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PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON WAYS AND MEANS

THE TWENTY-NINTH LEGISLATURE  
Regular Session of 2017  
Monday, April 3, 2017  
1:35 PM

TESTIMONY ON HOUSE BILL NO. 735, H.D. 2, S.D. 1 RELATING TO MOTOR  
VEHICLE RENTAL INDUSTRY.

TO THE HONORABLE JILL N. TOKUDA, CHAIR,  
TO THE HONORABLE DONOVAN M. DELA CRUZ, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“DCCA”), Office of  
Consumer Protection (“OCP”) opposes House Bill No. 735, H.D. 2, S.D. 1, Relating to  
Motor Vehicle Rental Industry. My name is Stephen Levins and I am the Executive  
Director of the OCP.

House Bill No. 735, H.D. 2, S.D. 1 seeks to amend Hawaii’s Motor Vehicle Rental  
law, Chapter 437D of the Hawaii Revised Statutes, in two significant ways. It adds  
license plate fees and use taxes to the litany of fees that car rental companies are  
authorized to visibly pass on to consumers and it creates a new unfair method for

calculating the visible pass on. Senate Draft 1 would also require the motor vehicle rental industry to report to the Legislature prior to the 2019 Regular Session concerning the effect of this measure on the average vehicle license recovery fee charged each customer on each motor vehicle, the profit margin of each motor vehicle rental, and the actual time in service of each motor vehicle.

The addition of “license plate fees” and “use taxes” to the list of taxes and fees would appear to be inconsistent with existing law governing visible pass on in car rental transactions. Under current law the car rental industry is only allowed to visibly pass on recurring costs, such as, general excise taxes, license and registration fees, surcharge taxes, and rents and fees payable to the State Department of Transportation. They are not allowed to visibly pass on fixed one-time costs of doing business, such as, use taxes attributable to the importation of motor vehicles to the state, and license plate fees. In this regard, authorizing the fees would be a significant departure from the existing statutory policy favoring the visible pass on of only recurring government fees and taxes.

Currently, the Motor Vehicle Rental law authorizes a visible “pass on” to consumers only if it is prorated at  $1/365^{\text{th}}$  of the annual fees and taxes actually paid on the particular vehicle being rented. What this means is that a consumer is charged for the amount of fees and taxes that is directly attributable to their use of the vehicle. It is a logical and fair method of “passing on” these costs.

The Department is opposed to House Bill No. 735, H.D. 2, S.D. 1 because it seeks to change existing law in an unfair fashion allowing car rental companies to charge consumers an excessive amount for fees and taxes.

This amendment unnecessarily complicates the calculation of the pass on. Under the current system, rental car companies are able to recoup from their customers the actual fees and taxes attributable to the rental of the vehicle on a specific day. The consumer pays the car rental company the exact amount that they should, neither more nor less. Adopting the proposed amendment to the 1/365<sup>th</sup> proration currently allowed in the statute would result in consumers paying for more than their fair share of the authorized pass on.

Thank you for providing me with the opportunity to testify in opposition of House Bill No. 735, H.D. 2, S.D. 1. I will be happy to answer any questions that the Committee may have.

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DATE: April 2, 2017

TO: Senator Jill Tokuda  
Chair, Committee on Ways and Means  
*Submitted Via Capitol Website*

RE: **H.B. 735, H.D.2, S.D.1 – Relating to Motor Vehicle Rental Industry**  
**Hearing Date: Monday, April 3, 2017 at 1:35 p.m.**  
**Conference Room: 211**

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Dear Chair Tokuda and Members of the Committee on Ways and Means:

We submit this testimony on behalf of Enterprise Holdings in Hawaii, which operates Enterprise Rent-A-Car, Alamo Rent-A-Car, National Car Rental, Enterprise CarShare and Enterprise Rideshare (Van Pool).

Enterprise **strongly supports** H.B. 735, H.D.2, S.D.1 which modernizes the vehicle license fee law to be in line with 38 other states that allow rental car companies to pass on to customers the government fees that are assessed on each vehicle.

This bill seeks to address a shortcoming in the law that regulates the rental car industry. Chapter 437D, which imposes regulatory requirements over rental car companies, was enacted to ensure that each rental transaction to customers was done in a fair and transparent manner. As part of this transparency, the law requires that rental car companies must visibly list on its rental car contracts the fees and taxes that they incur. Although this law was aimed at making sure those fees were disclosed to the customer, it fails to include all of the fees the companies pay to make vehicles road ready.

Specifically, the existing law includes some fees that the companies pay to make the vehicle ready to rent (registration and weight tax), but not others (license plate fees, emblem fees, inspection fees, GET, and beautification fees). In addition, due to a

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formula in the law for calculating the fees, currently, car rental companies may only recover from their customers  $1/365^{\text{th}}$  per day of the fees paid.

The current law virtually ensures that car rental companies in Hawaii under-collect government taxes and fees. Rental cars are only rented on average 80% of the calendar year. Vehicles are routinely grounded for routine maintenance and cleaning, repair, or recall. When cars are grounded, vehicles cannot be rented and fees go uncollected. As the deficit between what is paid and collected continues to grow, the rental car industry faces increased pressure on business operations.

