

Approved

2/24/89  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at  
Chairperson

9:00 a.m./p.m. on MONDAY, FEBRUARY 20, 1989 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ Senators Bond, Salisbury, Karr, Kerr, McClure, Moran, Parrish, Reilly, Strick and Yost.

Committee staff present:

Bill Wolff, Legislative Research  
Bill Edds, Revisor's Office  
Myrta Anderson, Legislative Research  
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Independent Insurance Agents

Chairman Bond called the meeting to order at 9:10 a.m.

Larry Magill, Independent Insurance Agents, requested to appear before the committee for the purpose of presenting a bill request. Mr. Magill stated that this bill would prohibit rental car companies from selling collision damage waivers and would force the rental companies to include the cost of insurance into the cost of rental. (attachment 1)

Senator Kerr made the motion to introduce the bill and Senator McClure seconded the motion. The motion passed and the bill will be introduced.

SB 110 - Discussion continued on this proposal with Bill Edds, Revisor's Office, presenting two ballooned versions of this bill, one drafted by the Revisor's Office and one by the Research Department.(attachments 1 and 2)

Committee discussion followed the explanation of these ballooned versions of the bill with most of the discussion centering around the meaning of the word "agreement" and the date that the penalty should begin. Ron Todd, Assistant Commissioner of Insurance informed the committee that the primary intent of the bill was to be able to enforce a penalty when there was no doubt that an agreement had been reached between the parties involved and yet payment was not forthcoming within a reasonable time. Senator Yost made the suggestion that the language in the Research Department's version be altered to read that "if payment is to be made to the claimant and same is not paid within 30 calendar days after the date payment is due, interest shall be payable from the date said payment is due."

Senator Strick made a motion to adopt the ballooned amendments to the bill as well as the language suggested by Senator Yost. Senator Yost seconded the motion and the motion passed.

Discussion continued with a committee member remarking that he/she was not convinced that the language in this bill would create fewer difficulties and inquired of Ron Todd what he thought the Insurance Department anticipated in terms of regulations. Mr. Todd replied that the Department would probably focus on the type of "agreement" and the date from which a penalty should begin.

Senator Reilly moved to amend language into the bill that gives authority to the Insurance Commissioner to promulgate rules and regulations to carry out the language concerning timely payment in SB 110. The motion was seconded by Senator Salisbury. The motion carried.

Senator Strick made the motion to pass SB 110 out of committee favorably as amended. Senator Yost seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529 S, Statehouse, at 9:00 a.m./~~p.m.~~ on MONDAY, FEBRUARY 20, 199.

The minutes of February 15 and 16 were approved on a motion of Senator Salisbury with Senator Reilly seconding the motion. The motion carried.

Chairman Bond adjourned the meeting at 9:45 a.m.

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

Mon. Feb. 20

DATE	NAME	ADDRESS	REPRESENTING
2/20	Jim Oliver	Topeka	DIA
2/20	Bob Keshew	Topeka	
"	Ron Todd	"	Gen. Dept.
"	M. Hawver	"	Cap. Source
"	LARRY MAGILL	"	IIAK
"	David Hanson	"	KS LIFE ASSOC KS ASSOC PROPRTAS INS.

MONOPOLIES AND UNFAIR TRADE

CHAPTER 193

Senate Bill No. 679

AN ACT concerning the consumer protection act; relating to exclusion of warranties; providing that certain acts with respect to the advertisement, sale or offering for sale of collision damage waiver contracts in connection with the rental of motor vehicles are deceptive acts and practices under the consumer protection act and prescribing requirements for such contractual provisions; amending K.S.A. 50-635 and 50-639 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 50-635 is hereby amended to read as follows: 50-635. (a) ~~This article~~ *The Kansas consumer protection act* does not apply to:

(1) A publisher, broadcaster, printer or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter so far as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated ~~this article~~ *the Kansas consumer protection act*; or

(2) claim for personal injury or death or claim for damage to property other than the property that is the subject of the consumer transaction.

(b) A person alleged to have violated this act has the burden of showing the applicability of this section.

Sec. 2. K.S.A. 50-639 is hereby amended to read as follows: 50-639. (a) Notwithstanding any other provisions of law, with respect to property which is the subject of or is intended to become the subject of a consumer transaction in this state, no supplier shall:

(1) Exclude, modify or otherwise attempt to limit the implied warranties of merchantability, *as defined in K.S.A. 84-2-314 and amendments thereto* and fitness for a particular purpose, *as defined in K.S.A. 84-2-315 and amendments thereto*; or

(2) exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of implied warranty of merchantability and fitness for a particular purpose.

