Approved March 22, 1989
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Dale Sprague
Chairperson
at 3:30 xx a.m./p.m. on March 21, 89, 19__ in room 531-n of the Capitol.

All members were present except: Representative Delbert Gross, excused

Committee staff present: Chris Courtwright, Research Department
Bill Edds, Revisor of Statutes
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Others present: see attached list

The Chairman called the meeting to order at 3:30 p.m.

Representative Campbell made a motion to approve the Minutes of March 14 and March 15, 1989. Representative Bryant seconded. The motion carried.

The Committee began hearings on SB 107.

SB 107 -- An Act relating to insurance; providing that refunds of unearned premiums be made upon declination or termination of coverage or other adverse underwriting decisions; amending K.S.A. 40-2,112 and K.S.A. 1988 Supp. 40-2404 and repealing the existing sections.

Chris Courtwright, Legislative Research Department, gave an overview of SB 107. The bill would require Insurance Companies or agents to expeditiously refund premiums or unearned portions of premiums when application for coverage has been denied, existing coverage has been terminated or any other adverse underwriting decision has occurred.

Pam Scott, Insurance Department, testified in support of SB 107, which addresses a problem arising when an applicant for insurance is required to make an advance payment of premium at the time an application for coverage is taken. Ms. Scott provided testimony (Attachment 1) explaining that the bill would place some controls on the length of time the insurer or agent has to refund the advance payment. Ms. Scott stated that Section 2 of the bill would amend the Unfair Trade Practices Act so that the penalties applicable to violations of existing statutes relating to adverse underwriting decisions will apply to the new responsibilities imposed by SB 107. Ms. Scott also provided a balloon amendment to the bill (Attachment 2), and explained that it changes the original 15 days for the company to make the underwriting decisions, to 20 days, and provides for when and how the outside information is maintained.

Walt Whalen, Pyramid Life Insurance Company, briefly appeared before the Committee to endorse the passage of SB 107, testifying that the original bill did not give life insurance companies ample time to get reports.

There were no other conferees wishing to testify and hearings on SB 107 were closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 xx a.m./p.m. on March 21, 89 19__.

The Committee began hearings on SB 317.

SB 317 -- An Act relating to rental companies that provide certain rental motor vehicles to the public; prohibiting certain acts and providing penalties for violations; repealing K.S.A. 1988 Supp. 50-654 to 50-658, inclusive.

Chris Courtwright, Legislative Research Department, gave an overview of SB 317 explaining that the bill prohibit any person in the business of renting motor vehicles to the public from including in the rental contract, liability for any damage done in excess of $200, except for; intentional damage, damage caused while the driver is intoxicated or under the influence of a drug, or the rental vehicle is used to carry persons or property to hire. Mr. Courtwright stated that SB 317 would prohibit car rental companies from selling collision damage waivers.

Larry Magill, Independent Insurance Agents of Kansas, testified in support of SB 317 . Mr. Magill told the Committee that SB 317 was requested by the Independent Insurance Agents due to public confusion of collision damage waivers in rental car contracts. This bill would eliminate the sale of collision damage waiver coverage in Kansas and require the cost of damage be built into the base rate charged by the rental company. (Attachment 3.)

Art Weiss, Deputy Attorney General, Consumer Protection Division, provided testimony supporting SB 317 including the Attorney Generals recommendations (Attachment 4). Mr. Weiss explained that the recommendations of the Attorney General came out of a 1988 task force of the National Association of Attorneys General, looking into the advertising and business practices of the car rental industry.

Next appearing in support to SB 317 was Mark Hobart, representing The Hertz Corporation. Mr. Hobart explained that The Hertz Corporation is a proponent of the bill, although they are not in favor of complete elimination of the fund, would like to see the deductible limit of $200 raised to a range of $500 to $1,000.

Appearing in opposition to SB 317 was Steve Graham, Budget Rent A Car. Mr. Graham provided testimony (Attachment 5) expressing concern that passage of this bill would provide large corporations a tremendously unfair advantage over the smaller operators because of increased base rental rates. Mr. Graham asked the Committee to consider; increasing the limit amount, delaying the effective date two years, and allowing operators in Kansas to pursue individuals and prosecute in Kansas.

Vance Herring, National Car Rental, briefly testified in opposition to SB 317 stating that this bill would cause rate increases by car rental companies. (Attachment 6.)

Larry McPherson, Budget Rent A Car, testified in opposition to SB 317 for reasons discussed here.

Gay Carstens, National Car Rental, testified in opposition to SB 317 and explained to the Committee that a bigger deductible is needed for smaller companies to continue business.

The Chairman announced that due to the time, the committee will finish hearings on SB 317 at the March 23 meeting.

The meeting was adjourned at 5:20 p.m.

GUEST LIST

COMMITTEE: Insurance DATE: 3/21/89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Potter Donald	238 OKLO	Hertz Potter Inc
Bill Carpenter	5211 E Kellogg Wichita 67218	Enterprise RAC
Mark Hobart	1709 Lane	Hertz - Topeka
Brad Barackman	7800 Metcalf	Enterprise RAC
Carl Kincaid	4030 State Ave KC, KS	Enterprise Rent-A-Car
Dave Willey	29 Hunter Ave St. Louis	Enterprise Rent-A Car
Bruce Kriegel	7815 Floyd O.P. Ks	" "
John Peterson	Topeka	" " "
Gary Cinatera	Forbes Field	National Car Rental
Natalie Vaura	Forbes Field	National Car Rental
Andrea Olmsted	909 Alma Dr.	R. Turnquists office
Pam Scott	Topeka	Ks Ins Dept.
Jack Graham	1895 Midfield Rd Wichita, Ks.	Budget Rent A Car
Steve Graham	" "	" " "
Vance Herring	Wichita Ks 6515 W. Irving	National Car Rental
W. W. Whalen	6201 Johnson Dr Mission	Pyramid Life Ins Co
Larry McPherson	3017 Point Cove Memphis Tn	Budget Rent A Car
Tom Owens	4826 So Topeka	Budget of Topeka
Art Weiss	Topeka	AG Assoc
Pat Barnes	Topeka	Ks Motor Car Dealers Assn.
Kevin Allen	Topeka	KMCDA
Pam Seastrom	Topeka	Ed Bozarth Chevrolet
David Hanson	Topeka	Ks Life Assoc
Jim Oliver	Topeka	PIAK