This bill would allow car rental companies to recover all of the government assessed fees that are paid on these vehicles. This modest increase in price amounts to less than 50 cents per vehicle per day and is assessed on rental car customers, who are predominantly tourists. This would allow car rental companies to reinvest the recovered fees back into their businesses to further enhance the visitor experience by ensuring a wide variety and selection of vehicles are available for rent to match customer needs.

Enterprise Holdings provides over 1000 jobs locally throughout the state, and prides itself on the significant contributions it has made to Hawaii's community. A healthy and robust rental car industry is vital to Hawaii's tourism economy. This measure will ensure that Enterprise's operations in Hawaii are in-line with 38 other states where recovery is allowed, and can continue to provide quality services that support the tourism industry and local rental market.

**Enterprise supports the S.D.1 version of the bill, but has some concerns regarding the current language and requests amendments as outlined below:**

- Insert the definition of vehicle license recovery fees in the Hawaii Revised Statutes, as well as for the purpose of a report to the legislature.
- Amend the definition of vehicle license recovery fees to add in all of the government paid fees -- including emblem, inspection and highway beautification fees. The intent of the bill has always been to include all of these fees, but the current language is missing some of the correct HRS references.
- Insert a fraction to reflect the average time vehicles are actually rented, around 80% annually, or 1/292 of the fees annually paid on each vehicle.
- Amend the parameters of the report to the legislature to reflect what is most relevant to the industry's additional recovery of the vehicle license recovery fee – the average fee charged to each consumer, and the average time in

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service of each vehicle. This would eliminate reference to the “profit margin on each rental,” which causes concern for the industry and is not relevant to the collection of vehicle license fees.

We have attached these proposed amendments in a proposed S.D.2 for the Committee’s reference. Thank you for the opportunity to submit testimony in strong support of this measure.

**H.B. 735, H.D.2, S.D.1 – Proposed S.D.2:**

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. **In addition, the categories of government fees that the companies are permitted to collect do not reflect the total fees paid by rental car companies.** Rental car companies **therefore** 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 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 ~~2~~**3**. Section 437D-8.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§437D-8.4 License and registration fees.** (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 **recovery fees and registration fee and weight taxes**, prorated at [~~1/365th~~] **1/292** of the annual vehicle license **recovery fees 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 **recovery fees and registration fees** charged to all lessees shall not exceed the annual vehicle license **recovery fees 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."

SECTION 3. 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, ~~the profit margin of each motor vehicle rental,~~ and the **average actual** time in service of each motor vehicle rental.

For purposes of this section, "vehicle license recovery fee" includes motor vehicle weight taxes under section 249-2, Hawaii Revised Statutes; fees connected with registration of specially constructed, reconstructed, or rebuilt vehicles, **special interest vehicles, or imported vehicles** as referenced under section 286-41(c), ~~Hawaii Revised Statutes; fees connected with the registration of special interest vehicles as defined in section 286-2, Hawaii Revised Statutes; fees connected with the registration of imported vehicles as referenced in section 286-41(c),~~ Hawaii Revised Statutes; license plate **and emblem** fees under section 249-7(b), Hawaii Revised Statutes; **inspection fees as referenced in section 286-26, Hawaii Revised Statutes; highway beautification fees as referenced in section 286-51(b)(1), Hawaii Revised Statutes;** and any use tax under chapter 238, Hawaii Revised Statutes.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on **July March 1, 2050 2017**; provided that the amendments made to section 437D-8.4(a), Hawaii Revised Statutes, by section 2 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.

## Support for H.B. 735, HD2, SD1 Vehicle License Fee Recovery

**H.B. 735, HD2, SD1** will amend Hawaii's vehicle license fee recovery law to be more consistent with 38 other states in allowing rental car companies to fully pass on the government fees they pay. The proposed law will allow rental car companies to recover all of the government fees paid, rather than the fraction allowed under current law.

The rental car industry is critical to Hawaii's tourism industry and the state economy as a whole. By offering an ample and diverse fleet of vehicles in top condition and good repair, car rental companies contribute to the overall positive visitor experience for tourists visiting the island.

To meet a variety of rental needs, rental car companies keep a large selection to ensure a vehicle is available for customer requirements, including: number of passengers; luggage capacity, technology; color, convertibles, 4-wheel drive, SUV, etc.

Generally, businesses are able to pass on costs of doing business. But under current law, rental car companies are unable to recover costs of bringing vehicles into the State. For rental car companies, the deficit between the government fees paid and what they collect continues to grow, putting undue pressure on the rental car industry's overall business operations.

The current law only allows a 1/365<sup>th</sup> per day recovery for certain government fees but not others. Rental car companies essentially lose money under the current law because vehicles are only "on rent" and recovering fees on average for 80% each calendar year. Rental car companies also take rental cars out of service regularly for cleaning, preventative maintenance, and to handle recalls.

The American Car Rental Association respectfully asks for your support for this proposed legislation. We believe that modernizing Hawaii's law will help keep the rental car companies in the best position to continue providing quality services and support the tourism market as a whole.

