

Honolulu, Hawaii

MAR 24 2009

RE: H.B. No. 1696

H.D. 2

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Transportation, International and Intergovernmental Affairs, to which was referred H.B. No. 1696, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO MOTOR VEHICLE RENTAL INDUSTRY, "

begs leave to report as follows:

The purpose of this measure is to clarify the use of collision damage waivers by motor vehicle rental companies.

Specifically, this measure:

- (1) Re-names "collision damage waiver" to "damage waiver";
- (2) Requires damage waiver disclosures, as an alternative, to be placed in a wall holder where the disclosure pamphlet can be easily seen and reached by lessees and potential lessees;
- (3) Allows rental car companies to fulfill the requirement of providing rental car lessees with notice of certain motor vehicle laws, such as the seat belt and child passenger restraint system laws, by posting the notice in a conspicuous place in the main rental area of all rental locations; and
- (4) Repeals the requirement that the rental car company submit data or information to the Director of Commerce



and Consumer Affairs about specified information relevant to collision damage waivers and costs of repairs.

Your Committee received testimony in support of this measure from Catrala-Hawaii; Avis Rent A Car; Budget Rent A Car; Enterprise Rent A Car; Alamo Rent A Car; and National Car Rental. Comments were received from the Department of Commerce and Consumer Affairs. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that under current law a "collision damage waiver" may encompass any damages to a rental motor vehicle during the term of the rental agreement. By renaming "collision damage waiver" to "damage waiver", this measure clarifies the existing law by removing any inference that a rental car damage waiver may only apply to "collision" damages.

Your Committee further finds that 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. It is the difference between the value of the property before the harm and value after the harm.

Your Committee notes that the Department of Commerce and Consumer Affairs is not opposed to removing the current statutory requirement that collision damage waiver statistics be automatically submitted to the Department for review if the lessors continue to maintain the information and make it available to the Department upon request. Your Committee thus requests the lessors to keep appropriate records to facilitate the work of the Department.

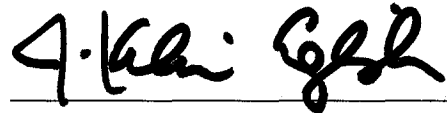
Your Committee also notes that the testimony indicates that the Office of Consumer Protection and the interested rental car companies are currently working toward reaching an agreement on expedited processing of traffic infraction citations and summonses. Your Committee urges all parties to expedite their efforts to reach an agreement before the end of this Regular Session, as this may obviate the need for legislative solutions.

As affirmed by the record of votes of the members of your Committee on Transportation, International and Intergovernmental Affairs that is attached to this report, your Committee is in



accord with the intent and purpose of H.B. No. 1696, H.D. 2, and recommends that it pass Second Reading and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,
International and
Intergovernmental Affairs,

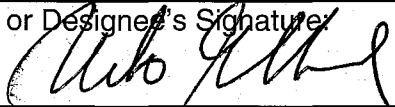


J. KALANI ENGLISH, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Transportation, International and Intergovernmental Affairs
TIA

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1696, HD2	TIA, CPN	3-18-09		
<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
ENGLISH, J. Kalani (C)	✓			
GABBARD, Mike (VC)	✓			
ESPERO, Will	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5	-	-	-
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designer's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes

A BILL FOR AN ACT

RELATING TO MOTOR VEHICLE RENTAL INDUSTRY.

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

1 SECTION 1. Section 437D-3, Hawaii Revised Statutes, is
2 amended by amending the definition of "collision damage waiver"
3 to read as follows:

4 ~~"["Collision damage waiver"]~~ "Damage waiver" means any
5 contract or contractual provision, whether separate from or a
6 part of a rental agreement, whereby the lessor agrees, for a
7 charge, to waive any or all claims against the lessee for any
8 damages to the rental motor vehicle during the term of the
9 rental agreement."

10 SECTION 2. Section 437D-4, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~§~~]**437D-4**[~~]~~ **Rental agreements; delivery to director.**
13 No lessor shall offer a rental agreement or [~~collision~~] damage
14 waiver unless a specimen of the rental agreement or [~~collision~~]
15 damage waiver is delivered to the director prior to its use."