TESTIMONY BY

PAM SCOTT
CHIEF ATTORNEY
KANSAS INSURANCE DEPARTMENT

BEFORE THE

HOUSE INSURANCE COMMITTEE

SENATE BILL NO. 107

MARCH 21, 1989

Senate Bill No. 107 is a recommendation of the Insurance Department. It is intended to address a problem which sometimes arises when an applicant for insurance is required to make an advance payment of premium at the time an application for coverage is taken. If the coverage requested is subsequently denied or the applicant is otherwise subjected to an adverse underwriting decision, the applicant often cannot seek coverage elsewhere until the advance payment is returned. Senate Bill No. 107 would place some controls on the length of time the insurer or agent has to refund the advance payment.

The Senate Committee amendments are consistent with the original intent of the bill but applies a separate time limitation to situations where coverage is in effect (e.g. binder) and another time limitation if coverage is not in effect. As provided by lines 61 and 62 if coverage is in effect the refund must accompany the notice of the adverse underwriting decision.

If coverage is not in effect, one of two time limitations will apply. If the application does not require underwriting information that must be obtained from an outside source (i.e. medical information, investigative report, etc.) the insurer would -- with the proposed amendment -- have 20 business days from the date the company's agent receives the application to make the underwriting decision. If the risk is accepted, Senate Bill No. 107 would not apply. However, if the underwriting decision is of an adverse nature, the refund would be required to accompany the notice of the action.

The other alternative involves situations where -- with the proposed amendment -- the underwriting decision cannot be made by the insurer until it receives underwriting information that is available only from an outside source. In this situation, the company would be required to make their decision within 10 business days from the date the underwriting information is received. Again, if the decision is adverse to the applicant, the refund would have to accompany the notice of the decision.

Section 2 of the bill simply amends the Unfair Trade Practices Act so the penalties applicable to violations of existing statutes relating to adverse underwriting decisions will apply to the new responsibilities imposed by Senate Bill No. 107.

Attachment 2

prefers; and

(3) the names and addresses of the institutional sources that supplied the specific items of information given pursuant to subsection (b)(2) if the identity of any health care provider or health care institution is disclosed either directly to the individual or to the designated health care provider, whichever the insurance company or agent prefers.

(c) The obligations imposed by this section upon an insurance company or agent may be satisfied by another insurance company or agent authorized to act on its behalf.

(d) The company or the agent, whichever is in possession of the money, shall refund to the applicant or individual proposed for coverage, the difference between the payment and the earned premium, if any, in the event of a declination of insurance coverage, termination of insurance coverage, or any other adverse underwriting decision.

(1) If coverage is in effect, such refund shall accompany the notice of the adverse underwriting decision.

(2) If coverage is not in effect and payment therefor is in the possession of the company or the agent, the underwriting decision shall be made within ~~15~~ business days from receipt of the application by the agent ~~and the~~ refund shall accompany the notice of ~~the~~ adverse underwriting decision.

Sec. 2. K.S.A. 1988 Supp. 40-2404 is hereby amended to read as follows: 40-2404. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

(b) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

20

unless the underwriting decision is dependent upon substantive information available only from an independent source. In such cases, the underwriting decision shall be made within 10 business days from receipt of the external information by the party that makes the decision.

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Attachment 2

Testimony on SB 317
Before the House Insurance Committee
March 21, 1989
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you very much, Mr. Chairman, and members of the committee, for the opportunity to appear in support of SB 317 as amended, which we requested the Senate Financial Institutions and Insurance Committee to introduce. In a broad sense, SB 317 deals with a contractual liability problem faced by consumers who rent automobiles. Rental contracts hold consumers liable for damage to the rented vehicle - in most cases regardless of fault and including theft of the vehicle and "loss of use". Rental companies in turn sell collision damage waiver coverage (CDW) where they agree not to hold a renter liable with certain exceptions for an additional daily charge.

SB 317 would eliminate the sale of collision damage waiver coverage in Kansas and is patterned after a National Association of Insurance Commissioners model act approved in June of 1988. In other words, under the provisions of SB 317, the cost of damage must be built into the base rate charged by the rental company.

SB 317 would eliminate a law passed last year that sought to regulate the advertising practices of rental companies. Last year's law tried to eliminate the practice used by many rental companies of advertising artificially low daily rental rates and then charging high rates for collision damage waivers.

Under the provisions of SB 317, the rental company could only hold the consumer liable for damage if caused by seven "exclusions" which are listed on lines 51-67 of SB 317. For the most part, these are

exclusions which should not cause a prudent renter any problem.

Rental companies originally began selling a deductible buy back years ago for a small daily charge. The deductible grew from $100-200 to $1,000-2,500 to the present day full value of the car including loss of use. What began as a buy back for collision damage only is now a buy back for all damage to the vehicle whether the renter was liable (negligent) or not.