Thank you again for permitting us to share our industry's perspective. Please feel free to contact me if you should have any questions or would like to discuss this matter further.

Sincerely,



Sharon Faulkner  
Executive Director



Senator Jill Tokuda, Chair  
Senator Donovan Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

Monday, April 3, 2017; 1:35 PM  
Hawaii State Capitol; Conference Room 211

**RE: HB 735 HD2 SD1 – Relating to Motor Vehicle Rental Industry – IN SUPPORT; REQUEST AMENDMENTS**

Chair Tokuda, Vice Chair Dela Cruz and Members of the Committee:

My name is Michael Luedtke, Hawaii Regional Manager for Avis Budget Group. Thank you for giving us this opportunity to offer testimony in support of HB 735 HD2 SD1, which amends the prorated amount of vehicle license and registration fee and weight taxes that rental car companies may pass on to lessees.

This bill will update Hawaii's rental motor vehicle law and puts Hawaii in line with 38 other states that allow for the full pass through and recovery of government assessed vehicle fees.

Vehicles are not rented every day of the year due to down time for maintenance. The average vehicle is rented 20 – 25 days per month. Therefore, the current 1/365 methodology results in a shortfall and adds up to a significant amount. HB 735 HD2 SD1, if passed, will allow rental car companies to recover all of the government assessed fees that are paid on our vehicles. The current law does not permit the recovery of highway beautification fees, license plate and emblem fees, safety inspection fees and use tax paid when vehicles are registered.

Visitors represent approximately 90% of our market. The price increase would be minimal (less than \$.50 per vehicle per day) and would allow us to reinvest to enrich the visitor experience.

We would like to ask the Committee to consider the following amendments:

- Amend the definition of vehicle license recovery fees to be included in the HRS as well as for the study, and to include all of the government paid fees including emblem, inspection and highway beautification fee.
- Insert a fraction to more accurately reflect the average time vehicles are rented, around 80% annually, or 1/292 of the fees of an annual fees paid on each vehicle.
- Amend the parameters of the report to the legislature to reflect what is most relevant to the industry's additional recovery of the vehicle license recovery fee - the average fee charged to each consumer, and the average time in service of each vehicle.

Thank you for the opportunity to submit testimony.



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the Senate Committee on Ways and Means  
Monday, April 3, 2017 at 1:35 P.M.  
Conference Room 211, State Capitol**

**RE: HOUSE BILL 735 HD2 SD1 RELATING TO  
MOTOR VEHICLE RENTAL INDUSTRY**

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 735 HD2 SD1, which allows lessors of rental motor vehicles to pass on to lessees a government assessed fee; defines government assessed vehicle fee and vehicle license recovery fee; requires a report by the Department of Business, Economic Development, and Tourism; sunsets on June 30, 2018.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The rental car industry is an essential part of Hawaii's tourism industry. Keeping Hawaii's rental car companies healthy is important so that they can continue to be a key strategic partner in the tourism industry. As part of their overall health, car rental companies must maintain a quality fleet of vehicles in excellent condition and in good repair, as this creates an overall positive first impression for tourists renting cars on arrival and ensure a great customer experience.

- Rental car companies now maintain an inventory of many more vehicles than 10-20 years ago. Today's tourists seek new adventures, often venturing outside of traditional tourist areas to "undiscovered" locations which require a rental car to access. Tourists seek flexibility and independence while on vacation, and rent cars in order to customize their visitor experience.
- To meet these needs, rental car companies provide a large selection of vehicles to customers to ensure a vehicle is available for rent that matches their needs (passenger and luggage capacity, Bluetooth technology, color, convertible, 4-wheel drive, SUV, etc.).

This bill seeks to modernize Hawaii's vehicle license fee recovery law so that it is in line with 38 other states that allow rental car companies to fully pass on the government fees they pay to rental car customers. The change being proposed would allow rental car companies to recover all of the government fees they pay for their cars, rather than the fraction of the fees that they are currently collecting under the existing law. While this would result in a very modest increase (less than 50 cents per day per vehicle) in the overall fee paid by customers, it would also mean



that the companies will be able to reinvest the recovered fees back into the business to further enhance the customer's experience while in Hawaii.

Generally, businesses are able to pass on the basic costs of conducting business, but in this case, the current law essentially prevents rental car companies from recovering their costs of bringing vehicles into the State. For rental car companies, the deficit between the government fees they pay and what they collect continues to grow, putting continued pressure on the rental car industry's overall business operations.

- The current law only allows a 1/365<sup>th</sup> per day recovery for certain government fees but not others.
- Rental car companies essentially lose money under the current law because vehicles are only "on rent" and recovering fees on average for 80% each calendar year. Rental car companies also take rental cars out of service regularly for cleaning, preventative maintenance, and to handle recalls.

As a partner to the rental car industry, the Chamber respectfully asks for your support for this proposed legislation. We believe that modernizing Hawaii's law will help keep the rental car companies in the best position to continue providing quality services and support the tourism market as a whole.

Thank you for the opportunity to testify.