

## COLLISION DAMAGE WAIVER MODEL ACT

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### Section 1. Title of Chapter

This chapter shall be known and may be cited as the Collision Damage Waiver Model Act.

### Section 2. Scope

This chapter shall apply to all persons and organizations renting private passenger automobiles from locations in this state.

**Drafting Note:** This Act replaces the Collision Damage Waiver Model Act adopted by the NAIC in June, 1986.

### Section 3. Purpose

The purpose of this Act is to prohibit rental car companies from imposing liability upon renters subject to certain stated exceptions and the sale of the collision damage waiver in connection with private passenger automobile rental agreements of thirty (30) days or less.

### Section 4. Definitions

- A. "Rental company" means a person or organization in the business of providing private passenger automobiles to the public.
- B. "Renter" means a person or organization obtaining the use of a private passenger automobile from a rental company under the terms of a rental agreement.
- C. "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a private passenger automobile provided by a rental company.
- D. "Damage" means any damage or loss to the rented vehicle, including loss of use and any costs and expenses incident to the damage or loss.
- E. "Private passenger automobile" or "vehicle" means a motor vehicle of the private passenger type including passenger vans and minivans that are primarily intended for transport of persons.

- F. “Authorized driver” means the person to whom the vehicle is rented; his or her spouse if the spouse is a licensed driver and satisfies the rental company’s minimum age requirement, his or her employer or coworker if the person is engaged in business activity with the person to whom the vehicle is rented and is a licensed driver satisfying the rental company’s minimum age requirement, any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment, or any person expressly listed by the rental company on the rental agreement as an authorized driver.

## Section 5. Practices Prohibited

- A. A rental company shall not, in rental agreements of thirty (30) continuous days or less, hold an authorized driver liable for any damage, except where:

**Drafting Note:** It is expressly recommended by the NAIC that no deductible be charged by the rental company. Any jurisdiction that chooses to allow a nominal deductible should be careful to include language which would prohibit the offering of a waiver for whatever nominal deductible is allowed.

- (1) The damage is caused intentionally by an authorized driver or as a result of his or her willful and wanton misconduct;
- (2) The damage arises out of the authorized driver’s operation of the vehicle while legally intoxicated or under the influence of an illegal drug as defined or determined under the law of the state where the damage occurred;
- (3) The damage is caused while the authorized driver is engaged in a speed contest;

**Drafting Note:** “Speed contest” is a recognized term in many states. It is in no way intended, however, to mean exceeding a speed limit whether lawfully or unlawfully.

- (4) The rental transaction is based on information supplied by the renter with the intent to defraud the rental company;
- (5) The damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity;

**Drafting Note:** The intent of Paragraph (5) is to only allow an exception where the vehicle is used in the commission of a felony or other serious criminal activity where the vehicle is a means or operative tool of the act including transport of illegal contraband or as a means of escape. It is not intended to cover minor traffic violations.

- (6) The damage arises out of the use of the vehicle to carry persons or property for hire; or
- (7) The damage arises out of the use of the vehicle outside of the United States or Canada unless that use is specifically authorized by the rental agreement.

- B. No action for damage may be brought by a rental company against a renter who is a resident of the United States except in the state and county of the renter’s primary residence.

- C. No security or deposit for damage in any form may be required or requested by the rental company during the rental period or pending resolution of any dispute.

**Drafting Note:** It is intended that Subsection C include, but not be limited to, the practice of requiring security in the form of credit card lines of credit. Security may be allowed but only in amounts to reasonably insure payment on the account or security for return of the automobile.

- D. No waiver may be offered to provide coverage for any of the exceptions [or deductible, if applicable] listed above.

## **Section 6. Penalties**

A rental company, found by a court of competent jurisdiction or the delegated agency charged with enforcing this Act in this state, to have violated a provision of this Act, or to have proceeded with a lack of good faith to impose liability upon a renter as provided in this chapter, shall be subject to a penalty of not less than \$500 nor more than \$1,000 for each violation.