Charges for collision damage waiver increased from $1 to $2 per day to $8 to $15 per day today. Rental companies advertise low base rates and then use high pressure sales tactics to sell highly profitable CDW. They create doubt in consumers' minds about their own coverage and require large cash or credit card deposits if CDW is not purchased.

Agents are in a quandary. There is little standardization of personal auto and commercial auto policies even among the companies represented by a single independent agent. There is no way for the agent to know what each rental agreement might hold the renter responsible for. There may be and probably are gaps in coverage for renters between the insurance coverage their own policy may provide and what the rental contracts holds them liable for. And many rental companies refuse to deal with the renter's insurance company, wanting to collect from the renter and let the renter make a claim with their insurer.

An example of the problems encountered by consumers is outlined in the attached newsletter article taken from the January 31, 1989, Wall Street Journal about an "extra cautious" renter. It points out two things. First, the collision damage waiver he purchased did not apply

until the stolen car was recovered, if ever!

Second, some "gold" credit cards give their users free coverage. The cost for CDW cannot be too great if it is being given away by credit card companies.

The attached newsletter from the Illinois Department of Insurance indicates the annual cost for physical damage coverage to the rental company should be $300-400 per year. Yet at $8-15 per day, they are charging $2,920 to $5,475 annually.

The Illinois Department of Insurance estimates that prohibiting the sale of CDW would raise the base rental rates $1-2 per day. Hertz has estimated that the Illinois law would raise their rates $2.50 per day. The net savings should go to the consumer.

Plus, consumers would not be hassled or pressured into purchasing the high cost CDW under the provisions of SB 317. Comparison shopping of rental rates will be easier and there will be no more "bait and switch" advertising tactics.

Including Kansas, 17 states are currently considering legislation based on the NAIC Model Act, according to the latest information from NAIC. To our knowledge, at this point, only Illinois and New York have passed laws patterned after the model. However, we feel confident that a large number of states will.

We intend to ask our national association to encourage the other state independent insurance agent associations to press for the model law in their state. It is a much better approach than the first NAIC model which treated the sale of CDW as "insurance" and attempted to regulate rates and sales practices in that manner. That approach had been challenged successfully in court by the rental companies.

The NAIC cited the following advantages to consumers of the 1988 Model CDW Act:

1. Elimination of opportunity for abuse of consumers through CDW sales practices.
2. Rental car expenses will be internalized into the daily or weekly rate.
3. It is an equitable response to problems arising in the rental car contract. The abuses have been caused by the rental companies - not the consumers or their insurers.
4. Possible gaps in coverage for damage to rental cars would be avoided.
5. Insurance regulatory resources would not be required.
6. True price competition would be fostered.
7. Other advantages: It would not put the small rental companies at the disadvantage that the 1986 NAIC Model would. And it keeps the customer from being caught in the middle between the rental company and the customer's insurer.

We strongly urge the committee to act favorably on SB 317. It is a reasonable, practical approach to solving a very difficult problem for consumers and their agents. Thank you very much for your consideration.

DOUBLE PROTECTION, NO PROTECTION

It's usually better to be safe than sorry - unless you're trying to get car-rental insurance.

Some credit-card companies now pay for damaged or stolen rental cars if you use their card to charge a rental. So some people try to get double protection: they charge the rental car and buy the car-rental company's collision-damage waiver.

The problem is, this "precaution" can actually leave you with no coverage.

Consider what happened to Joe Mancuso, president of the Center for Entrepreneurial Management in New York. He rented a car from General Rent a Car Inc. last year, using his American Express card. He also paid $10 a day for the waiver. "I figured I'd give myself a gold star for being so safe," says Mr. Mancuso.

A few days later, the car was stolen. No sweat, Mr. Mancuso thought. The waiver would protect him. But General asked him to pay $7,000 for a new car. Why? Becaused its waiver doesn't apply until the stolen car is recovered, he says.

So Mr. Mancuso asked American Express to pay for the car. But American Express says his car-rental insurance was voided because he bought the waiver. "It's one of our rules," says an American Express Co. spokeswoman.

As odd as all this seems, it could happen to anyone. Other credit-card companies also void their insurance if a renter buys the waiver. And many car-rental companies have little-known rules that render their waivers worthless. "It just doesn't pay to take precautions," says Mr. Mancuso, who adds he is still fighting with General and American Express over the issue.

This article was taken from The Wall Street Journal, Tuesday, January 31, 1989.

COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) has left many producers confused. I am not an expert in COBRA, but, I will try to briefly explain some of the more salient points.

* An employer with 20 employees or more will usually fall under Section 162(k) of the Internal Revenue Code created by COBRA.

* Plans that are maintained by an employer for medical coverages, services or reimbursement--either directly or indirectly are included under COBRA. Certain programs that provide first aid, employee fitness programs and a few others are excluded. A careful analysis of each medical program should be undertaken to avoid complications. This should be done by the employer, producer and the company.

ILLINOIS INSURANCE

Published by the Illinois Department of Insurance

October-December 1988

Illinois Takes Lead In Abolishing 'C.D.W's'

A recent amendment to Section 6-305 of the Illinois Motor Vehicle Code (ch. 95½ of the Illinois Revised Statutes) will prohibit rental car companies from selling collision damage waivers in Illinois effective January 1, 1989. Illinois is the first state in the nation to enact such a law which closely parallels model legislation adopted in June by the National Association of Insurance Commissioners. Director of Insurance John Washburn was a leading proponent of the legislation which was sponsored by Senators David Barkhausen of Lake Forest and Cal Schuneman of Prophetstown and Representatives Al Ronan, Roger McAuliffe and Bill Laurino, all of Chicago.

