National Car Rental and Alamo Rent A Car (collectively referred to as "Enterprise"). Our clients are members of Catrala-Hawaii.

**Enterprise strongly supports H.B. 1696, HD1.** This measure makes four amendments to Chapter 437D of the Hawaii Revised Statutes, relating to the Motor Vehicle Rental Industry:

1. *Changes "collision damage waiver" to "damage waiver":* In the context of insurance coverage, the term "damage waiver" is broader than the term "collision damage waiver" – i.e., there may be confusion that a "collision damage waiver" will only cover vehicular damage resulting from a collision or some type of impact. H.B. 1696's changing of this term to "damage waiver" will avoid such confusion and make the term consistent with its definition as set forth in § 437D-3, which requires the lessor "to waive any or all claims against the lessee for **any damages** to the rental motor vehicle during the term of the rental agreement."

2. *Amends the notice and posting requirements for motor vehicle lessors:* First, H.B. 1696 amends § 437D-10 (Pamphleting requirements), which currently

February 25, 2009

Page 3

deceptive practices where the lessor overcharges the lessee for damages to a rental motor vehicle. One of those circumstances – paragraph (C) – currently prohibits the lessor from charging more than the diminution in value of the vehicle if it is not repaired and not declared a total loss. Determining the diminution in value of a vehicle that is not repaired is often difficult, as valuation is affected by numerous factors (e.g., the size of Hawaii’s market). Additionally, most insurers do not pay for diminution in value on first-party claims. H.B. 1696 will resolve this difficulty by amending § 437D-15(5)(C) to prohibit the lessor from charging more than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with standard practice in the automobile repair industry in the community. Using the estimated cost of repair is a more objective means of valuing the loss.

Enterprise is aware that the Office of Consumer Protection has concerns regarding H.B. 1696’s amendment to § 437D-15(5)(C), which Director Stephen Levins discussed during his testimony to the House Transportation Committee. In response to his concerns, Enterprise has proposed an amendment to that provision of H.B. 1696 (please see the attachment). Despite the proposed amendment, it is our understanding that Mr. Levins continues to have concerns regarding the amendment to § 437D-15(5)(C). Enterprise respectfully requests that the Committees keep H.B. 1696 alive, so that the parties may continue their discussions on this issue.

For all the reasons set forth above, Enterprise respectfully asks for your support of H.B. 1696.

Thank you very much for this opportunity to submit testimony.

February 25, 2009  
Page 4

**Proposed Amendment to Section 11 of  
H.B. 1696 relating to Motor Vehicle Rental Industry**

SECTION 11. Section 437D-15, Hawaii Revised Statutes, is amended to read as follows:

**"§437D-15 Unfair trade practices.** Each lessor, and each officer, employee, agent, and other representative thereof, is prohibited from engaging in any practice constituting a violation of chapter 480. The following shall be per se violations of section 480-2:

- (1) The making of any material statement that has the tendency or capacity to mislead or deceive, either orally or in writing, in connection with the rental of, offer to rent, or advertisement to rent a vehicle;
- (2) The omission of any material statement that has the tendency or capacity to mislead or deceive, in connection with the rental or, offer to rent, or advertisement to rent a vehicle;
- (3) The making of any statement to the effect that the purchase of a [~~collision~~] damage waiver is mandatory;
- (4) Any violation of sections 437D-5 through 437D-14, and section 437D-17.5;
- (5) The charging by the lessor to a lessee of:

February 25, 2009  
Page 5

- (A) More than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with standard practice in the ~~[automobile]~~ motor vehicle repair industry in the community, if the vehicle is repaired;
- (B) More than the actual cash value of a vehicle if it is declared a total loss; or
- (C) More than the ~~[diminution in value of a vehicle]~~ costs of the parts and labor necessary to repair a damaged vehicle in accordance with standard practice in the motor vehicle repair industry in the community if it is not repaired and not declared a total loss.

The lessor shall not recover from the lessee any amount charged as specified in this section 437D-15(5), to the extent the lessor obtains recovery from another person;

- (6) The making of any statement by the lessor to the effect that the lessee is or will be confined to remain within boundaries specified by the lessor

February 25, 2009

Page 6

unless payment or an agreement relating to the payment of damages has been made by the lessee;

(7) The charging of a lessee more than a reasonable estimate of the actual income lost for loss of use of a vehicle; and

(8) The charging of a lessee more than actual towing charges."



Honorable Robert Herkes, Chair  
Committee on Consumer Protection & Commerce  
House of Representatives

Honorable Jon Riki Karamatsu, Chair  
Committee on Judiciary  
House of Representatives

Hearing: February 26, 2009

Re: HB 1696, HD1 Relating to Motor Vehicle Rental Industry

Chairs Herkes and Karamatsu and Honorable Joint Committee Members:

My name is Michael Oh and I am the legislative chairman for Catrala-Hawaii whose membership consists of the major u-drive companies in Hawaii and the many businesses which support our industry.

Catrala supports this bill and asks that you keep it alive so further discussions may take place with the Office of Consumer Protection to resolve differences.

In part this bill seeks to change the term "collision damage waiver" to "damage waiver" to avoid confusion and clarify matters.

Further, this bill seeks to ease various posting requirements. The posting requirements are not eliminated but deemed satisfactory if in a conspicuous place in the main rental area for each rental location.

Still further, this bill in part seeks to clarify how "diminution in value" is determined to avoid any activities that might be deemed to be an unfair trade practice.

And finally this bill seeks to eliminate the gathering and reporting of various statistics which are burdensome and not relevant given the fact that past problems have been corrected and there are no ongoing serious problems.

Thank you for allowing me to testify. Please pass this bill so further discussions can take place.