

HB 1696, HD2



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TO THE SENATE COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2009

Wednesday, March 18, 2009
1:45 p.m.

**TESTIMONY ON HOUSE BILL NO. 1696, H.D. 2 -- RELATING TO MOTOR VEHICLE
RENTAL INDUSTRY.**

TO THE HONORABLE J. KALANI ENGLISH, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to testify with comments on House Bill No. 1696, H.D. 2, 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. 2, 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, and repeals the requirement to submit collision damage waiver statistics to the DCCA. 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.

Thank you for this opportunity to testify on House Bill No. 1696, H.D. 2. I will be happy to answer any questions that the Committee members may have.

Honorable J. Kalani English, Chair
Committee on Transportation, International
and Governmental Affairs
Hawaii State Senate

Hearing: March 18, 2009

Re: HB 1696, HD2 Relating to Motor Vehicle Rental Industry

Chair English and Honorable 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 in the form of HD1 and with a July 1, 2009 effective date. HD1 contained provisions wherein u-drive companies could be fairly compensated for damage to their vehicles due to diminution in value like any other resident of Hawaii who has his/her/its vehicle damages and seeks to be compensated for diminution in value. U-drives should be afforded the same rights to recover for such damages like everyone else.

This bill seeks to make various changes to the u-drive statute, Chapter 437D of the Hawaii Revised Statutes.

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, if the deleted provisions of HD1 are restored, 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 in the form of HD1 with a July 1, 2009 effective date. If you are not willing to incorporate the provisions deleted by HD2 please continue to pass this bill so further discussions with the Office of Consumer Protection can take place. You may defect the effective date of this to allow for such discussions and further deliberations. Thank you.

Honorable J. Kalani English, Chair
Committee on Transportation, International
and Governmental Affairs
Hawaii State Senate

Hearing: March 18, 2009

Re: HB 1696, HD2 Relating to Motor Vehicle Rental Industry

Chair English and Honorable Committee Members:

My name is Martin Mylott and I am the Hawaii Regional Manager at Avis Rent A Car and Budget Rent A Car.

We support this bill and CATRALA Hawaii's position on this bill.

This bill seeks to make various changes to the u-drive statute, Chapter 437D of the Hawaii Revised Statutes.

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.

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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 in the form of HD1 with a July 1, 2009 effective date. If you are not willing to incorporate the provisions deleted by HD2 please continue to pass this bill so further discussions with the Office of Consumer Protection can take place. You may defect the effective date of this to allow for such discussions and further deliberations. Thank you.

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MEMORANDUM

TO: Senator J. Kalani English
Chair, Committee on Transportation, International & Intergovernmental
Affairs

Via e-mail: TIAtestimony@Capitol.hawaii.gov

FROM: Chris Pablo/Anne Horiuchi

DATE: March 17, 2009

**RE: H.B. 1696, HD2 – Relating to Motor Vehicle Rental Industry
Hearing: Wednesday, March 18, 2009 at 1:45 p.m., Room 224**

Dear Chair English and Members of the Committee:

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, HD2, but respectfully requests that it be amended to reflect the language in the original version of H.B. 1696, relating to the amendment to § 437D-15.

H.B. 1696, HD2 makes several 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.”

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2. *Amends the notice and posting requirements for motor vehicle lessors:* First, H.B. 1696 amends § 437D-10 (Pamphleting requirements), which currently requires that the pamphlets containing information relating to damage waivers be placed prominently and conspicuously on the rental desk or countertop. H.B. 1696 adds wall holders as another option for a lessor to satisfy the pamphleting requirements of § 437D-10.

Second, H.B. 1696 amends § 437D-13, regarding the requirements that lessors post certain motor vehicle laws.¹ The current law requires posting in three different locations: (1) a decal that is in a conspicuous place in each rental motor vehicle; (2) a card that is placed in the glove compartment of every rental motor vehicle; and (3) a sign or signs in the main rental area of all rental locations. With regard to the decals, once a rental motor vehicle is removed from the rental fleet, the decals are removed, which may damage the car. As for the card in the glove compartment, the impact of this method of posting is questionable because it requires the lessee to actually access the glove compartment to view its contents. H.B. 1696 amends § 437D-13 to require *only* the posting of a sign or signs in a conspicuous place in the main rental area of each rental location. Enterprise believes that such posting is a more effective means of informing lessees of the requisite motor vehicle laws, as compared to the other methods under current law.

3. *Repeals requirement that lessors submit damage waiver sales statistics to the Director of the Department of Commerce & Consumer Affairs:* Section 437D-8.6 currently requires that a compilation of sales statistics and damage expenses related to damage waiver losses to be submitted annually to the DCCA, and requires the maintenance of these records by all motor vehicle rental companies. Compliance with this section is burdensome, because significant business resources must be expended to establish and maintain accurate reporting practices relating to damage waivers, and to coordinate multiple departments to ensure accurate data relating to damage amounts in each file. Compliance with § 437D-8.6 has also resulted in problems relating to records retention, because the statute offers no guidance as to the period of time for which these records must be maintained. Moreover, it is not clear how these reports have been utilized by the DCCA in its oversight of the industry. Consequently, Enterprise requests a repeal of § 437D-8.6.

¹ Lessors must post notices to inform lessees of Hawaii's laws requiring the use of seat belts and child restraints, and the prohibition against operating a vehicle under the influence of an intoxicant and leaving a child unattended in the vehicle.

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Finally, Enterprise respectfully requests that H.B. 1696, HD2 be amended to reflect the language in the original version of H.B. 1696, relating to the amendment to § 437D-15. Under current law, subsection 5 of § 437D-15 describes three circumstances that will be considered *per se* unfair or 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). Moreover, an estimated cost of repair is typically factored into a bid on a damaged vehicle, meaning that the diminution in value will usually be a higher amount than the estimated cost of repair. Finally, Enterprise notes that most insurers do not pay for diminution in value on first-party claims.

In its original form, H.B. 1696 resolved 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.

For all the reasons set forth above, Enterprise respectfully asks for your support of H.B. 1696, and for your consideration of our requested amendment.

Thank you very much for this opportunity to submit testimony.