(b) Notwithstanding any provision of law, no action for breach of warranty with respect to property subject to a consumer transaction shall fail because of a lack of privity between the claimant and the party against whom the claim is made. An action against any person for breach of warranty with respect to property subject to a consumer transaction shall not of itself

(No changes)

*Attachment 1*

constitute a bar to the bringing of an action against another person.

(c) A supplier may limit the supplier's implied warranty of merchantability and fitness for a particular purpose with respect to a defect or defects in the property only if the supplier establishes that the consumer had knowledge of the defect or defects, which became the basis of the bargain between the parties. In neither case shall such limitation apply to liability for personal injury or property damage.

(d) Nothing in this section shall be construed to expand the implied warranty of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, to involve obligations in excess of those which are appropriate to the property.

(e) A disclaimer or limitation in violation of this section is void. If a consumer prevails in an action based upon breach of warranty, and the supplier has violated this section, the court may, in addition to any actual damages recovered, award reasonable attorney's fees and a civil penalty under K.S.A. 50-636, and amendments thereto, or both to be paid by the supplier who caused the improper disclaimer to be written.

(f) The making of a limited express warranty is not in itself a violation of this section.

(g) This section shall not apply to seed for planting.

(h) This section shall not apply to sales of livestock for agricultural purposes, other than sales of livestock for immediate slaughter, except in cases where the seller knowingly sells livestock which is diseased.

(No changes)

New Sec. 3/ Sections 3 through 7, inclusive, of this act shall be known and may be cited as the Kansas collision damage waiver act.

New Sec. 4/ Sections 3 through 7, inclusive, of this act shall apply to all persons in the business of leasing rental motor vehicles for a period of 60 days or less from locations in this state under an agreement which imposes upon the lessee an obligation to pay for any damages caused to the leased vehicle. The provisions of sections 3 through 7, inclusive, of this act apply solely to the collision damage waiver portion of the rental agreement.

New Sec. 5 (a) "Collision damage waiver" means any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees for a charge, to waive any and all claims against the lessee for any

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damage to the rental motor vehicle during the term of the rental agreement.

(b) "Lessor" means any person or organization in the business of providing rental motor vehicles to the public.

(c) "Lessee" means any person or organization obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.

(d) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of the rental motor vehicle by the lessee for a period of 60 days or less.

(e) "Rental motor vehicle" means a private passenger type vehicle or commercial type vehicle which, upon execution of a rental agreement, is made available to a lessee for the lessee's use.

New Sec. 6. No lessor shall deliver or issue for delivery in this state a rental agreement containing a collision damage waiver unless:

(a) It is written in simple and readable words with common meanings and is understandable;

(b) the terms of the collision damage waiver are prominently displayed including, but not limited to, any conditions and exclusions applicable to the collision damage waiver. The collision damage waiver may exclude the following:

are (1) Damages caused intentionally by the lessee or as a result of lessee's willful or wanton misconduct;

are (2) damages caused by driving while intoxicated or under the influence of any drug, or the combined influence of alcohol and any drug; and

are (3) damages caused while engaging in any speed contest;

(c) all restrictions, conditions or provisions in or endorsed on a collision damage waiver shall be printed in type as large as ten-point type, or be written in pen and ink or typewritten in or on such agreement, but nothing contained in this section shall relate or apply to photographic copies of applications or parts thereof, attached to or made part of such agreement;

--(d) the collision damage waiver includes a statement of the total charge for the waiver period; and

--(e) the agreement containing the collision damage waiver displays the following notice on the face of the agreement, set apart and in boldface type and in no smaller print than 10-point type:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO

including passenger vans and minivans that are primarily intended for transport of persons.

(c) "Authorized drivers" shall mean the persons to whom the vehicle is rented; their spouse if a licensed driver and satisfying the rental company's minimum age requirement; their employer or coworker if engaged in business activity with the person to whom the vehicle is rented and are licensed drivers satisfying the rental company's minimum age requirement; any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment; or any person expressly listed by the rental company on the rental agreement as an authorized driver.