P.A. 85-1374 (S.B. 1870) limits an individual's liability to $200 for physical damage to a vehicle rented for 30 days or less, except under specified circumstances such as using the vehicle to commit a crime or driving while intoxicated. The amendment also restricts the manner in which rental companies advertise their rates by requiring that all mandatory charges except taxes and mileage be included in the advertised base price.

"The basic area of competition for rental car companies has become the leisure market," noted Director Washburn, "and the use of separately priced C.D.W.'s has permitted some companies to engage in what amounts to bait and switch tactics. Many consumers have complained that they are pressured into buying the supposedly voluntarily selected C.D.W. coverage despite the fact that most personal automobile insurance policies cover almost any damage or liability incurred while driving a rental car."

Washburn said that collision damage waivers have only become a problem in recent years as rental car companies have dramatically increased the consumer's liability from several hundred dollars to the full value of the vehicle plus "loss-of-use" charges while the rental car is being repaired. "Because of this exposure, even sophisticated buyers who understand insurance are uncertain what to do," he said.

Insurance commissioners have looked at all kinds of different mechanisms for correcting the problems and have concluded that there is no standard, fail-safe means for advising consumers on whether they should buy collision damage waivers. The consensus of the regulators is that the best and only available system is to prohibit the sale of this coverage as a separate charge.

"The actual cost of the C.D.W. coverage itself cannot be that great or credit card companies would not be giving it away," Washburn observed. "If rental car firms purchased collision coverage directly from an insurance company, the annual premium would probably not exceed $300-$400 per car. That would translate to no more than a $1 or $2 per day increase in the base rental price to recover the cost of insurance. The rest of the $10-$12 per day which many rental firms charge is nothing more than pure profit to offset the "loss-leader" used to advertise a cheap base price," he continued.

By requiring rental car companies to internalize the cost of car repairs in their daily rental charge, the new Illinois law will force such firms to advertise actual total costs of renting a car. It will eliminate unpleasant surprises for consumers who are attracted by low advertised prices only to find that the rate substantially increases when collision insurance is added.

Another important provision of S.B. 1870 is an amendment to Section 9-105 of the Motor Vehicle Code. Currently the law requires the owner of leased vehicles to carry a minimum of $50,000 in liability insurance for bodily injury or death of the vehicle operator or damage to property without any type of corresponding limit per accident. The amendment establishes a second limit for liability of $100,000 per occurrence. Most automobile liability insurance is sold with both types of limits.■

Producer Licensing Fees To Increase

-by Robert Brozka

The Illinois General Assembly has enacted legislation (P.A. 85-1139) that will affect licensing fees for all Illinois insurance producers effective January 1, 1989.

Registration of firms, currently requiring a one-time fee, will require renewal each year.

Fees affected by the legislative action are as follows:

- A $75 annual fee for an insurance producer license
- A $25 fee for the issuance of a temporary insurance producer license
- A $25 annual fee for registration of a business firm
- A $25 annual fee for a limited insurance representative license
- A $25 application fee for the processing of each request to take the written examination for an insurance producer license (in addition to the fee payable to Educational Testing Service)
- A $50 annual fee for registration of an education provider
- A $25 certification fee for each certified prelicensing or continuing education course and a $10 annual fee for renewing the certification of each such course
- A $50 fee for reinstating a license which lapsed because the annual fee was not received by the due date

All applications for the above licenses and registrations which are received by the Department of Insurance after January 1, 1989, must be accompanied by the correct fee or the Department will be required to return the application.■

ISSUE PAPER
ELIMINATION OF COLLISION DAMAGE WAIVERS

ISSUE: Prohibiting the sale of collision damage waivers by car rental companies (bill introduced - no bill number yet)

The bill would replace the provisions of SB 679 passed last year and prohibit the sale of collision damage waivers (CDW's). Last year's legislation just sought to regulate the advertising of collision damage waivers under the Consumer Protection Act administered by the Attorney General's office.

The NAIC model approved in June of 1988 prohibits the sale of CDW's and would allow rental companies to hold renters liable only where:

1. The damages were caused intentionally or as a result of willful or wanton misconduct.

2. Damages were caused by driving while intoxicated or under the influence of drugs.

3. Damages were caused while engaging in a speed contest.

4. The rental transaction is based on information supplied by the renter with the intent to defraud.

5. The damage arises out of the use of the vehicle while committing a criminal act.

6. The damage arises while carrying persons or property for hire.

7. The damage arises outside of the United States or Canada, unless the use is specifically authorized.

In addition, the proposal would require the rental company, if it sues, to sue the renter in their home county and would prohibit rental companies from taking deposits of any form.

BACKGROUND:

Rental companies charge anywhere from $8-15 per day or $2,920 to $5,475 per year, according to an article in the Journal of American Insurance. The Minnesota Department of Insurance estimates that CDW rates are at least twice the highest rate for collision coverage charged the worst driver in their assigned risk auto plan.

The actual cost cannot be that great or credit card companies would not give it away with certain gold cards.

The Illinois Insurance Department estimates it would probably not exceed $300-400 per car per year. According to an Illinois Insurance Department newsletter, that would translate into $1-2 per day increasing rental rates if CDW's are eliminated. Hertz estimated a

$2.50 per day increase in Illinois. The consumers should save the difference.

Rental companies have consistently increased what customers are liable for over the years to force the purchase of CDW. Many rental companies now hold renters liable for "loss of use" of the vehicle while it is being repaired. Loss of use is not covered under standard insurance policies.

