

CHAPTER 437D
MOTOR VEHICLE RENTAL INDUSTRY

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Cross References

Lease-purchase agreements for personal property, see chapter 481M.

Motor vehicle lease disclosure act, see chapter 481L.

Terminal rental adjustment clause, see §286-52.4.

" **[§437D-1] Short title.** This chapter shall be known and may be cited as the "Motor Vehicle Rental Industry Act". [L 1988, c 251, pt of §2]

" **[§437D-2] Scope.** This chapter shall apply to all persons in the business of leasing rental motor vehicles in this State. [L 1988, c 251, pt of §2]

" **§437D-3 Definitions.** As used in this chapter:

"Advertisement" means any oral, written, graphic, or pictorial statement or representation, including those made through any electronic or print medium. "Advertisement" does not include telephonic communications.

"Damage waiver" means any contract or contractual provision, whether separate from or a part of a rental agreement, whereby the lessor agrees, for a charge, to waive any or all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.

"Director" means the director of commerce and consumer affairs.

"Lessee" means any person obtaining the use of a rental motor vehicle from a lessor for a period of six months or less under the terms of a rental agreement.

"Lessor" means any person in the business of providing rental motor vehicles to the public.

"Plain language" means language written or spoken in a clear and coherent manner using words with common and everyday meanings.

"Rental agreement" means any written agreement setting forth the terms and conditions governing the use of the rental motor vehicle by the lessee.

"Rental cost" means the daily or periodic rate charged for the use of the rental motor vehicle, but does not include optional or refueling charges.

"Rental motor vehicle" or "vehicle" means a motor vehicle as defined in section 286-2, which is rented or leased or offered for rent or lease in this State, whether for personal or commercial use, for a period of six months or less. [L 1988, c 251, pt of §2; am L 2009, c 148, §1]

" **§437D-4 Rental agreements; delivery to director.** No lessor shall offer a rental agreement or damage waiver unless a specimen of the rental agreement or damage waiver is delivered to the director prior to its use. [L 1988, c 251, pt of §2; am L 2009, c 148, §2]

" **§437D-5 Rental agreements; damage waivers.** (a) Each rental agreement that contains a damage waiver shall disclose, at a minimum, in plain language and in at least ten-point boldface type, the following information:

- (1) That the damage waiver is optional;
- (2) That the damage waiver entails an additional charge;
- (3) The actual charge per day for the damage waiver;
- (4) All restrictions, conditions, and provisions in or endorsed on the damage waiver;
- (5) That the lessee may already be sufficiently covered and should examine the lessee's personal automobile insurance policy to determine whether it provides coverage for damage and the amount of the deductible;
- (6) That by entering into the rental agreement, the lessee may be liable for damage to the rental motor vehicle; and
- (7) The acknowledgment described in section 437D-11.

(b) The rental agreement shall not contain an unreasonable restriction, condition, or provision in or endorsed on a damage waiver. The damage waiver shall not exclude damages caused by ordinary negligence on the part of the lessee. [L 1988, c 251, pt of §2; am L 2009, c 148, §3]

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

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

(b) For purposes of this chapter, collision insurance means coverage to pay a specified amount to or on behalf of the lessee for claims by the lessor relating to loss of or damage to the rented vehicle. The definitions of collision insurance and damage waiver stated in this chapter shall apply only to this chapter. No definition of insurance in this chapter or in any other statute shall be deemed to include damage waiver as defined in this chapter. [L 2002, c 235, §2; am L 2009, c 148, §4]

" **§437D-6 Additional mandatory charges prohibited.** The daily and periodic rental cost to the lessee shall include the

amount of each charge which is required as a condition to the rental other than those charges provided for in section 437D-8.4. The lessor shall disclose as part of any quotations of price, including all quotations contained in advertising or by telephone, all payments a lessee must make in order to rent the vehicle, including all charges provided for in section 437D-8.4. [L 1988, c 251, pt of §2; am L 1997, c 140, §2]

" **§437D-7 Rate disclosure requirements; advertising.** (a) Each lessor, and each officer, employee, agency, or other representative of the lessor, who states or permits to be stated the rental cost of a rental motor vehicle in any advertisement, shall state conspicuously, in plain language and in conjunction with the advertised rental cost of the vehicle, the daily rate of the applicable damage waiver, and that the rate constitutes an additional daily charge to the lessee.

