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RENTAL VEHICLE LIABILITY LIMITS

House Bill 4679 as enrolled
Public Act 98 of 1995
Second Analysis (6-29-95)

Sponsor: Rep. Kirk A. Profit
House Committee: Insurance
Senate Committee: Financial Services

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. According to testimony from the industry, 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.

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, just giving up the keys to a vehicle makes them practically responsible for whatever happens while the vehicle is in operation. The result, say industry representatives, is that some companies face costs they cannot afford and their 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 longer 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 vehicle leasing businesses (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 (unless the company or its agents were negligent in leasing the vehicle). 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.

Unless the lessor or an agent was negligent in leasing the motor vehicle, 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

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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 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 or reduce, except as otherwise provided by the bill, 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.

For the purposes of the bill, the term "motor vehicle" would be defined as a self-propelled device by which a person or property may be transported upon a public highway. The term would not include a bus, power shovel, road machinery, agricultural machinery, or other machinery or vehicle not designed primarily for highway transportation. The term also would not include a device that moves upon or is guided by a track.

FISCAL IMPLICATIONS:

The bill has no fiscal implications, according to the House Fiscal Agency. (Fiscal note dated 4-2-95)

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. It should also be noted that the caps would not apply when a vehicle had been leased negligently.

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, and perhaps other kinds of vehicles. The implications of this have not been thought through. As a result of this legislation, some badly injured people who otherwise might have been fully compensated for their injuries will see their awards severely reduced.

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.

Response:

The agreement reached last year ultimately proved unworkable. The \$300,000/\$500,000 limits are unrealistically high.

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.