In some cases the waivers sold did not apply if the renter was driving too fast or did not file a claim within 24 hours, according to the Minnesota Department.

Customers used to be liable only for negligent damage. Now most rental agreements hold the customer liable for all damage and theft.

Agents are in an impossible situation to advise their insureds. Insurance policies are not standardized either on the personal or commercial side. Agents generally do not have an opportunity to review the actual rental agreement. If there are any potential gaps such as the loss of use, the agent cannot definitely say their client does not need CDW.

Rental companies have often used "bait and switch tactics" where they advertise low daily rates and then use high pressure sales tactics to sell CDW's. Many rental companies require deposits, sometimes in cash, refuse to deal with a customer's insurance company if there is damage and threaten to not allow the customer to leave the state until all damages are paid for.

Consumers will benefit. There will probably be a net cost savings on rental charges from elimination of the sale of CDW's. Comparison shopping of rental rates will be much easier and more accurate without the hidden cost of CDW. There will be less stress on consumers from high pressure sales tactics and the uncertainty of whether their own insurance adequately protects them.

IIAK POSITION:

IIAK requested introduction of the legislation in the Senate FI&I Committee and supports its passage.

STATUS:

Introduced.

2/22/89

12/8/87

Report of
Market Conduct Surveillance (EX3) Task Force
Subgroup on Rental Car Insurance

The National Association of Insurance Commissioners (NAIC) has given increased attention in recent years to the insurance and insurance type products sold in conjunction with the rental of automobiles. In June 1986, the NAIC adopted a Collision Damage Waiver Model Act (copy enclosed). The act, while stopping short of deeming the collision damage waiver (CDW) to be insurance, would give the insurance regulator power to license those offering the product, authorize form and rate approval and grant authority over the sale and marketing of the product. Unfortunately, no jurisdiction has yet adopted the NAIC model act.

Within the last several years, a number of insurance regulators have attempted to respond to a growing list of complaints concerning the CDW by taking the position that the CDW is insurance within the state code definition and to regulate it accordingly. However these efforts have been thwarted by courts which have taken a narrow view that the CDW is merely a contract provision which grants a waiver of a common law bailment obligation and that any indemnification aspects of the product are merely "incidental" or "peripheral" to the "primary object" of the transaction (i.e., the renting of automobiles). (See Truta v. Avis Rent-A-Car Systems Inc., Ct. App. Calif. Case No. AO-30-674, (July 20, 1987); Hertz Corporation v. Attorney General of the State of New York Sup. Ct. N.Y., New York County, Sept. 22, 1987, both reversing attempts by the insurance departments to regulate various aspects of the CDW and other rental car practices).

The issue now, however, goes well beyond CDW. Rental car companies now universally offer personal effects coverage, accidental death and dismemberment and, in some cases, increased limits of liability as tag-on items at the point of sale. These coverages individually may be solicited without a license as they are generally excepted from code requirements as enrollments in group coverages. Their collective solicitation however, may call into question justification for the exception.

The NAIC conducted a hearing on June 5, 1987, in Chicago, Ill. and heard testimony from a number of the major rental car companies. That inquiry focused on the following reported abuses:

-- Price and Exposure. Just several years ago, the average price for the CDW ran from $3 to $5 a day to cover $1,000 to $3,000 worth of liability exposure. In late 1986, most rental car companies either substantially increased or removed the limitation on liability and increased their rates for the CDW to the range of $7 to $13 per day.

-- Reports of rental car counter agents using hard-sell and scare tactics upon consumers who are inclined to not purchase the waiver.

-- Rental car counter agents advising and counselling consumers on the need for purchasing the various types of insurance being offered in addition to the CDW.

-- The failure of counter agents to advise customers of alternatives to the insurance being offered or inquiring as to whether they may presently have such coverage.

-- Exclusions from coverage including, operation by other than "authorized drivers" (defined in small print); driving in an "abusive" or "careless" fashion; operation by

someone incapable of safely driving due to alcohol or "drowsiness"; operation on other than regularly maintained roads, among many others.

-- Fine print granting permission to the firm to fill out and sign a credit card voucher on the renter's behalf.

-- Debiting the renter's credit card immediately for unilaterally determined damage up to the "full retail value" of the car.

-- Unilateral determination of the cost of repairs which may or may not relate to a rental car company's costs.

-- Exclusions for tires and glass.

-- Deceptive rental rate and "discount rate" advertising.

And last but not least, documented admission that if all of the optional coverages are purchased, it can amount to 40% or more of the total cost of the rental transaction. This, more than anything else, strongly calls into question the rationale that the offering of the package of insurance or insurance type coverages is merely "incidental" or "peripheral" to the transaction. It may even call into question the primary business of the rental car firms, but the rental car firms will not provide the necessary data.

The following is a summary of some of the programs being offered.

I. Collision Damage Waiver

The typical rental agreement substantially parallels the concept of bailment at common law, holding the renter liable for damage to the rented goods. As a matter of business practice, until a few years ago, most rental firms limited the renter's liability by contract to around $1,000. The rental firms offered a program whereby they would "waive" the $1,000 for the payment of a fee averaging from $3 to $5 per day. In late 1986, most firms had eliminated the liability cap altogether and raised the daily fee to the $7 to $13 range.

II. Accidental Death and Dismemberment

Coverage is provided in the event of accidental death or bodily injury at all times during the rental of the vehicle for the renter, and coverage for a specified amount to passengers while they are entering, exiting or occupying the rented vehicle. Coverage is provided on what the rental car companies consider a group contract. The amount of coverage and provider of the insurance usually vary by location. A daily charge at the time of rental usually is in the $___ to $____ range.