(b) When a written advertisement, including all print media, contains the statement of the rental cost of a vehicle, the disclosure required by this section shall be printed in type no less than one-third the size of the type used to print the rental cost, or twelve-point type, whichever is larger. When the video presentation of a television advertisement contains the statement of the rental cost of a vehicle, the depiction of the disclosure required by this section shall be no less than one-third the size of the depiction of the rental cost. When a radio advertisement or the audio presentation of a television advertisement contains the statement of the rental cost of the vehicle, the oral statement of the rental cost shall be immediately accompanied by an oral statement of the disclosure required by this section.

(c) Except as set forth in this section, the statement of the rental cost and the disclosure shall be equally prominent in all respects. [L 1988, c 251, pt of §2; am L 2009, c 148, §5]

" **§437D-8 Rate disclosure requirements; oral or written statements.** Each lessor, and each officer, employee, agent, or other representative of the lessor, who makes any oral statement, excluding telephonic communications, or written statement of the rental cost of a vehicle, shall disclose, in plain language and in conjunction with that statement, the daily rate of the applicable damage waiver and that the rate constitutes an additional daily charge to the lessee. [L 1988, c 251, pt of §2; am L 2009, c 148, §6]

" **§437D-8.4 License and registration fees.** (a) *[Repeal and reenactment on December 31, 2027. L 2005, c 247, §9(3); L 2015,*

c 240, §7.] Notwithstanding any law to the contrary, a lessor may visibly pass on to a lessee:

- (1) The general excise tax attributable to the transaction;
- (2) The vehicle license and registration fee and weight taxes, prorated at 1/365th of the annual vehicle license and registration fee and weight taxes actually paid on the particular vehicle being rented for each full or partial twenty-four-hour rental day that the vehicle is rented; provided the total of all vehicle license and registration fees charged to all lessees shall not exceed the annual vehicle license and registration fee actually paid for the particular vehicle rented;
- (3) The surcharge taxes imposed in chapter 251 attributable to the transaction;
- (4) The county surcharge on state tax under section 46-16.8; provided that the lessor itemizes the tax for the lessee; and
- (5) The rents or fees paid to the department of transportation under concession contracts negotiated pursuant to chapter 102, service permits granted pursuant to title 19, Hawaii Administrative Rules, or rental motor vehicle customer facility charges established pursuant to section 261-7; provided that:
 - (A) The rents or fees are limited to amounts that can be attributed to the proceeds of the particular transaction;
 - (B) The rents or fees shall not exceed the lessor's net payments to the department of transportation made under concession contract or service permit;
 - (C) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts of the rents or fees paid to the department of transportation pursuant to the applicable concession contract or service permit:
 - (i) For all airport locations; and
 - (ii) For each airport location;
 - (D) The lessor submits to the department of transportation and the department of commerce and consumer affairs a statement, verified by a certified public accountant as correct, that reports the amounts charged to lessees:
 - (i) For all airport locations;
 - (ii) For each airport location; and

- (iii) For each lessee;
- (E) The lessor includes in these reports the methodology used to determine the amount of fees charged to each lessee; and
- (F) The lessor submits the above information to the department of transportation and the department of commerce and consumer affairs within three months of the end of the preceding annual accounting period or contract year as determined by the applicable concession agreement or service permit.

The respective departments, in their sole discretion, may extend the time to submit the statement required in this subsection. If the director determines that an examination of the lessor's information is inappropriate under this subsection and the lessor fails to correct the matter within ninety days, the director may conduct an examination and charge a lessor an examination fee based upon the cost per hour per examiner for evaluating, investigating, and verifying compliance with this subsection, as well as additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination, which shall relate solely to the requirements of this subsection, and which shall be billed by the departments as soon as feasible after the close of the examination. The cost per hour shall be \$40 or as may be established by rules adopted by the director. The lessor shall pay the amounts billed within thirty days following the billing. All moneys collected by the director shall be credited to the compliance resolution fund.

(b) A representation by the lessor to the lessee which states that the visible pass on of the charges in this section is mandatory or that it is a government assessment upon the consumer shall be a per se violation of section 480-2. [L 1997, c 140, §1; am L 1999, c 223, §3; am L 2005, c 247, §6; am L 2008, c 226, §8; am L 2014, c 110, §6]

Note

The 2008 amendment to this section is exempt from the December 31, 2022 repeal and reenactment condition by L 2005, c 247. L 2009, c 11, §21.

L 2015, c 240, §7 exempted the amendments by: (1) L 2008, c 226, §§8, 16, as amended by L 2009, c 11, §21; and (2) L 2014, c

110, §§6, 8, from the December 31, 2027 repeal and reenactment condition of L 2005, c 247, §9.