## **Section 7. Effective Date**

The provisions of this Act shall become effective ninety (90) days after enactment.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1988 Proc. II 5, 11, 157-159, 159-160, 181 (adopted).*

*This model act replaces an earlier document by the same name which used a different approach.*

*1986 Proc. II 12, 17, 164, 172-173, 177-179 (adopted).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-103 (1954/2014) (Collision damage waiver is not insurance).
Arkansas	NO CURRENT ACTIVITY	
California		CAL. BUS. & PROF. CODE § 22325 (1988); CAL. CIV. CODE § 1936 (1989).
Colorado		COLO. REV. STAT. §§ 10-3-1301 to 10-3-1307 (1989).
Connecticut		CONN. GEN. STAT. § 14-15b (1988).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 437D-5 to 437D-16 (1989/2003).
Idaho	NO CURRENT ACTIVITY	
Illinois		625 ILL. COMP. STAT. 5/6-305 to 5/6-305.2 (1989/1997); 27/20 (1997).
Indiana		IND. CODE §§ 24-4-9-1 to 24-4-9-24 (1989).
Iowa		IOWA CODE §§ 516D.1 to 516D.9 (1991).
Kansas		KAN. STAT. ANN. §§ 50-654 to 50-658 (1989).
Kentucky	NO CURRENT ACTIVITY	
Louisiana		LA. REV. STAT. ANN. §§ 22:2091.1 to 22:2091.10 (1989/1990); § 22:1406(F) (1989).
Maine		ME. REV. STAT. ANN. tit. 24-A, § 2927 (1991).
Maryland		MD. CODE ANN., COM. LAW § 14-2101 (1989); MD. CODE ANN., INS. § 19-512 (1972/1997).
Massachusetts		MASS. GEN. LAWS § 90:32E1/2 (1991).
Michigan	NO CURRENT ACTIVITY	
Minnesota		MINN. STAT. § 72A.125 (1987/1988) (Rental Vehicle Personal Accident Insurance); § 65B.48 (1986/1988).
Mississippi	NO CURRENT ACTIVITY	



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Missouri		MO. REV. STAT. §§ 407.730 to 407.735 (1989).
Montana	NO CURRENT ACTIVITY	
Nebraska	NO CURRENT ACTIVITY	
Nevada		NEV. REV. STAT. §§ 598.7915 to 598.7922 (1989).
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	NO CURRENT ACTIVITY	
New Mexico		N.M. STAT. ANN. § 59A-32-0 (1987).
New York		N.Y. GEN. BUS. CODE § 396-z (1988/2002); N.Y. INS. LAW § 3440 (1988/1989); N.Y. ADMIN. CODE tit. 11, § 60-1.5 (1989/1996) (Regulation 35-A).
North Carolina		N.C. GEN. STAT. § 58-36-80 (1989) (Own policy may offer coverage for rentals).
North Dakota		N.D. CENT. CODE § 26.1-40-17.1 (1989).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma	NO CURRENT ACTIVITY	
Oregon		OR. REV. STAT. §§ 646.857 to 646.859 (1989).
Pennsylvania		75 PA. STAT. ANN. § 1725 (1990) (Own policy must contain clear notice as to whether it covers rental vehicles).
Puerto Rico	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island		R.I. GEN. LAWS § 31-34-7 (1990/2004).
South Carolina		S.C. CODE ANN. §§ 56-31-10 to 56-31-40 (1989).
South Dakota	NO CURRENT ACTIVITY	
Tennessee		TENN. CODE ANN. § 56-7-1110 (1988).
Texas	TEX. BUS. & COM. CODE ANN. § 17.71 (1999).	
Utah	UTAH CODE ANN. §§ 31A-22-311 to 31A-22-313 (1989).	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. § 59.1-207.28 to 59.1-207.33 (1989).	VA. CODE ANN. §§ 59.1-207.15 to 59.1-207.20 (1988).
Washington	NO CURRENT ACTIVITY	
West Virginia	NO CURRENT ACTIVITY	
Wisconsin		WIS. STAT. §§ 344.57 to 344.579 (1990).
Wyoming	NO CURRENT ACTIVITY	

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### Proceedings Citations Cited to the Proceedings of the NAIC

#### Section 1. Title

This title was also used for an earlier NAIC model which sought to regulate the use of the collision damage waiver by requiring a license for companies issuing a collision damage waiver and requiring the filing of contracts and rates with an unspecified agency. The model did not define rental car collision damage waivers as insurance. **1986 Proc. II 175-179.**

#### Section 2. Scope

The Market Conduct Surveillance (EX3) Task Force further examined the issue of rental car supplementary insurance coverage in 1989, to consider how the NAIC should attempt to prevent unfair and deceptive practices. The most common supplementary coverages offered are excess liability protection, personal effects coverage and personal accident insurance. The abuses identified in the report prepared by the Subgroup on Rental Car Insurance were: unfair or deceptive conditions, complaint avenue unavailability, unreasonable pricing methods and lack of professionalism at the merchandising location.

