

SECOND REGULAR SESSION

# HOUSE BILL NO. 1285

## 92ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE ENGLER.

Read 1<sup>st</sup> time January 27, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4221L.011

---

### AN ACT

To repeal sections 407.730 and 407.735, RSMo, and to enact in lieu thereof two new sections relating to car rental insurance, with a penalty provision.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 407.730 and 407.735, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 407.730 and 407.735, to read as follows:

407.730. As used in sections 407.730 to 407.748, the following terms mean:

2 (1) **"Authorized driver":**

3 (a) **The renter;**

4 (b) **The renter's spouse if the spouse is a licensed driver and satisfies the car rental  
5 company's minimum age requirement;**

6 (c) **Any person expressly listed by the car rental company on the renter's contract  
7 as an authorized driver;**

8 (2) "Blackout date", any date on which an advertised price is totally unavailable to the  
9 public;

10 (3) **"Car rental company", any person or entity in the business of renting private  
11 passenger vehicles to the public;**

12 [(2)] (4) "Clear and conspicuous", that the statement, representation or term being  
13 disclosed is of such size, color contrast, and audibility and is so presented as to be readily noticed  
14 and understood by the person to whom it is being disclosed. All language and terms should be  
15 used in accordance with their common or ordinary usage and meaning;

16 [(3)] (5) "Collision damage waiver", any product a consumer purchases from a car rental

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.**

17 company in order to waive all or part of his liability in the event of a collision, other damage to,  
18 or loss due to theft of, a rental vehicle;

19 [(4)] (6) "Limited time availability", that the advertised rental price is only available for  
20 a specific period of time or that the price is not available during certain blackout periods;

21 [(5)] (7) "Material restriction", a restriction, limitation or other requirement which  
22 significantly affects the price of, use of, or a consumer's financial responsibility for a rental car;

23 [(6)] (8) "Mandatory charge", any charge, fee, or surcharge consumers must generally  
24 pay in order to obtain or operate a rental vehicle;

25 (9) **"Optional car rental insurance", products and services that are offered in  
26 connection with and incidental to the rental of a motor vehicle under subdivision (10) of  
27 subsection 1 of section 375.786, RSMo. This definition of optional car rental insurance or  
28 any other definition of insurance shall not include the car rental company's agreement to  
29 waive its right of indemnity against the renter for damages to the rental vehicle;**

30 [(7)] (10) "Advertisement", oral, written, graphic or pictorial statements made in the  
31 course of solicitation of business including, without limitation, any statement or representation  
32 made in a newspaper, magazine, **the Internet**, or other publication, or contained in any notice,  
33 sign, poster, display, circular, pamphlet, or letter which may collectively be called "print  
34 advertisements", or on radio or television, which may be referred to as "broadcast commercials".

407.735. 1. Any business practices utilized by car rental companies in furtherance of  
2 their business of renting vehicles to the public shall be nondeceptive, fair and shall not be  
3 unconscionable.

4 2. Any collision damage waiver product offered for sale to the public shall not contain  
5 any provisions that are deceptive, unfair or unconscionable. It is deceptive, unfair, and  
6 unconscionable to require a consumer to assume absolute liability for damage or loss up to the  
7 total value of a rental vehicle regardless of fault as a condition of the rental agreement, and then  
8 not include as part of any collision damage waiver product, a waiver of liability for any damage  
9 or loss which occurs as a result of the consumer's ordinary negligence, except where:

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

12 (2) The damage arises out of the authorized driver's operation of the vehicle while  
13 intoxicated or under the influence of any illegal or unauthorized drug;

14 (3) The rental transaction is based on fraudulent information supplied by the renter;

15 (4) The damage arises out of the use of the vehicle while committing or otherwise  
16 engaged in a criminal act in which the automobile usage is substantially related to the nature of  
17 the criminal activity;

18 (5) The damage arises out of the use of the vehicle to carry persons or property for hire;

19 (6) The damage occurs while the vehicle is operated by a person other than an authorized  
20 driver]. For the purposes of this subsection, "authorized driver" means the person to whom the  
21 vehicle is rented; the renter's spouse or other family members who are licensed drivers and  
22 satisfy the rental company's minimum age requirement; the renter's employer or co-worker if they  
23 are engaged in business activity with the person to whom the vehicle is rented, are licensed  
24 drivers, and satisfy the rental company's minimum age requirement; any person who operates the  
25 vehicle during an emergency situation or while parking the vehicle at a commercial  
26 establishment; and any person expressly listed by the rental company on the rental agreement as  
27 an authorized driver] **as defined in section 407.730;**

28 (7) The damage arises out of the use of the vehicle outside of the United States unless  
29 such use is specifically authorized by the rental agreement;

30 (8) Towing or pushing anything or if operation of the vehicle on an unpaved road has  
31 resulted in damage or loss which is a direct result of the road or driving conditions;

32 (9) Loss due to the theft of the rental vehicle. However, the renter shall be presumed to  
33 have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition  
34 key furnished by the rental company or an authorized driver establishes that the ignition key  
35 furnished by the **car** rental company was not in the vehicle at the time of the theft, and (B) an  
36 authorized driver files an official report of the theft with the police or other law enforcement  
37 agency within twenty-four hours of learning of the theft and reasonably cooperates with the **car**  
38 rental company and the police or other law enforcement agency in providing information  
39 concerning the theft. The presumption set forth in this paragraph is a presumption affecting the  
40 burden of proof which the **car** rental company may rebut by establishing that an authorized  
41 driver committed, or aided and abetted the commission of, the theft.