" **§437D-8.5 Commissions.** (a) No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling damage waivers, except as provided in subsection (b). Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2.

(b) As used in this section:

"Commission for selling damage waivers" includes any compensation, bonus, award, or remuneration that corresponds directly to the amount of sales of damage waivers. "Commission for selling damage waivers" does not include any compensation, bonus, award, or remuneration to an employee that corresponds to the overall gross receipts of a sales location, where sales of damage waivers are one of many factors contributing to overall gross receipts.

"Sales location" means any location at which the employee worked or had oversight responsibility during the applicable compensation period. [L 1990, c 209, pt of §1; am L 1991, c 227, §1; am L 2003, c 155, §2; am L 2009, c 148, §7]

" **§437D-8.6 Damage waiver statistics.** Lessors shall maintain records of the sale of damage waivers in a given year and amounts expended to repair damage to rental vehicles caused while the vehicles are subject to the damage waiver. Lessors shall maintain all records reflecting these statistics for a period of three years and shall make the records available to the department of commerce and consumer affairs upon request. Neither the director, nor any other employee of the department of commerce and consumer affairs, nor any other person appointed by the director as provided by law, shall release or divulge any of the information or data required by this section, except as may be required or allowed by rules adopted pursuant to section 437D-18. [L 1990, c 209, pt of §1; am L 1991, c 227, §2; am L 2009, c 148, §8]

" **§437D-9 Posting requirements.** Except as provided in section 437D-17, each lessor who offers the damage waiver shall conspicuously display at the rental area of each rental location a notice, in plain language and printing, that includes all of the information in section 437D-5(a)(1), (2), (5), and (6), and a statement that restrictions or conditions apply. [L 1988, c 251, pt of §2; am L 2009, c 148, §9]

" **§437D-10 Pamphleting requirements.** Before the execution of a rental agreement, each lessor who offers a damage waiver option to a lessee shall provide to the lessee a pamphlet, written in plain language, that includes all of the information described in section 437D-5(a)(1) through (6). The requirements of this section shall be deemed to be satisfied if the lessor places the pamphlets prominently and conspicuously on the rental desk, countertop, or in a wall holder, where the pamphlets may be easily seen and reached by lessees and potential lessees. [L 1988, c 251, pt of §2; am L 2009, c 148, §10]

" **[§437D-11] Acknowledgment by lessee.** No lessor shall rent a motor vehicle to a lessee until the lessee has acknowledged that the lessee understands the information described in section 437D-5(a)(1), (2), (3), (5), and (6), and that restrictions or conditions apply. The acknowledgment shall be written in plain language on the rental agreement and signed by the lessee. [L 1988, c 251, pt of §2]

" **[§437D-12] Deposit or advance charge prohibited; payment for damages to rental motor vehicle.** No lessor shall require a deposit or an advance charge against the credit card of a lessee, in any form, for damages to a vehicle which is in the lessee's possession, custody, or control. No lessor shall require any payment for damages to the rental vehicle, upon the lessee's return of the vehicle in a damaged condition, until after the cost of the damage to the vehicle and liability therefor is agreed to between the lessor and lessee or is determined pursuant to law. [L 1988, c 251, pt of §2]

" **§437D-13 Notice and posting required concerning motor vehicle laws.** Every lessor shall display at all times a sign or signs in a conspicuous place in the main rental area of all rental locations, written in plain language and in no less than ten-point type, that informs the lessee of:

- (1) Hawaii's seat belt and child passenger restraint laws and the prohibition against operating a vehicle under the influence of an intoxicant and leaving a child unattended in a motor vehicle; and
- (2) The existence and location of additional information concerning the laws relating to seat belts, child passenger restraints, operating a vehicle under the influence of an intoxicant, and leaving a child unattended in a motor vehicle. [L 1988, c 251, pt of §2; am L 1990, c 154, §1; am L 2001, c 157, §33; am L 2008, c 170, §4; am L 2009, c 148, §11]

" **§437D-14 Fuel charges.** (a) Except as provided in this section, refueling charges are prohibited.

(b) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the vehicle is less than the amount originally provided by the lessor, the lessor may charge the lessee to refuel the vehicle based upon the number of gallons or liters used by the lessee. The amount of fuel that may be charged to the lessee shall be calculated in one of two ways:

- (1) If the vehicle was delivered to the lessee with a full tank, the number of gallons or liters required to refill the tank; or
- (2) If the vehicle was rented with less than a full tank, the number of gallons or liters less than the amount originally provided by the lessor according to the vehicle's gas gauge as read both before and after the lessee's use thereof, employing an appropriate chart showing the number of gallons or liters corresponding to the gas gauge readings. Each chart shall be specifically keyed to the model of car.

