

SECOND REGULAR SESSION  
[PERFECTED]  
HOUSE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1285**  
**92ND GENERAL ASSEMBLY**

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Taken up for Perfection April 20, 2004. House Substitute for House Committee Substitute for House Bill No. 1285 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

4221L.05P

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**AN ACT**

To repeal sections 226.092, 407.730 and 407.735, RSMo, and to enact in lieu thereof three new sections relating to car rental insurance, with a penalty provision.

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

Section A. Sections 226.092, 407.730 and 407.735, RSMo, are repealed and three new  
2 sections enacted in lieu thereof, to be known as sections 226.092, 407.730 and 407.735, to read  
3 as follows:

226.092. The state highways and transportation commission is authorized, when  
2 considered by it to be in the public interest, to provide [as part compensation to the employee  
3 involved,] liability insurance covering the operation of [state-owned vehicles involved in the  
4 performance of operations of the] **all motor vehicles and equipment, including airplanes and  
5 boats, owned, leased, rented or operated pursuant to commission authorization and used  
6 in the performance of official commission or department business.** The commission is  
7 authorized to provide such insurance coverage for [its employees] **all authorized operators, as  
8 determined by the commission,** and the commission's liability by a plan of self-insurance  
9 **operated in accordance with commercial insurance industry standards for fleet vehicle  
10 coverage** or by a plan partially self-insured and partially insured by a contract of insurance **with  
11 an insurance company or by a plan fully insured by a contract of insurance** with an  
12 insurance company as the commission deems to be in the public interest. If the commission

**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.**

13 provides for a plan of self-insurance or partial self-insurance, it shall annually determine the  
14 amount of contribution to the plan required to pay all accrued and anticipated claims and the cost  
15 of administering the plan and shall include such amount in its budget request for contribution to  
16 the [highways and transportation commission automobile liability insurance] **commission's self-**  
17 **insurance** plan. The commission may contract for the services of such actuaries, consultants,  
18 and claims administrators as it deems necessary for the effective administration of a [self-insured  
19 automobile liability] **self-insurance** plan and is authorized to contract for excess insurance  
20 coverage with an insurance company authorized to write such coverage in this state. The  
21 immunity in tort actions of the [state and the state highways and transportation] commission shall  
22 not be in any way affected by this section.

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) **The renter's employee or co-worker if they are engaged in business activity with**  
7 **the person to whom the vehicle is rented, are licensed drivers, and satisfy the rental**  
8 **company's minimum age requirements;**  
9 (d) **Any person who operates the vehicle during an emergency situation; and**  
10 (e) **Any person expressly listed by the car rental company on the renter's contract**  
11 **as an authorized driver;**  
12 (2) **"Blackout date", any date on which an advertised price is totally unavailable to the**  
13 **public;**  
14 (3) **"Car rental company", any person or entity in the business of renting private**  
15 **passenger vehicles to the public;**  
16 [(2)] (4) **"Clear and conspicuous", that the statement, representation or term being**  
17 **disclosed is of such size, color contrast, and audibility and is so presented as to be readily noticed**  
18 **and understood by the person to whom it is being disclosed. All language and terms should be**  
19 **used in accordance with their common or ordinary usage and meaning;**  
20 [(3)] (5) **"Collision damage waiver", any product a consumer purchases from a car rental**  
21 **company in order to waive all or part of his [liability in the event of a collision, other damage to]**  
22 **responsibility for damages, or loss [due to theft] of, a rental vehicle;**  
23 [(4)] (6) **"Limited time availability", that the advertised rental price is only available for**  
24 **a specific period of time or that the price is not available during certain blackout periods;**  
25 [(5)] (7) **"Material restriction", a restriction, limitation or other requirement which**  
26 **significantly affects the price of, use of, or a consumer's financial responsibility for a rental car;**

27            [(6)] (8) "Mandatory charge", any charge, fee, or surcharge consumers must generally  
28 pay in order to obtain or operate a rental vehicle;

29            (9) "Car rental insurance", **products and services that are offered in connection**  
30 **with and incidental to the rental of a motor vehicle under subdivision (10) of subsection 1**  
31 **of section 375.786, RSMo. This definition of optional car rental insurance or any other**  
32 **definition of insurance shall not include collision damage waiver;**