42 3. Any claim resulting from damage to or loss of a rental vehicle shall be reasonably and  
43 rationally related to the actual loss incurred. The **car** rental company shall not assert or collect  
44 any claim for physical or mechanical damage to or loss of a rental vehicle which exceeds: the  
45 actual cash value of the vehicle immediately before the loss less any proceeds from the vehicle's  
46 disposal after the loss, or the actual cost to repair the damaged vehicle including all discounts  
47 or price reductions, whichever is less. Such claim shall be based on an estimate of damage or  
48 repair invoice made by an independent appraisal company, an insurance company, or a repair  
49 facility that completed or would complete the repairs. A **car** rental company's charge for loss  
50 of use shall not exceed a reasonable estimate of the actual income lost.

51 4. It is a deceptive and unfair practice for a car rental company or employee to  
52 misrepresent any element of a rental agreement transaction or to fail to disclose to consumers all  
53 material facts and restrictions applicable to the rental of a vehicle or in the sale of optional  
54 products or services. The company shall disclose the extent of the consumer's liability for the

55 vehicle and the price for collision damage waiver, **optional car rental insurance or other**  
56 **optional products**, and applicable mileage limitations and charges. **A car rental company**  
57 **shall not require the purchase of damage waiver, optional car rental insurance, or any**  
58 **other optional products.** No car rental company shall sell or offer to sell a consumer a collision  
59 damage waiver, **optional car rental insurance, or any other optional** product as a part of the  
60 rental agreement unless the car rental company first provides the consumer with the following  
61 written notice:

62 [NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A  
63 COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE  
64 TO THE VEHICLE. BEFORE YOU DECIDE WHETHER TO PURCHASE THE COLLISION  
65 DAMAGE WAIVER PRODUCT, YOU MAY WISH TO DETERMINE WHETHER YOUR  
66 OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE  
67 RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN  
68 INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER  
69 PRODUCT IS NOT MANDATORY AND MAY BE DECLINED.] **OPTIONAL PRODUCTS**  
70 **NOTICE: OUR CONTRACT OFFERS FOR AN ADDITIONAL CHARGE OPTIONAL**  
71 **PROTECTION PRODUCTS. BEFORE DECIDING WHETHER TO PURCHASE ANY**  
72 **OF THESE OPTIONAL PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER**  
73 **YOUR PERSONAL INSURANCE OR CREDIT CARD PROVIDES YOU COVERAGE**  
74 **DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE OPTIONAL**  
75 **PRODUCTS IS NOT REQUIRED TO RENT A VEHICLE.**

76

77 Such notice shall be made on the face of the rental agreement as part of the written contract, shall  
78 be set apart in boldface type and in no smaller print than 10-point type, and shall include a space  
79 for the consumer to acknowledge his **or her** receipt of this notice.

80 5. **The car rental company shall also post at the rental office a sign that is clear and**  
81 **conspicuous and informs the consumer about collision damage waiver, optional car rental**  
82 **insurance, and other optional products. The following language may be used to comply**  
83 **with the requirements of this section, but shall not be considered the exclusive language**  
84 **that may be used:**

85

**OPTIONAL PRODUCTS NOTICE:**

86 **Our contract offers for an additional charge optional products which provide you**  
87 **protection during your rental, including:**

88 1. **Collision Damage Waiver: You are responsible for all damages to or loss of the**  
89 **rental vehicle. A Collision Damage Waiver will relieve you of responsibility for all or part**  
90 **of the damage to the rental vehicle that may occur during the rental period.**

91           **2. Personal Accident Insurance: Personal Accident Insurance provides accidental**  
92 **death and accident medical insurance that protects you during the rental period in or out**  
93 **of the rental vehicle and your passengers while in the rental vehicle.**

94           **3. Personal Effects Coverage: Personal Effects Coverage protects your possessions**  
95 **from loss or damage during the rental period.**

96           **4. Liability Insurance: Liability Insurance provides protection to cover injuries or**  
97 **death to third parties or damage to a third party's property if you are at fault in an**  
98 **accident with the rental vehicle during the rental period.**

99           Any time during the rental period you may add or remove any of these optional  
100 products by bringing the rental vehicle and your rental agreement to any of the car rental  
101 company's locations.

102           For a complete description of these optional products, including the benefits and  
103 exclusions, please see your rental agreement.

104           Before deciding to purchase any of these optional products, you may wish to  
105 determine whether your personal insurance or credit card provides you coverage during  
106 the rental period.

107           **The purchase of any of these products is not required to rent a vehicle.**

108           **6.** Car rental companies shall not place a hold against a consumer's credit limit or charge  
109 a consumer's credit card in a deceptive or unfair manner, and without full and complete  
110 disclosure of such practice.

111           **7. Any car rental company that is found after notice and hearing to have violated**  
112 **or attempted to violate any provision of this section shall be subject to a fine of fifty dollars**  
113 **for each violation. Each issuance, procurement, or negotiation of a single collision damage**  
114 **waiver in violation of this section shall be deemed a separate violation. No fine or fines**  
115 **shall be imposed against a car rental company under this section which in the aggregate**  
116 **exceeds ten thousand dollars in any calendar year.**