16 SECTION 3. Section 437D-5, Hawaii Revised Statutes, is
17 amended to read as follows:



1 "~~{~~§437D-5~~}~~ Rental agreements; ~~[eollision]~~ damage
2 **waivers.** (a) Each rental agreement ~~[which]~~ that contains a
3 ~~[eollision]~~ damage waiver shall disclose, at a minimum, in plain
4 language and in at least ten-point boldface type, the following
5 information:

- 6 (1) That the ~~[eollision]~~ damage waiver is optional;
- 7 (2) That the ~~[eollision]~~ damage waiver entails an
8 additional charge;
- 9 (3) The actual charge per day for the ~~[eollision]~~ damage
10 waiver;
- 11 (4) All restrictions, conditions, and provisions in or
12 endorsed on the ~~[eollision]~~ damage waiver;
- 13 (5) That the lessee may already be sufficiently covered
14 and should examine the lessee's personal automobile
15 insurance policy to determine whether it provides
16 coverage for ~~[eollision]~~ damage and the amount of the
17 deductible;
- 18 (6) That by entering into the rental agreement, the lessee
19 may be liable for damage to the rental motor vehicle
20 ~~[resulting from a collision]~~; and
- 21 (7) The acknowledgment described in section 437D-11.



1 (b) The rental agreement shall not contain an unreasonable
2 restriction, condition, or provision in or endorsed on a
3 [~~collision~~] damage waiver. The [~~collision~~] damage waiver shall
4 not exclude damages caused by ordinary negligence on the part of
5 the lessee."

6 SECTION 4. Section 437D-5.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§437D-5.5[+] **Offers or sales of collision insurance by**
9 **lessors or limited line motor vehicle rental company producers.**

10 (a) The provisions in this chapter relating to or otherwise
11 regulating the offer or sale [+]of[+] [~~collision~~] damage waivers
12 shall apply to the offer or sale of collision insurance by
13 lessors or limited line motor vehicle rental company producers.

14 (b) For purposes of this chapter, collision insurance
15 means coverage to pay a specified amount to or on behalf of the
16 lessee for claims by the lessor relating to loss of or damage to
17 the rented vehicle. The definitions of collision insurance and
18 [~~collision~~] damage waiver stated in this chapter shall apply
19 only to this chapter. No definition of insurance in this
20 chapter or in any other statute shall be deemed to include
21 [~~collision~~] damage waiver as defined in this chapter."



1 SECTION 5. Section 437D-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]**\$437D-7**[~~]~~ **Rate disclosure requirements**[~~+~~];

4 **advertising.** (a) Each lessor, and each officer, employee,
5 agency, or other representative of the lessor, who states or
6 permits to be stated the rental cost of a rental motor vehicle
7 in any advertisement, shall state conspicuously, in plain
8 language and in conjunction with the advertised rental cost of
9 the vehicle, the daily rate of the applicable [~~collision~~] damage
10 waiver, and that the rate constitutes an additional daily charge
11 to the lessee.

12 (b) When a written advertisement, including all print
13 media, contains the statement of the rental cost of a vehicle,
14 the disclosure required by this section shall be printed in type
15 no less than one-third the size of the type used to print the
16 rental cost, or twelve-point type, whichever is larger. When
17 the video presentation of a television advertisement contains
18 the statement of the rental cost of a vehicle, the depiction of
19 the disclosure required by this section shall be no less than
20 one-third the size of the depiction of the rental cost. When a
21 radio advertisement or the audio presentation of a television
22 advertisement contains the statement of the rental cost of the



1 vehicle, the oral statement of the rental cost shall be
2 immediately accompanied by an oral statement of the disclosure
3 required by this section.

4 (c) Except as set forth in this section, the statement of
5 the rental cost and the disclosure shall be equally prominent in
6 all respects."

7 SECTION 6. Section 437D-8, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]**\$437D-8**[~~}]~~ **Rate disclosure requirements; oral or**
10 **written statements.** Each lessor, and each officer, employee,
11 agent, or other representative of the lessor, who makes any oral
12 statement, excluding telephonic communications, or written
13 statement of the rental cost of a vehicle, shall disclose, in
14 plain language and in conjunction with that statement, the daily
15 rate of the applicable [~~eollision~~] damage waiver and that the
16 rate constitutes an additional daily charge to the lessee."

17 SECTION 7. Section 437D-8.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**\$437D-8.5 Commissions.** (a) No lessor or officer,
20 employee, agent, or other representative of the lessor shall pay
21 or receive a commission for selling [~~eollision~~] damage waivers,
22 except as provided in subsection (b). Any violation of this



1 section shall be an unfair or deceptive act or practice as
2 provided in section 480-2.

3 (b) As used in this section:

4 "Commission for selling [~~collision~~] damage waivers"
5 includes any compensation, bonus, award, or remuneration that
6 corresponds directly to the amount of sales of [~~collision~~]
7 damage waivers. "Commission for selling [~~collision~~] damage
8 waivers" does not include any compensation, bonus, award, or
9 remuneration to an employee that corresponds to the overall
10 gross receipts of a sales location, where sales of [~~collision~~]
11 damage waivers are one of many factors contributing to overall
12 gross receipts.

13 "Sales location" means any location at which the employee
14 worked or had oversight responsibility during the applicable
15 compensation period."

