

Approved _____

3/1/89
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 27, 1989 in room 529-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Larry Magill, Kansas Independent Insurors
Clark Seidel, Hertz Corporation
Ron Todd, Assistant Commissioner of Insurance
Kevin Allen, Executive Vice President, Kansas Motor Car Dealers

Chairman Bond called the meeting to order at 9:08 a.m.

SB 317 - After a brief explanation of this bill by Staff, Larry Magill, Kansas Independent Insurors, appeared before the committee to support the bill which he requested the committee to introduce. 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, 1988. SB 317 would also eliminate a law passed last year that sought to regulate the advertising practices of rental companies. In addition, this bill would permit the rental company to hold the consumer liable for damage only if such damage was caused by seven "exclusions" listed in the bill. (attachment 1)

Discussion followed Mr. Magill's presentation. A committee member asked about the regulation of coverage. Mr. Magill replied that since CDW is not considered insurance it can not be regulated in Kansas. Another committee member wondered why not propose this bill at the federal level instead of state by state. According to Mr. Magill, the National Association of Insurance Commissioners' logical approach is to address the state level.

Clark Seidel, Hertz Corporation, spoke before the committee in support of SB 317. He told the committee that his organization was very concerned about the image of the car rental industry being damaged by companies advertising so-called bargain rates. Since these companies cannot make a profit offering these bargain rates, they include "hidden" or "miscellaneous" charges, the largest of which is the Collision Damage Waiver. Oftentimes, the consumer may already have this type of coverage included in his own personal insurance policy. Mr. Seidel advised the committee that, while his company supported the bill as is, they would prefer to amend it to make the customer responsible for the first \$200 of damages provided no waiver can be sold. (attachment 2)

Ron Todd, Assistant Commissioner of Insurance, told the committee that the Insurance Department supported Mr. Magill's interpretation of the bill. He also stated to the committee that CDW was not insurance, therefore could not be regulated. Mr. Todd also stated that, under terms of this bill, there was nothing to keep the car rental companies from charging whatever they wished. (attachment 3)

Appearing in opposition to SB 317 was Kevin Allen, Executive Vice President, Kansas Motor Car Dealers, who stated to the committee that his organization felt the car rental customer should have the option of accepting CDW. Otherwise, according to Mr. Allen, some customers would pay for coverage they already have and would also pay for others who have no coverage.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529 S, Statehouse, at 9:00 a.m. ~~xxx~~ on MONDAY, FEBRUARY 27, 1989.

Chairman Bond asked if there were further conferees on this bill. Since there were none, hearings were closed on SB 317. Discussion ensued with a committee member inquiring of Mr. Seidel if Kansas would have a different rate structure from other states if they were to enact a \$200 deductible. Mr. Seidel replied that their rate structure differs in every city because their costs are different--that there were many variables.

Senator Karr made a motion to amend SB 317 to include the \$200 deductible language and instruct Staff to include language which would eliminate any buy back privilege. Senator Strick seconded the motion. The motion passed.

Senator Strick made a motion to pass SB 317, as amended, out of committee favorably. Senator Karr seconded the motion and the motion passed.

Senator Reilly made a motion to accept the minutes of February 22, 23 and 24 as written. Senator Strick seconded the motion. The motion carried.

Chairman Bond announced the meeting adjourned at 9:57 a.m.

Testimony on SB 317
Before the Senate Financial Institutions & Insurance Committee
February 27, 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 have a hearing on SB 317, which we requested this 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 50-66 of SB 317. For the most part, these are exclusions which should not cause a prudent renter any problem.

Attachment 1
Sen. F. F. I
2/27/89

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. *dealing with a not rate.*

We have not been able to find out yet from the National Association of Insurance Commissioners how many states are considering their model law. To our knowledge, at this point, only Illinois and California 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.

It is our understanding that Attorney General Stephan is chairman

of task force of the National Attorneys General Association that will be making recommendations on the CDW problem by March 14, 1989. They are considering three possibilities: 1) a prohibition of the sale of CDW's; 2) allowing the sale of a \$100-200 deductible buy back or; 3) requiring the use of actuarial rates. The Kansas Attorney General's office cannot take a position until the task force chooses which of the three alternatives it will recommend or possibly all three.

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? Because 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.

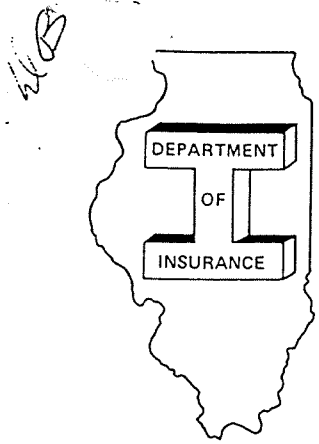
This article was taken from The Wall Street Journal, Tuesday, January 31, 1989.