III. Personal Effects Coverage

Personal effects coverage provides coverage for personal property for the possessions for which the renter and members of the renter's immediate family while the property is located in the rental car.

There is usually a maximum coverage during the rental period, less a per person, per occurrence deductible. Also, coverage may be reduced by the amount of the claim(s) paid and the applicable deductible(s). It is written on a group basis and issued to the rental car company as the named insured.

STATE OF KANSAS

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TESTIMONY OF ARTHUR R. WEISS

DEPUTY ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

BEFORE THE HOUSE COMMITTEE ON INSURANCE

HEARING ON SENATE BILL 317

MARCH 21, 1989

Mr. Chairman and Members of the Committee:

For the past year, Attorney General Stephan has chaired a task force of the National Association of Attorneys General looking into the advertising and business practices of the car rental industry. A major part of that task force's study was the issue of the sale and applicability of collision damage waivers. These waivers, also known as physical damage waivers, loss damage waivers and limited physical damage waivers had consistently been held by courts to not be insurance. Over the past several years, insurance commissioners in many states attempted to regulate the rates charged consumers for this product. Courts have consistently found that this product is not insurance but merely a waiver of a contractual term

contained in virtually every car rental company's standard agreement.

Under common law in most states, a renter would not be liable for damage to a vehicle he or she has rented unless he or she was negligent. However, in the standard rental agreement is a paragraph which holds the renter absolutely liable regardless of fault for any damage to the vehicle. In some cases, the renter is also liable absent fault for theft or vandalism to the vehicle. In order to not be held responsible, he or she must pay around $12.00 a day for the privilege of buying back his or her common law rights. This privilege is called Collision Damage Waiver.

The task force headed by Attorney General Stephan found abuses in the sale of CDW and its applicability rampant across the country. The states which had disclosure notices similar to what Kansas now has have found that consumers were still unaware of the legal ramifications and possible liability to which they may be subjected. It is patently unfair for a consumer arriving late at night in an airport, loaded down with bags, tired and in a strange city to have to make a split second decision at the rental counter that may cause them to be liable for a $20,000.00 vehicle. In addition, many complaints have shown deceptive tactics used by car rental counter agents who receive commission for the sale of this product. Agents have done things such as tell consumers that CDW is insurance which it is not, that it is mandatory which

it is not, or in some cases when a consumer has the presence of mind to even bring a letter from their insurance agent with them stating that their own personal car policy would cover them, they have been told that the car rental company doesn't care what the consumer's insurance policy says that they will not deal with the insurance company but rather with the renter himself and place a charge for damages on the consumer's credit card.

As an example of the coercive tactics used to sell this product, I relay a personal experience. When I recently rented a car I was confronted with a counter sign telling me that I was totally responsible for any damage to the car regardless of fault, unless I purchase CDW. It also pointed out that the average cost of that company's vehicles was $10,000.00, and that its cadillacs cost $22,000.00. This is a clear, coercive tactic designed to sell collision damage waivers.

The product itself would not be so inherently deceptive if it were not for the fact that our experience has shown that the car rental company's actual risk of loss can either be self insured or covered by a policy for between $.50 to $2.00 a day. The companies have openly admitted to our task force that collision damage waiver is used as a profit center. Our investigation has shown that companies can advertise artificially low rates and then push the sale of collision

damage waiver to supplement the income from those artificially low rates.

The report of Attorney General Stephan's task force was received and approved overwhelmingly by the National Association of Attorneys General on March 14. That report contains three possible recommendations which the task force supplies for legislative use. The first recommendation is a total elimination of the sale of collision damage waiver; the second recommendation is to limit a consumer's liability to an amount between $200.00 and $500.00 and allow the sale of a waiver of that liability only; and the third is to allow the sale of collision damage waiver as it presently exists but to prohibit car rental companies from charging a fee which bears no rational relationship to their actual risk. Senate Bill 317 bears a great resemblance with recommendation number two. However, as amended, this bill prohibits the sale of a waiver of the last $200.00 of liability. In effect, this bill would totally eliminate collision damage waiver.

The Attorney General supports any effort to eliminate or reduce absolute liability without fault imposed upon consumers who rent cars. Companies may choose to either self insure against possible losses or obtain insurance policies to protect them against such losses. In either case, it has been the findings of the car rental task force that insurance is available to car rental companies who do not wish to self insure and that the cost would in no event exceed $2.00 per

car per day. This is a far cry from the $12.00 per day charged by most car rental companies under the guise of protecting their investment. Therefore, we support the objectives of Senate Bill 317 which follow the recommendations set forth by the National Association of Attorneys General.

Thank you.

STATEMENT BY STEVEN GRAHAM
VICE PRESIDENT
BUDGET RENT A CAR OF KS., INC.

My name is Steve Graham. I represent Budget Rent a Car of Kansas, Inc. which operates the Budget franchise in Wichita. By way of background, I would like to state that our company is a family owned business. My father, a Kansas native, founded Budget in Wichita 27 years ago this month and my parents and I own the company today. Our only operations are in Kansas.

The Federal Trade Commission, in a February 24, 1989 letter to Attorney General Robert Stephan, addresses this issue very clearly and I quote in part:

> " The Commission previously indicated that legislative restriction of the offering of a distinct CDW product would be tantamount to mandating that car rental companies bundle CDW coverage into every car rental transaction. Any legislatively imposed bundling requirement will restrict consumer choice among CDW-like coverages of rental cars, resulting in some consumers having to bear greater costs primarily in the form of higher base prices than they otherwise might have to cover the accident and theft losses statutorily shifted to the rental car companies. Recent news reports suggest that this may be happening to some consumers in at least one state."

