

**ACT 148**

H.B. NO. 1696

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

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

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

“~~“Collision damage waiver”~~ “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.”

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

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

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

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

- (1) That the ~~[collision]~~ damage waiver is optional;
- (2) That the ~~[collision]~~ damage waiver entails an additional charge;
- (3) The actual charge per day for the ~~[collision]~~ damage waiver;
- (4) All restrictions, conditions, and provisions in or endorsed on the ~~[collision]~~ 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 ~~[collision]~~ 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 ~~[resulting from a collision]~~; 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 ~~[collision]~~ damage waiver. The ~~[collision]~~ damage waiver shall not exclude damages caused by ordinary negligence on the part of the lessee.”

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

**“[§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]~~ ~~[collision]~~ 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 ~~[collision]~~ 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 ~~[collision]~~ damage waiver as defined in this chapter.”

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

**“[§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 ~~[col-~~

lision] 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."

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

**"[§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 [collision] damage waiver and that the rate constitutes an additional daily charge to the lessee."

SECTION 7. 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 for selling [collision] damage waivers" includes any compensation, bonus, award, or remuneration 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 8. Section 437D-8.6, Hawaii Revised Statutes, is amended to read as follows:

**"§437D-8.6 [Collision damage] Damage waiver statistics.** Lessors shall ~~submit data or information to the director regarding their~~ maintain records of the sale of [collision] damage waivers in a given year and amounts expended to repair damage to rental vehicles caused while the vehicles are subject to the [collision] damage waiver. Lessors shall maintain all records reflecting these sta-

tistics[.] 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.”

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

**“[§437D-9] Posting requirements.** Except as provided in section 437D-17, each lessor who offers the ~~[collision]~~ damage waiver shall conspicuously display at the rental area of each rental location a notice, in plain language and printing, ~~[which]~~ that includes all of the information in section 437D-5(a)(1), (2), (5), and (6), and a statement that restrictions or conditions apply.”

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

**“[§437D-10] Pamphleting requirements.** Before the execution of a rental agreement, each lessor who offers ~~[the collision]~~ a damage waiver option to a lessee shall provide to the lessee a pamphlet, written in plain language, ~~[which]~~ 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 ~~[or]~~, countertop, or in a wall holder, where the pamphlets may be easily seen and reached by lessees and potential lessees.”

SECTION 11. Section 437D-13, Hawaii Revised Statutes, is amended to read as follows:

**“§437D-13 Notice and posting required concerning motor vehicle laws.** ~~[(a)]~~ Every lessor shall display at all times a sign or signs in a conspicuous place in ~~[each rental motor vehicle offered to the public, a decal,]~~ 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.

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

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

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

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

SECTION 12. 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 of, 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 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.”

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

**SECTION 14.** This Act shall take effect on July 1, 2009.

(Approved June 24, 2009.)