

## ACT 155

H.B. NO. 139

A Bill for an Act Relating to the Motor Vehicle Rental Industry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1990, the legislature barred the payment of commissions on the sale of rental vehicle collision damage waivers because of consumer confusion about the nature of the product and the potential for abuse relating to its sale. At the time there were over thirty-five rental companies operating in Hawaii, and the legislature had, in 1988, recently enacted a collision damage disclosure law. That law required sales of collision damage waivers to be accompanied by a boldface plain language description of the scope, optional nature, and cost of the collision damage waiver, as well as of the possibility that the consumer might already be covered under the consumer's personal automobile policy.

At present there are fewer than fifteen rental companies in Hawaii. In addition, and in part due to the consumer protections provided under the disclosure law, there exists much less of a basis to regulate the rental car industry through a blanket prohibition against commissions in any way related to the sale of collision damage waivers.

The legislature finds that commissions based on employee sales are a legitimate and valuable component of business, and that there are many segments of the tourism industry that pay commissions and evaluate or reward their employees based on their sales of products and services.

Given this, the legislature believes that the motor vehicle rental industry should no longer be singled out by a law that bars any and all commissions that are in any way associated with the sale of collision damage waivers. The legislature finds that the legitimate interests of business will be accommodated by a more limited law that prohibits only commissions based solely on the sale of collision damage waivers, and that the law will, in combination with the disclosure law, provide consumers with ample protection against abuse in the sale of collision damage waivers.

The legislature further finds that in addition to changes to the law in 1988 requiring certain disclosures, a major deterrent to problems in the sales of collision damage waivers was the fact that violation, deception, or misleading practices relating to such sales was made an unfair and deceptive trade practice where a violator in accordance with section 480-2, Hawaii Revised Statutes, would be subject to treble damages, civil penalties, and payment of attorney's fees and costs. It is not the intent of the legislature to change or alter these penalties. Thus, any deception or misleading practice in such sales or other rental activities will still be subject to these same penalties.

The purpose of this Act is to allow for the payment and receipt of commissions that may be related to, but do not directly correspond to the sale of collision damage waivers for rental vehicles.

SECTION 2. Section 437D-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“§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 collision 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~~”];

~~“Commission for selling collision damage waivers” includes any compensation, bonus, award, or remuneration[, whether direct, indirect, or otherwise, which is calculated by means of a formula, process, evaluation, or other mechanisms which considers sales of collision damage waivers as a factor in any manner. “Commission for selling collision damage waivers” also includes any performance evaluation which could be used in determining promotions, raises, or other personnel decisions, or any other device which serves to encourage the sale] that corresponds directly to the amount of sales of collision damage waivers. “Commission for selling collision 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 collision 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.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved June 5, 2003.)