(a) in rental agreements of 60 continuous days or less, hold any authorized driver liable for any damage except where:

- an authorized driver
- an authorized driver's
- illegally
- illegal
- illegal

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

5. The damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity.

6. The damage arises out of the use of the vehicle to carry persons or property for hire.

7. The damage arises out of the use of the vehicle outside of the United States or Canada unless such use is specifically authorized by the rental agreement.

~~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.~~

~~New Sec. 7. The commission of any deceptive act or practice in the advertisement or sales of collision damage waivers is prohibited. The following are deceptive acts or practices when conducted by a lessor or its officials or representatives:~~

- ~~(a) The making of any false or misleading statements either orally or in writing, in connection with the sale, offer to sell, or advertisement of a collision damage waiver;~~
- ~~(b) the omission of any material statement in connection with the sale, offer to sell, or advertisement of a collision damage waiver, which under the circumstances should have been made in order to make the statements that were made not misleading;~~
- ~~(c) the making of any statement that the purchase of a collision damage waiver is mandatory;~~
- ~~(d) at the time of the sale, the failure to provide proper disclosure that the purchase of a collision damage waiver may be duplicative of the lessee's automobile insurance contract; and~~
- ~~(e) any deceptive act or practice as defined in K.S.A. 50-626 and amendments thereto.~~

~~Sec. 8. K.S.A. 50-635 and 50-639 are hereby repealed.~~

~~Sec. 9. This act shall take effect and be in force from and after January 1, 1989, and its publication in the statute book.~~

~~Approved May 9, 1988.~~

- (b) No action for damages may be brought by a rental car company against a renter who is a resident of the United States, except in the state and county of the renter's primary residence.
- (c) No security or deposit for damages in any form may be required or requested by the rental company during the rental period or pending resolution of any dispute.

Wolff Person

Attachment 2

SENATE BILL No. 110

By Committee on Financial Institutions and Insurance

1-30

AN ACT relating to insurance; concerning the payment of claims ~~or judgments~~; providing for accrual of interest on amounts owing under certain circumstances.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Except as otherwise provided by K.S.A. 40-447 and 40-3110, and amendments thereto, each insurance company, fraternal benefit society and any reciprocal or interinsurance exchange licensed to transact the business of insurance in this state which fails or refuses to pay any amount due under any contract of insurance within ~~15 business days after final determination of the amount payable or which fails to pay any judgment against any entity to which this act applies within 45 days after final judgment and there being no appeal pending and no supersedeas bond filed shall pay interest at the rate of 18% per annum on the amount due.~~

Sec. 2. For purposes of this act, if a claimant agrees to accept other than a lump sum payment, the ~~penalty~~ provided by section 1 shall apply separately to each payment.

Sec. 3. ~~Nothing in this act shall be construed to allow any insurance company, fraternal benefit society, reciprocal or interinsurance exchange to withhold payment of money for a period longer than reasonably necessary to transmit such payment.~~

~~Sec. 4.~~ This act shall take effect and be in force from and after its publication in the statute book.

the time prescribed herein shall pay interest on the amount due. If payment is to be made to the claimant and the same is not paid within 30 calendar days after reaching an agreement with the claimant on the amount payable, interest shall be payable from the date such agreement was made. If payment is to be made to any other person for providing repair or other services to the claimant and the same is not paid within 30 calendar days following the date of completion of such services, interest on the amount agreed to shall be payable to the claimant from the date of completion of the services. The rate of such interest shall be equal to 1% multiplied by the number of days that such amount remained unpaid, but not exceeding 100%

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*E. L. Vernon*

**SENATE BILL No. 110**

By Committee on Financial Institutions and Insurance

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shall pay interest on the amount due under any contract of insurance upon failure or refusal to pay such amount within 30 calendar days of the date agreed upon pursuant to an agreement with the claimant fixing such date and the amount payable. The rate of such interest shall be equal to 1% multiplied by the number of days that such amount remains unpaid after the date agreed for payment to be made upon, but not exceeding 100%

Sec. 2. For purposes of this act, if a claimant agrees to accept other than a lump sum payment, the ~~penalty~~ provided by section 1 shall apply separately to each payment.

interest payable as with respect

Sec. 3. ~~Nothing in this act shall be construed to allow any insurance company, fraternal benefit society, reciprocal or interinsurance exchange to withhold payment of money for a period longer than reasonably necessary to transmit such payment.~~

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.