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TO THE HOUSE COMMITTEE ON TRANSPORTATION

TWENTY-FIFTH STATE LEGISLATURE
Regular Session 2009

Wednesday, February 18, 2009
8:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 1696 -- RELATING TO MOTOR VEHICLE RENTAL
INDUSTRY.**

TO THE HONORABLE JOSEPH M. SOUKI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to testify with comments and in opposition to House Bill No. 1696, 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, 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 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 or unable to be repaired (such as when it is declared a "total loss") 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. I will be happy to answer any questions that the Committee members may have.

Honorable Joseph Souki, Chair
Committee on Transportation
House of Representatives

Hearing: February 18, 2009

Re: HB 1696 Relating to Motor Vehicle Rental Industry

Chair Souki 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 which 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 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.

GOODSILL ANDERSON QUINN & STIFEL

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MEMORANDUM

TO: Representative Joseph Souki
Chair, House Committee on Transportation
Via e-mail: TRNtestimony@capitol.hawaii.gov

FROM: Chris Pablo/Anne Horiuchi

DATE: February 16, 2009

RE: H.B. 1696 relating to Motor Vehicle Rental Industry
Hearing: Wednesday, February 18, 2009 at 8:30 a.m., Room 309

Dear Chair Souki and Members of the Committee on Transportation:

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. 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. Changing 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 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

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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. *Amends per se violations of unfair trade practices:* 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). 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.

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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4. *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.

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.