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

\$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

STATEMENT BY CLARK SEIDEL
ZONE MANAGER
THE HERTZ CORPORATION
SENATE BILL 317

Good day, I am Clark Seidel, speaking on behalf of The Hertz Corporation. As you know Hertz is the number one car rental company in the world and we virtually created the car rental industry. We have worked for over 70 years to build our reputation. We are proud to serve our customers, and proud to be a vital link in the country's transportation system.

But we are also alarmed by what we see happening in the car rental business. You may remember the movie, Tin Men. In it, aluminum siding salesmen pull off one outrageous scheme after another on their customers.

We fear that much of the car rental business is becoming the aluminum siding business of the nineteen eighties. Some of the newcomer rental car companies are destroying the goodwill that Hertz has worked so hard to build.

No wonder half of the customers surveyed in a recent pool said they are unhappy with their experience renting a car.

That's why we need your help. To clean up our industry. To give customers the right to rent a car at the price advertised.

Anyone who rents a car from the so-called bargain rental companies knows what happens. They advertise a car for \$49 or \$59 a week. That sounds great. It may be cheaper than the car payments on your own car. And that's the point -- no one can rent you a car for \$49 a week and make a profit. So they add on the hidden charges.

Maybe the so-called weekly rate is only for the first four days. The remaining three days are charged at a higher rate. Apparently a week is no longer seven days.

They charge you \$11.95 for a half a tank of gas, suggesting you return it empty. Do you really want to drive a car on empty when you're rushing for plane? And there may be 10 percent more for airport fees and another five percent for "miscellaneous charges", whatever those are.

Finally, there is the biggest added charge, the Collision Damage Waiver, or CDW. That's where the real money is for a lot of companies. They charge up to \$13 a day, or \$91 a week. Ninety-one dollars extra for a car that was advertised for \$49 a week. Over 100% more than the advertised rate.

*Attachment 2
Sen. F I & I
2/27/89*

They probably don't tell you that your own car insurance may cover the CDW. It's the hard sell. For some, a majority of the income of sales reps is determined on the basis of how many CDW's they sell.

And the hard sell often becomes an out and out coercion. If you decline CDW, you may find, that the car you reserved is no longer available. Or the rate you were given is no longer valid. Or that a large cash deposit is suddenly required.

Because profits from the CDW are used to make up for the artificially low advertised rates, the CDW isn't presented as an option. It is presented as a requirement.

At Hertz, the CDW is clearly an option for a customer. We wish we did not have to use it at all. That's why I'm here today. Our customers know they may not need the CDW. In fact, there is a large box right in the contract alerting customers that their own insurance may cover the CDW. That's right, a large box. Not some fine print hidden in the back of the contract.

In fact, we have removed all fine print from our advertising. We want to compete on price and service, not hidden extras. That means one price. No extras, no fine print.

We support SB 317, and believe its elimination of CDW, an extra charge that has been abused; and most expensive for consumers of all extras charges, is a vital first step. We do advocate a modification which would have the customer responsible for the first \$200 of damages provided no waiver can be sold. People should have some responsibility so that they exercise ordinary care. *would accept bill in the present form.*

Kansas is just one of many states considering a law to protect consumers and do away with the CDW. There are now 27 states considering action. The National Association of Insurance Commissioners and the National Association of Attorneys General have called for the end of CDW's.

Consumers are mad, and justifiably so. They need your help at the rental car counter. And we need you help to clean up our industry. To offer consumers what they deserve -- a car for the price that's advertised.

Thank you.

TESTIMONY ON SENATE BILL NO. 317

My name is Ron Todd and I am the Assistant Commissioner of Insurance of the State of Kansas. Commissioner Bell favors the enactment of Senate Bill No. 317 which language has been recommended by the National Association of Insurance Commissioners.

Senate Bill No. 317 would prohibit, with some exceptions, the practice used by many rental car companies of using rental agreements to make the customer liable for any damage to the rented car and then selling the renter a "collision damage waiver" which relieves the renter of such liability. The problem that is caused by this practice is that it is not the business of insurance and, therefore, the charges for the "waiver" are not regulated by the applicable insurance rating laws and such charges appear to greatly exceed the cost of providing such a waiver.

We feel that Senate Bill No. 317 would result in much less confusion and misunderstanding for the consumers and would not cause a problem to the car rental firms, because they can still have the legitimate costs of damage to their autos reflected in their rental fees.

We urge the favorable consideration of Senate Bill No. 317.

*Attachment 3
Sen 7784
2/27/89*