16 SECTION 8. Section 437D-9, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~f~~]**\$437D-9**[~~l~~] **Posting requirements.** Except as provided
19 in section 437D-17, each lessor who offers the [~~collision~~]
20 damage waiver shall conspicuously display at the rental area of
21 each rental location a notice, in plain language and printing,
22 [~~which~~] that includes all of the information in section 437D-



1 5(a)(1), (2), (5), and (6), and a statement that restrictions or
2 conditions apply."

3 SECTION 9. Section 437D-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~+~~]**§437D-10**[+] **Pamphleting requirements.** Before the
6 execution of a rental agreement, each lessor who offers [~~the~~
7 ~~collision~~] a damage waiver option to a lessee shall provide to
8 the lessee a pamphlet, written in plain language, [~~which~~] that
9 includes all of the information described in section 437D-
10 5(a)(1) through (6). The requirements of this section shall be
11 deemed to be satisfied if the lessor places the pamphlets
12 prominently and conspicuously on the rental desk [~~or~~],
13 countertop, or in a wall holder, where the pamphlets may be
14 easily seen and reached by lessees and potential lessees."

15 SECTION 10. Section 437D-13, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§437D-13 Notice and posting required concerning motor**
18 **vehicle laws.** [~~(a)~~] Every lessor shall display at all times a
19 sign or signs in a conspicuous place in [~~each rental motor~~
20 ~~vehicle offered to the public, a decal,~~] the main rental area of
21 all rental locations, written in plain language and in no less
22 than ten-point type, that informs the lessee of:



1 (1) Hawaii's seat belt and child passenger restraint laws
2 and the prohibition against operating a vehicle under
3 the influence of an intoxicant and leaving a child
4 unattended in a motor vehicle; and

5 (2) The existence and location of additional information
6 concerning the laws relating to seat belts, child
7 passenger restraints, operating a vehicle under the
8 influence of an intoxicant, and leaving a child
9 unattended in a motor vehicle.

10 ~~[The requirements and penalties of Hawaii's seat belt laws and~~
11 ~~child passenger restraint laws, as provided in sections 291-11.5~~
12 ~~and 291-11.6, and the prohibition against and penalties for~~
13 ~~operating a vehicle under the influence of an intoxicant, as~~
14 ~~provided in section 291E-61, and leaving a child unattended in a~~
15 ~~motor vehicle, as provided in section 291C-121.5, shall be~~
16 ~~printed on a card which shall be placed in the glove compartment~~
17 ~~of every rental motor vehicle offered to the public.~~

18 ~~(b) Except as provided in section [437D-17], a sign or~~
19 ~~signs written in plain language calling attention to the laws~~
20 ~~referred to in subsection (a) shall be prominently posted in the~~
21 ~~main rental area of all rental locations in a place and manner~~
22 ~~conspicuous to the public.~~



1 ~~(c) The notices and signs required by this section shall~~
2 ~~include symbolic representations that are of common~~
3 ~~understanding and clearly recognizable to the public as~~
4 ~~conveying the required use of seat belts and child passenger~~
5 ~~restraint systems in the operation of a motor vehicle and the~~
6 ~~prohibition against operating a vehicle under the influence of~~
7 ~~an intoxicant.~~

8 ~~(d) The director shall prescribe the form of the notices~~
9 ~~and signs required by this section.]"~~

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

12 "**§437D-15 Unfair trade practices.** Each lessor, and each
13 officer, employee, agent, and other representative thereof, is
14 prohibited from engaging in any practice constituting a
15 violation of chapter 480. The following shall be per se
16 violations of section 480-2:

17 (1) The making of any material statement that has the
18 tendency or capacity to mislead or deceive, either
19 orally or in writing, in connection with the rental
20 of, offer to rent, or advertisement to rent a vehicle;

21 (2) The omission of any material statement that has the
22 tendency or capacity to mislead or deceive, in



- 1 connection with the rental of, offer to rent, or
2 advertisement to rent a vehicle;
- 3 (3) The making of any statement to the effect that the
4 purchase of a [~~collision~~] damage waiver is mandatory;
- 5 (4) Any violation of sections 437D-5 through 437D-14, and
6 section 437D-17.5;
- 7 (5) The charging by the lessor to a lessee of:
- 8 (A) More than the cost of the parts and labor
9 necessary to repair a damaged vehicle in
10 accordance with standard practice in the
11 [~~automobile~~] motor vehicle repair industry in the
12 community, if the vehicle is repaired;
- 13 (B) More than the actual cash value of a vehicle if
14 it is declared a total loss; or
- 15 (C) More than the diminution in value of a vehicle if
16 it is not repaired and not declared a total loss;
- 17 (6) The making of any statement by the lessor to the
18 effect that the lessee is or will be confined to
19 remain within boundaries specified by the lessor
20 unless payment or an agreement relating to the payment
21 of damages has been made by the lessee;