The F.T.C. further states:

> " Where consumers suffer from insufficient or confusing information, remedies requiring the disclosure of more or better information often may resolve the problem. Therefore, providing consumers information on CDW may be more effective and less costly than requiring that CDW be sold in the rental bundle regardless of whether or not consumers want it."

We agree with the F.T.C.

Some renters don't need CDW. They have insurance that covers them when they rent a car. If a renter doesn't have personal insurance that covers him in a rented car, CDW can be a valuable product. I can tell you this. When I rent a car in a strange city, I buy CDW. I don't have any personal insurance that provides me coverage and when I'm driving in unfamiliar territory I want the piece of mind that CDW affords.

If a renter does not have some form of coverage and we <u>fail</u> to inform him of his responsibility, then we have <u>really</u> breeched our duty to the customer. Consequently, we insist vigorously that our rental agents inform <u>every</u> customer of their potential exposure if they damage the vehicle. Some people view this as being high pressured. This is not our intention. We're simply trying to provide the person with enough information to make a decision.

What all this boils down to is that CDW is a user fee. It provides protection for those who need it and those who don't need it don't have to pay for it. The customer simply has to become knowledgeable about his own needs.

Attachment 5

The legislature in Kansas passed a comprehensive disclosure law last year. It became effective January 1 of this year and seems to be working fine.

From the consumers standpoint, further legislation isn't warranted at this point in time.

From the standpoint of the rental car industry, especially the smaller independents and franchise operators such as ourselves, this legislation could be a disaster.

Our collision repair costs and insurance costs will continue but the revenue from CDW will not be there to offset the costs. Therefore, we must raise our base rental rates.

Unfortunately, since Kansas is one of the first states to consider this legislation, Hertz and Avis are not in a similar position. Since Hertz and Avis are corporately owned stores in Wichita, they have the luxury of being able to absorb the loss of revenue in Kansas over their entire U.S. operation. For Hertz and Avis the price increases related to the elimination of CDW can be a gradual phasing-in process nationwide. This puts the Kansas owned and operated businesses at a drastic competitive disadvantage.

For all the reasons stated, Budget opposes the passage of Senate bill 317. We would plead that legislature not pass this law until the effects of it's disclosure law are known and/or at least until enough other states have enacted the law so Hertz and Avis don't have a tremendously unfair advantage over the smaller operators.

Thank you.

March 21, 1989

To: House Insurance Committee
From: Vance Herring/National Car Rental
Re: Senate Bill 317

As a small franchise of National Car Rental, it is our position that Senate Bill no. 317, in its original form, is grossly unfair to both the consumer and our industry:

Unfair to the Consumer

Currently, the tens of thousands of dollars of property damage incurred every year on our rental cars, is paid for by the person or consumer causing the damage. This bill would essentially result in our customers having little or no responsibility for their actions. In addition, it would undoubtably increase rental costs for the consumer, with all renters subsidizing the minority who cause damage to a vehicle. It will also make auto rental costs prohibitive for many of our current customers.

Unfair the the Industry

It is highly likely that many small companies will go out of business, including our own, as a result of SB 317. The result would be fewer businesses in Kansas, more unemployed, and less consumer choice. This is fine with the large, corporately-owned agencies, who can spread their local losses over their nationwide system, while forcing small independent operators and frachisees to price themselves out of the market, and consequently, out of business, in the attempt to recover some portion of their losses.

Please note the Federal Trade Commissions report dated February 24, 1989, which was sent to Attorney General Robert Stephens of Kansas, Their assessment of the National Association of Attorney Generals guidelines indicates that they are not in the best interest of the consumer or the industry.

It is my opinion that the current CDW disclosure notice, which we have followed, to the letter, since January 1, 1989, provides an excellent solution to concerns about collision damage. It offers a clear and concise explanation to every consumer regarding the definition of, and freedom of choice regarding the acceptance or non-acceptance of the collision damage waiver, as well as providing small businesses in Kansas with protection and recourse when property damage does occur.

The current disclosure is excellent, and it provides protection to the consumer. Please note the attached Kansas-Maryland, Virginia, and Minnesota consumer protection and disclosure notices. The state of Utah recently passed legislation based on the National Association of Attorney Generals guidelines, yet exempted rental companies that faithfully, as my company does, with disclosure requirements. COMPLY

In summary, our position, is that the proposed bill is extremely unfair to both the consumer and the industry, especially the small business operator. We feel that the customer disclosure notice, which we provide to <u>every</u> customer, is an excellent program. Senate bill #317, on the other hand, will benefit no one but the insurance companies and the large, corporate agencies.

Thank you,
Vance Herring, Midwest Car Corp., National Car Rental, Wichita, Kansas

Vance Herring

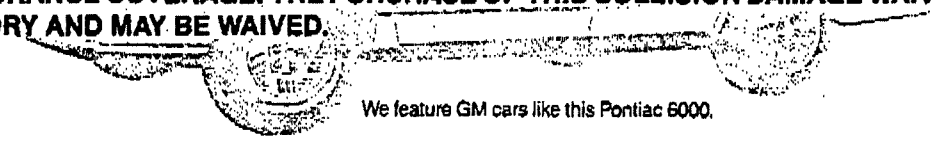
Attachment 6

National Car Rental

KANSAS/MARYLAND DISCLOSURE NOTICE

THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE.

BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN AUTOMOBILE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED.



We feature GM cars like this Pontiac 6000.

