

ACT 251

H.B. NO. 2036

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. The purpose of this Act is to amend the Hawaii Revised Statutes by adding a new chapter to provide for regulation of the current rental practices of motor vehicle rental companies in the rental or lease of rental motor vehicles to the public by providing safeguards to the public regarding the sale and advertisement of collision damage waivers; deposits, charges or payments for damages to rental motor vehicles; notice of seat belt, child passenger restraint and drunk driving laws; and unfair or deceptive trade practices in the motor vehicle rental industry. Existing laws have proven to be ineffective in reducing the potential and existing harm to consumers resulting from current industry practices.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER MOTOR VEHICLE RENTAL INDUSTRY

§ **-1 Short title.** This chapter shall be known and may be cited as the “Motor Vehicle Rental Industry Act.”

§ **-2 Scope.** This chapter shall apply to all persons in the business of leasing rental motor vehicles in this State.

§ **-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.

“Collision 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.

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

“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.

“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.

§ **-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.

§ **-5 Rental agreements; collision damage waivers.** (a) Each rental agreement which contains a collision damage waiver shall disclose, at a minimum, in plain language and in at least 10-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 -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.

§ -6 **Additional mandatory charges prohibited.** The daily and periodic rental cost to the lessee shall include the amount of each charge, other than the general excise tax, which is required as a condition to the rental.

§ -7 **Rate disclosure requirements: advertising.** 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 collision damage waiver, and that the rate constitutes an additional daily charge to the lessee. 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 12-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. Except as set forth in this section, the statement of the rental cost and the disclosure shall be equally prominent in all respects.

§ -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.

§ -9 **Posting requirements.** Except as provided in section -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 includes all of the information in sections -5(a)(1), (2), (5), and (6), and a statement that restrictions or conditions apply.

§ -10 **Pamphleting requirements.** Before the execution of a rental agreement, each lessor who offers the collision damage waiver option to a lessee shall provide to the lessee a pamphlet, written in plain language, which includes all of the information described in section -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, where the pamphlets may be easily seen and reached by lessees and potential lessees.

§ -11 **Acknowledgement 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 sections -5(a)(1), (2), (3), (5), and (6), and that restrictions or conditions apply. The acknowledgement shall be written in plain language on the rental agreement and signed by the lessee.

§ -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.

§ -13 Notice and posting required concerning seat belt, child passenger restraint, and drunk driving laws. (a) Every lessor shall display in a conspicuous place in each rental motor vehicle offered to the public, a permanently affixed notice, written in plain language and in no less than ten point type, which informs the lessee of the requirement and penalties of Hawaii's seat belt and child passenger restraint laws, as provided in sections 291-11.5 and 291-11.6, and the prohibition against and the penalties for driving while under the influence of intoxicating liquor, as provided in section 291-4.

(b) Except as provided in section -16, 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.

(c) The notices and signs required by this section shall include symbolic representations which 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 driving while under the influence of intoxicating liquor.

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

§ -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 which 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 which is charged for the amount of fuel required to refuel the vehicle, as provided in subsection (b), shall not exceed the sum 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 which 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.

§ **-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 which 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 which 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 -5 through -14 of this chapter;
- (5) The charging by the lessor to a lessee of more than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with the standard practices in the automobile repair industry in the community; and
- (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.

§ **-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.

§ **-17 Exceptions to posting requirements.** The posting requirements of sections -9 and -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.

§ **-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.

§ **-19 Civil penalties.** Any person who violates or attempts to violate any provision of this chapter shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil suit brought by the office of consumer protection or the department of commerce and consumer affairs. Each day or instance of violation shall be deemed a separate violation and shall subject the person to a separate civil penalty."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect on July 1, 1988; provided that sections -14 and -19 shall not be enforced until October 1, 1988; provided further that sections -4 to -13 and section -15 shall not be enforced until January 1, 1989.

(Approved June 9, 1988.)