(c) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the rental vehicle is greater than the amount originally provided by the lessor upon delivery of the vehicle to the lessee, the lessor shall credit the lessee an amount based on the gallons or liters added by the lessee, calculated by the method set forth in subsection (b)(2).

(d) In the event that the lessor has no reasonably accessible refueling facilities, the lessor is not required to give the credit to the lessee as described in subsection (c); provided that if no credit is given, the lessor shall disclose that fact to the lessee at the time the rental agreement is signed.

(e) The lessor shall provide the lessee with written notice of the amount to be credited, except as provided in subsection (d), or charged on a per gallon or per liter basis.

(f) The price per gallon or per liter that is charged for the amount of fuel required to refuel the vehicle, as provided in subsection (b), shall not exceed the average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers and a reasonable surcharge not to exceed one-half of that retail price.

(g) The per gallon or per liter amount that is credited pursuant to subsection (c), except as provided in subsection (d), may not be lower than the locally prevailing retail market price for similar fuel sold by commercial gasoline dealers.

(h) Nothing in this section shall prohibit the lessor from offering the lessee the option of purchasing, at the time of

taking delivery of the vehicle, a full tank of fuel from the lessor at a price per gallon or per liter that shall not exceed the average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers; provided that the option includes the provisions that:

- (1) If the vehicle is driven one hundred miles or less, and the lessee has not returned the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle, and be charged in the method set forth in subsection (b); or
- (2) If the lessee returns the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle. [L 1988, c 251, pt of §2; am L 1996, c 171, §2; am L 2004, c 35, §2]

" **§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 of, offer to rent, or advertisement to rent a vehicle;
- (3) The making of any statement to the effect that the purchase of a 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 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;

- (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 is not declared a total loss but is determined by the lessor to be no longer in rentable condition; provided that the vehicle shall not be rented or leased by the lessor to any other lessee after that determination has been made by the lessor.

To the extent the lessor obtains recovery from a third party, the lessor shall not recover any amount specified in this paragraph from the lessee;

- (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. [L 1988, c 251, pt of §2; am L 1994, c 44, §1; am L 2000, c 145, §1; am L 2009, c 148, §12]

" **§437D-16 Application of insurance laws.** None of the provisions of this chapter shall apply to the issuance of collision insurance underwritten by an insurer authorized to transact property and casualty business in this State; provided that the insurer is not a lessor as defined in this chapter or a limited line motor vehicle rental company producer as defined in [section] 431:9A-141. [L 1988, c 251, pt of §2; am L 2002, c 235, §3]

" **[§437D-17] Exceptions to posting requirements.** The posting requirements of sections 437D-9 and 437D-13 shall not apply to a lessor who is a party to a commercial lease which prohibits all posting and which is in force on January 1, 1989. [L 1988, c 251, pt of §2]

" **§437D-17.5 Rental agreements; unpaid traffic infractions.** Pursuant to section 291D-3.5, or other sections of the law and except for summons, citations, or violations relating to the care and maintenance of a rental motor vehicle, the lessor, as

the registered owner of the rental motor vehicle, may be responsible for fines, costs, penalties, fees, or other charges related to traffic infractions of a motor vehicle while being leased or rented to a lessee. The lessor may adopt a policy of charging the lessee the actual amount paid for the traffic infractions to the court or other state government agency or county government plus an administrative fee not to exceed out-of-pocket expenses documented by receipts plus up to four hours of work multiplied by Hawaii's prevailing minimum wage relating to research of files and communications with the court, county government or governmental agencies and lessee; provided that every rental agreement of a lessor adopting the policy must disclose, at a minimum, in plain language and in at least ten-point bold typeface print:

- (1) The maximum estimated amount of the administrative fee to be charged; and
- (2) Language encouraging the lessee to pay directly to the court, county government or other appropriate government agency the applicable fines, costs, monetary assessments, penalties, fees, surcharges, or other charges. [L 1993, c 247, §1; am L 2007, c 85, §11]

" **[§437D-18] Power and duties of the director.** The director shall have the power and duty to adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter and to do all things necessary to carry out the functions, powers, and duties set forth in this chapter. [L 1988, c 251, pt of §2]

Note

Section on rulemaking enacted by L 1990, c 209 omitted as similar to this section.

" **§437D-19 Civil penalties.** Any person who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair and deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2. [L 1988, c 251, pt of §2; am L 1996, c 59, §1]