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

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

6 SECTION 12. Section 437D-8.6, Hawaii Revised Statutes, is
7 repealed.

8 [~~"§437D-8.6 Collision damage waiver statistics. Lessors~~
9 ~~shall submit data or information to the director regarding their~~
10 ~~sale of collision damage waivers in a given year and amounts~~
11 ~~expended to repair damage to rental vehicles caused while the~~
12 ~~vehicles are subject to the collision damage waiver. Lessors~~
13 ~~shall maintain all records reflecting these statistics. Neither~~
14 ~~the director, nor any other employee of the department of~~
15 ~~commerce and consumer affairs, nor any other person appointed by~~
16 ~~the director as provided by law, shall release or divulge any of~~
17 ~~the information or data required by this section, except as may~~
18 ~~be required or allowed by rules adopted pursuant to section~~
19 ~~437D-18."]~~

20 SECTION 13. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 14. This Act shall take effect on July 1, 2020.



Report Title:

Motor Vehicle Rental Industry

Description:

Replaces "collision damage waiver" with "damage waiver" in the motor vehicle rental industry law. Repeals requirement to place notices of certain vehicle laws in each rental vehicle and repeals power of DCCA to prescribe form of signs to be posted at rental sites. Repeals requirement to submit collision damage waiver statistics to DCCA. Effective 07/01/2020. (HB1696 HD2)





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2009

Thursday, April 2, 2009
10:00 a.m.

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

TO THE HONORABLE ROSALYN H. BAKER, 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 Rosalyn Baker, Chair
Committee on Commerce and
Consumer Protection
Hawaii State Senate

Hearing: April 2, 2009

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

Chair Baker 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 with a new section 11 attached to this testimony. Discussions are ongoing with the Office of Consumer Protection and our members to address various issues and concerns and we respectfully ask that you keep this bill alive by passing it with a defective start date if necessary.

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, seeks to clarify that vehicles not put back into service can be disposed of without being repaired and customers charged for the repair costs since the vehicle is being sold in a damaged condition and thus of lesser value. Proposed new language is attached to our testimony.

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 with the new section 11 attached to testimony. Please keep this bill alive so further discussions can take place as we continue to get more feedback including but not limited to the Office of Consumer Protection and others. Thank you.

**Proposed Amendment to Section 11 of
H.B. 1696 relating to Motor Vehicle Rental Industry
Proposing New Subsection (D) to § 437D-15(5)**

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:

- (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 if it is not repaired and not declared a total loss;
or
- (D) More than the cost 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 the vehicle is not repaired and not declared a total loss, but is determined by the lessor to be no longer in rentable condition; provided, however, that the vehicle shall not be rented or leased by the lessor to any other lessee after such determination has been made by the lessor.

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 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."

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

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MEMORANDUM

TO: Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Via Hand Delivery

FROM: Chris Pablo/Anne Horiuchi

DATE: April 1, 2009

RE: **H.B. 1696, HD2 – Relating to Motor Vehicle Rental Industry**
Hearing: Thursday, April 2, 2009 at 10:00 a.m., Room 229

Dear Chair Baker 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 the attached amendment be made to Section 437D-15, regarding Unfair Trade Practices.

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.”

April 1, 2009

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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 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 insert the attached proposed amendment to Section 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. If a damaged vehicle is not repaired and is not declared a total loss, then under current law, the lessor may not charge the lessee more than the diminution in value. However, 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 order to address this difficulty, Enterprise proposes the addition of a new subsection to Section 437D-15(5), which would allow a lessor to collect a repair estimate from the lessee, but not repair the vehicle and not return the vehicle to the rental fleet in its damaged condition. Enterprise has also proposed language to Section 437D-15(5) to ensure that a lessor would not be able to bill and collect from multiple lessees for the same damage to a vehicle.

Enterprise has been working with the Office of Consumer Protection and other members of the industry to craft an amendment to Section 437D-15(5) that is acceptable to all stakeholders. In order to allow the parties additional time to work on this issue, we respectfully request that Enterprise's proposed amendment be made to H.B. 1696, HD2, so that we may continue our work during Conference.

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.

**Proposed Amendment to Section 11 of
H.B. 1696 relating to Motor Vehicle Rental Industry
Proposing New Subsection (D) to § 437D-15(5)**

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:

- (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 if it is not repaired and not declared a total loss;
or
- (D) More than the cost 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 the vehicle is not repaired and not declared a total loss, but is determined by the lessor to be no longer in rentable condition; provided, however, that the vehicle shall not be rented or leased by the lessor to any other lessee after such determination has been made by the lessor.

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 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."