

ACT 137

H.B. NO. 735

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

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

SECTION 1. The legislature finds that a healthy and robust rental car industry is vital to Hawaii's tourism economy and supports tourism as an integral part of Hawaii's transportation infrastructure. Although current law permits rental car companies to recover from rental car customers certain mandatory government fees paid by the companies to make rental vehicles road-ready, the prorated formula is calculated over a period of three hundred sixty-five days, which results in a significant portion of the fees going unrecovered. Rental car companies incur a shortfall in collections under current law, which hinders their ability to provide a selection of rental cars to customers, many of which are tourists who want to explore areas of the State that require a rental car.

The legislature also finds that many other states have laws permitting rental car companies to pass on to consumers an amount closer to the full recovery of mandatory government fees.

The purpose of this Act is to amend the prorated amount of vehicle license and registration fee and weight taxes that rental car companies are allowed to pass on to lessees, and to expand the categories of government fees that the companies are permitted to collect.

SECTION 2. Section 437D-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Vehicle license recovery fees” includes motor vehicle weight taxes under section 249-2; fees connected with the registration of specially constructed, reconstructed, or rebuilt vehicles, special interest vehicles, or imported vehicles as referenced in section 286-41(c); license plate and emblem fees under section 249-7(b); inspection fees as referenced in section 286-26; highway beautification fees as referenced in section 286-51(b)(1); and any use tax under chapter 238.”

SECTION 3. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) 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,]~~ recovery fees, prorated at ~~[1/365th]~~ 1/292nd of the annual vehicle license ~~[and registration fee and weight taxes]~~ recovery fees 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]~~ recovery fees charged to all lessees shall not exceed the annual vehicle license ~~[and registration fee]~~ recovery fees 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

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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.”

SECTION 4. No later than twenty days prior to the convening of the regular session of 2019, the motor vehicle rental industry shall report to the legislature on the effect of this Act on the average vehicle license recovery fee charged to each customer on each motor vehicle rental and the average time in service of each motor vehicle rental.

SECTION 5. Beginning March 1, 2019, all rental car companies shall submit an annual audit, to be conducted by a third party certified public accountant, to the office of consumer protection of the department of commerce and consumer affairs by July 1 of every year.

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2017; provided that the amendments made to section 437D-8.4(a), Hawaii Revised Statutes, by section 3 of this Act shall not be repealed when that section is reenacted on December 31, 2027, pursuant to section 9 of Act 247, Session Laws of Hawaii 2005, as amended by section 7 of Act 240, Session Laws of Hawaii 2015.

(Approved July 10, 2017.)