



**House
Legislative
Analysis
Section**

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RENTAL VEHICLE LIABILITY LIMITS

House Bill 4679 as introduced
First Analysis (4-5-95)

Sponsor: Rep. Kirk A. Profit
Committee: Insurance

THE APPARENT PROBLEM:

Representatives of the car and truck rental industry are seeking limitations on their exposure to lawsuits under Section 401 of the Michigan Vehicle Code, which deals with "owner's liability." The industry says its members have become a "deep pockets" under that section, which they say exposes them to unlimited vicarious liability. A rental company can be held liable for harm done by a negligent operator of one of its vehicles, even though the operator was not the person who rented the vehicle and even though the company had no way to control who was driving the vehicle. There have been cases in which a company has been held liable for millions of dollars without any attribution of negligence to the company as a result of this vicarious liability statute, according to testimony from the industry.

The problem arises out of the interpretation of the language of Section 401. The section says, "The owner of a motor vehicle shall be liable for any injury occasioned by the negligent operation of the motor vehicle . . ." It adds, "The owner shall not be liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge." (The act also says it is presumed that a vehicle is being driven with the knowledge and consent of the owner if it is being driven at the time of the injury by his or her father, mother, brother, sister, son, daughter, or other immediate family member.)

While the so-called owner's liability statute applies to all vehicle owners, it is said to have a peculiarly acute impact on the rental vehicle industry. They have complained that, as a result of case law, by giving up the keys to the vehicle they are practically responsible for whatever happens when the vehicle is in operation. The result, say industry spokespersons, is that the industry faces costs it cannot afford and its viability in the state is threatened. (Reportedly, only about ten states have such laws affecting rental companies.) One company has testified that its liability insurance

costs have more than tripled since 1991. And catastrophic damage awards have the potential to destroy a company. An exemption from liability was provided in 1988 for the owners of leased motor vehicles when the lease is for a period of greater than 30 days. What is proposed now is a limitation on liability for vehicles rented for shorter durations.

THE CONTENT OF THE BILL:

The bill would amend the section of the Michigan Vehicle Code (MCL 257.401) dealing with "owner's liability" to limit the liability of businesses that lease out motor vehicles (1) by specifying that a company would only be liable when a rental vehicle was being operated by certain drivers; and (2) by putting a cap on the amount of liability a company faced. The bill would apply to leases providing for use of the motor vehicle for 30 days or less. (The code already says that a person engaged in the business of leasing motor vehicles is not liable at common law for damages to either person or property resulting from the operation of a leased motor vehicle if the lease is for a period greater than 30 days.)

Under the bill, a rental company would only be liable for an injury caused by the negligent operation of the leased vehicle if the injury occurred while the vehicle was being operated by an authorized driver under the lease agreement or by the lessee's spouse, father, mother, brother, sister, son, daughter, or other immediate family member.

The liability of the rental company would be limited to \$20,000 because of bodily injury to or death of one person in any one accident and \$40,000 because of bodily injury to or death of two or more persons in any one accident.

The rental company would have to notify customers leasing a vehicle of the limits of the company's

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liability (both as regards the specified operators and the caps) and notify them that they may be liable to an injured person for amounts awarded in excess of the caps (and to the company for amounts up to the cap).

The bill specifies that it should not be construed to expand the liability of a person engaged in the business of leasing motor vehicles or to impair that person's right to indemnity or contribution, or both.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill proposes a responsible solution to the problem the rental car and truck industry faces with the "owner's liability" statute. The bill would limit the liability of rental companies in two ways. It would specify that a company as vehicle owner would only be liable for the negligence of a person listed in the rental agreement or an immediate family member of the renter. The company would no longer be liable when unauthorized persons operated the rental car or truck. Also, the amount of liability for bodily injury would be limited to \$20,000 per person per accident and \$40,000 for all persons in one accident. Industry representatives point out that the bill does not affect the state's no-fault insurance law. That law provides unlimited medical benefits coverage for people injured in auto accidents (as well as providing coverage for residual liability, when vehicle owners or operators are sued for damages that exceed a certain threshold). The lawsuits against rental companies under the "owner's liability" statute, industry representatives point out, are for non-economic ("pain and suffering") damages beyond those covered by no-fault insurance.

The rental industry is not seeking a total exemption, even though it has little control over how the vehicle is used once the keys are turned over. It only seeks to limit its liability. The current situation, where companies face unlimited and uncontrollable losses from harm done in incidents involving their vehicles, inhibits the growth of the industry and threatens to drive some companies out of the state.

Against:

Legislation was developed on this issue last session and a consensus bill was developed that had the agreement of a number of parties, including representatives of the trial lawyers. But that bill called for limits of \$300,000 per person per accident and \$500,000 per accident. The limits in this bill are unacceptably low. The no-fault act, for example, requires \$20,000 and \$40,000 as minimums for residual liability coverage for all vehicle owners. This bill uses those numbers as caps. Also, the legislation last session applied only to "private passenger" motor vehicles. This bill would extend the limits on liability to renters of commercial trucks, school buses, and other kinds of vehicles. The implications of this have not been thought through.

The bill says a company is only liable for damages when certain people are driving. But the list does not cover cases when, for example, the person who rented the car becomes ill or injured and must let a friend (or other non-relative) drive. Or cases where a person is intoxicated and wants a sober friend to drive. Doesn't this bill provide a disincentive for such responsible behavior? The list of eligible drivers needs to be expanded. There are other issues as well that need to be addressed, such as cases where a rental company negligently leases a vehicle to an impaired or uninsured driver. There should be no cap in such cases. Further, the bill says it should not be construed as expanding the liability of rental companies; it should also say that it does not reduce a company's liability except as expressly provided.

Response:

The agreement reached last year ultimately proved unworkable. The \$300,000/\$500,000 limits are unrealistically high and are simply unaffordable for many rental companies. The bill does not intend to limit liability in cases where a company acts negligently.

Against:

The bill carves out a narrow exception to the owner's liability statute for one kind of company. This is unfair and bad public policy. If it is an unfair law, it is unfair for everyone, not just for one industry. The statute applies to all private vehicle owners who let others use their vehicles. It affects other kinds of companies, such as employers whose

employees use their vehicles. It affects, for example, auto repair shops or dealerships that provide loaner vehicles. Some people believe the vicarious liability statute should be repealed and that liability should be tied to negligent behavior.

Response:

The bill addresses a peculiar problem faced by the car and truck rental industry. It offers them practical, immediate relief from the threat of catastrophic damage awards from lawsuits under the current law. This is a serious demonstrated business problem for the industry.

POSITIONS:

The Car and Truck Rental and Leasing Association of Michigan supports the bill. (4-4-95)

A representative of the Small Business Association of Michigan testified in support of the bill, and further advocated repeal of the "owner's liability" provision of the vehicle code.

The Michigan Trial Lawyers Association testified in opposition to the bill as introduced. (4-4-95)

The Michigan Insurance Federation takes the position that vicarious liability for vehicle owners should be eliminated entirely. (4-4-95)