33            (10) "Rental agreement", **any document or combination of documents, which, when**  
34 **read together and incorporated by reference to each other, relate to and establish the terms**  
35 **and conditions of the rental of a motor vehicle by an individual; or when such a**  
36 **combination of documents is entered into as part of any written master, corporate, group**  
37 **or individual agreement setting forth the terms and conditions governing the use of a rental**  
38 **car rented by a car rental company;**

39            (11) "Master rental agreement", **those documents used by a car rental company for**  
40 **expedited service to members in a program sponsored by the car rental company in which**  
41 **renters establish a profile and select preferences for rental needs which establish the terms**  
42 **and conditions governing the use of a rental car rented by a car rental company by a**  
43 **participant in a master rental agreement;**

44            [(7)] (12) "Advertisement", oral, written, graphic or pictorial statements made in the  
45 course of solicitation of business including, without limitation, any statement or representation  
46 made in a newspaper, magazine, **the car rental company's proprietary web site**, or other  
47 publication, or contained in any notice, sign, poster, display, circular, pamphlet, or letter which  
48 may collectively be called "print advertisements", or on radio or television, which may be  
49 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 **knowingly and intentionally** misrepresent any **material** element of a rental agreement  
53 transaction [or to fail to disclose to consumers all material facts and restrictions applicable to the  
54 rental of a vehicle or in the sale of optional products or services] **including the sale of collision**  
55 **damage waiver and car rental insurance**. The company shall disclose **in the rental**  
56 **agreement** the extent of the consumer's liability for the vehicle and **applicable mileage**  
57 **limitations and charges**. **When the consumer elects the collision damage waiver or car**  
58 **rental insurance**, the price for collision damage waiver and [applicable mileage limitations and  
59 charges] **car rental insurance shall appear on the rental agreement**. **A car rental company**  
60 **shall not require the purchase of collision damage waiver or car rental insurance**. No car  
61 rental company shall sell **to a consumer** or offer to sell a consumer a collision damage waiver  
62 [product] **or car rental insurance** as a part of the rental agreement unless the car rental company  
63 [first] provides the consumer with the following written notice:

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

79 **THIS NOTICE REQUIREMENT SHALL BE DEEMED SATISFIED IF THIS**  
80 **WRITTEN NOTICE APPEARS IN MATERIALS FURNISHED TO A CONSUMER**  
81 **DURING THE ENROLLMENT PROCESS INTO A MASTER RENTAL AGREEMENT**  
82 **OR IF PLACED ON THE RENTAL COMPANY'S PROPRIETARY WEB SITE AFTER**  
83 **THE EFFECTIVE DATE OF THIS STATUTE. THIS NOTICE PROVISION IS**  
84 **DEEMED COMPLIED WITH FOR ALL CONSUMERS WHO HAVE PREVIOUSLY**

85 **ENROLLED INTO A MASTER RENTAL AGREEMENT PRIOR TO THE EFFECTIVE**  
86 **DATE OF THIS STATUTE AND NO FURTHER NOTICE SHALL BE REQUIRED.**

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

90 **5. The car rental company shall provide a notice at the rental office in the form of**  
91 **a sign, placard, or brochure that informs the consumer of the following:**

92 **(1) The availability of collision damage waiver;**

93 **(2) The availability of car rental insurance;**

94 **(3) A statement that the purchase of collision damage waiver and/or car rental**  
95 **insurance is not required in order to rent.**

96

97 **The following language may be used to comply with the requirements of this section, but**  
98 **shall not be considered the exclusive language that may be used:**

99 **COLLISION DAMAGE WAIVER AND CAR RENTAL INSURANCE NOTICE:**

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

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

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

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

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

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

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

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

120           **7. The sole and exclusive remedies for any violation by a car rental company of any**  
121 **provision of sections 407.730 to 407.735, or for any conduct, act, or practice prescribed by**  
122 **any provisions of sections 407.730 to 407.735, shall be injunctive relief and monetary**  
123 **damages in an amount not to exceed fifty dollars for each violation. The aggregate amount**  
124 **of monetary damages which may be assessed against a car rental company for violations**  
125 **of any provisions of sections 407.730 to 407.735, or for any conduct, act, or practice**  
126 **prescribed by any provisions of sections 407.730 to 407.735, shall not exceed the sum of ten**  
127 **thousand dollars in the aggregate during any calendar year. These remedies are in lieu of,**  
128 **and supercede, all other remedies provided by this chapter, other Missouri statutes,**  
129 **common law, or equity.**