FORM 5619 1/89

National CarRental

MINNESOTA CONSUMER PROTECTION NOTICE

Under Minnesota law, a personal automobile insurance policy issued in Minnesota must cover the rental of a motor vehicle unless the rental is principally for business use or rented on a monthly or longer basis. Therefore, purchase of any collision damage waiver or insurance affected in this rental contract may not be necessary if your policy was issued in Minnesota.

ACKNOWLEDGEMENT:

I hereby acknowledge that I have read and understand the above Minnesota Consumer Protection Notice concerning the Collision Damage Waiver Option.

Customer Signature _____

FORM 5601 9/87

National Car Rental℠

VIRGINIA DISCLOSURE NOTICE

THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED.

ACKNOWLEDGEMENT:

BY SIGNING BELOW, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THIS NOTICE.

_____ _____

CUSTOMER SIGNATURE DATE

FORM 8831 7/88

LEGISLATIVE GENERAL COUNSEL

S. B. No. 112

Approved for Filing GBD

Date 01-12-89 8:01 AM

(COLLISION DAMAGE WAIVER ON RENTAL VEHICLES)

1989

GENERAL SESSION

S. B. No. 112 By Haven J. Barlow

AN ACT RELATING TO THE INSURANCE CODE; ENACTING THE COLLISION DAMAGE WAIVER MODEL ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

ENACTS:

31A-22-311, UTAH CODE ANNOTATED 1953

31A-22-312, UTAH CODE ANNOTATED 1953

31A-22-313, UTAH CODE ANNOTATED 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 31A-22-311, Utah Code Annotated 1953, is enacted to read:

31A-22-311. As used in Section 31A-22-312:

(1) "Authorized driver" means the person to whom the vehicle is rented and includes:

(a) his spouse if a licensed driver satisfying the rental company's minimum age requirement;

(b) his employer or coworker if engaged in business activity with

See PAGE 4.

the renter and if they are licensed drivers satisfying the rental company's minimum age requirement;

(c) any person who operates the vehicle during an emergency situation;

(d) any person who operates the vehicle while parking the vehicle at a commercial establishment; or

(e) any person expressly listed by the rental company on the rental agreement as an authorized driver.

(2) "Damage" means any damage or loss to the rented vehicle hHH RESULTING FROM A COLLISION HHh including loss of use and any costs and expenses incident to the damage or loss.

(3) "Rental agreement" means any written agreement stating the terms and conditions governing the use of a private passenger motor vehicle provided by a rental company.

(4) "Rental company" means any person or organization in the business of providing private passenger motor vehicles to the public.

(5) "Renter" means any person or organization obtaining the use of a private passenger motor vehicle from a rental company under the terms of a rental agreement.

Section 2. Section 31A-22-312, Utah Code Annotated 1953, is enacted to read:

31A-22-312. (1) No rental company may, in rental agreements of 30 continuous days or less, hold any authorized driver liable for any damage

except when:

(a) the damage is caused intentionally by an authorized driver or as a result of his willful and wanton misconduct;

(b) the damage arises out of the authorized driver's operation of the vehicle while illegally intoxicated or under the influence of any illegal drug as defined or determined under the law of the state where the damage occurred;

(c) the damage is caused while the authorized driver is engaged in any speed contest;

(d) the rental transaction is based on information supplied by the renter with the intent to defraud the rental company;

(e) the damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the use of the motor vehicle is substantially related to the nature of the criminal activity;

(f) the damage arises out of the use of the motor vehicle to carry persons or property for hire; or

(g) the damage arises out of the use of the motor vehicle outside of the United States or Canada unless the use is specifically authorized by the rental agreement.

HHH [(2)//NO/ACTION/FOR/DAMAGE//LOSS//OF/INCIDENTAL/COSTS/AND

20a EXPENSES/BY

21 DA//DROPPING/BY/A/RENTAL/COMPANY/AGAINST/A/RENTER/WHO/IS/A/PARTICIPANT/OF/THE

22 PRIZE/EXCESS/EXCEPT/IN/THE/STATE/AND//COUNTY//OF//THE//RENTER/S//PRIMARY

23 RESIDENCE/] HHH

hHH [~~(3)~~] (2) HHh No security or deposit for damage in any form may be required or requested by the rental company during the rental period, or pending the resolution of any dispute.

hHH [~~(4)~~] (3) HHh No waiver may be offered to provide coverage for any of the exceptions listed in this section.

sSS hHH [~~(5)~~] (4) HHh THIS SECTION DOES NOT APPLY TO ANY RENTAL COMPANY:

(a) WHOSE ADVERTISING IN THIS STATE CLEARLY DISCLOSES ALL CHARGES AND COSTS INCIDENTAL TO THE BASIC DAILY RENTAL RATE; AND

(b) THAT PROVIDES WRITTEN NOTICE TO RENTERS CLEARLY PRINTED ON THE RENTAL AGREEMENT AND PROMINENTLY DISPLAYED AT ITS PLACE OF BUSINESS, THAT THE RENTER'S OWN MOTOR VEHICLE INSURANCE OR HIS CREDIT CARD AGREEMENT MAY COVER ANY DAMAGE OR LOSS TO THE RENTAL VEHICLE. SSs

Section 3. Section 31A-22-313, Utah Code Annotated 1953, is enacted to read:

31A-22-313. Any rental company found by the district court or the insurance department to have violated any of the provisions of Section 31A-22-312, or to have proceeded with a lack of good faith to impose liability upon a renter as prohibited in Section 31A-22-312, is subject to a civil penalty of not less that $500 nor more than $1,000 for each violation.