The alternatives discussed by the subgroup were direct regulation of rental car agents as insurance producers, regulation in the area of rate control, removal of restrictions present in the coverage, rolling all the add-on coverages into the base price, and prohibiting the sale of the products in conjunction with rental car agreements. In the absence of a showing by rental car companies that a public good is served by allowing these coverages, the subgroup decided they will prohibit the sale of supplementary insurance coverage. **1989 Proc. II.**

#### Section 3. Purpose

The subgroup on rental car insurance attempted to respond to the growing list of complaints concerning the collision damage waiver and other options being offered by car rental companies. The reported abuses included high rates, hard-sell and scare tactics used upon consumers, failure to advise customers of alternatives to the coverage being offered, exclusions from coverage and deceptive advertising of rates. **1988 Proc. I 145-147.**

The first solution proposed to the growing problem of auto rental company complaints was to specifically include the contracts within the definition of insurance to ensure fair treatment of citizens who purchase them. Since collision damage waivers are not subject to regulation by state insurance departments, their rates are not subject to provisions prohibiting excess rates, nor to insurance trade statutes prohibiting misrepresentation and false advertising. **1985 Proc. I 175.**

The industry advisory committee expressed the opinion that the model act adopted in June of 1986 to regulate collision damage waivers did not correct most of the abuses recognized. The advisory committee suggested the best approach was not to attempt to regulate the collision damage waiver as insurance, but to change the law of bailment as it pertained to car rental companies. By restricting the car rental company's recourse for damages, the rental company would be required to assume the risk of damage to their rental vehicles as part of their normal business expense. These expenses consequently would be reflected in the daily/weekly rental car rates. **1988 Proc. II 188-189.**

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#### Section 3 (cont.)

The subgroup on rental car insurance considered but did not act upon the suggestion that the NAIC adopt a resolution that all automobile insurance policies providing for collision coverage, include as standard the same coverage for rental vehicles. The subgroup considered the issue of whether a resolution for universal coverage as proposed did not in effect result in non-renters of automobiles subsidizing those who rent. Though there would be an element of subsidization, the extent was unknown. **1988 Proc. I 131.**

#### Section 4. Definitions

An early report when the NAIC was first discussing the collision damage waiver defined it: “In standard rental contracts there is a provision under which the bailee/renter may, upon payment of a charge in addition to the basic rental charge, exonerate himself from damage which may be done to the vehicle resulting from collision, upset or other acts described in the agreement. This is the “collision damage waiver”. **1985 Proc. I 173.**

To the consumer, payment of the CDW daily charge bears a resemblance to insurance. In fact, it has frequently been called insurance at the point of sale, further misleading the public. Insurance companies in more than a dozen states have attempted to exercise jurisdiction over the offering and sale of these CDWs. Each state faced with deciding whether CDWs are insurance for the purposes of regulation has been persuaded that they are not. Because the CDW has slipped through the definitional cracks of insurance, it is not subject to regulation by state insurance departments. **1985 Proc. I 173-174.**

The first draft considered by the NAIC was a regulation which would define the waiver provisions as insurance for rating purposes, for unfair trade practice purposes and for premium tax purposes. The advisory committee argued that the provisions were not insurance because there was no transfer of risk. Nevertheless, the rental car working group said the public perception was that the waivers were insurance, and some advisory committee members agreed that insurance departments were the proper agencies to regulate the rental car agreements. **1985 Proc. II 234.**

The advisory committee suggested alternatives to protect consumers without regulating the CDW as insurance. They were: (1) grant authority to another state agency to regulate car rental agencies; (2) authorize regulation by the Federal Trade Commission; or (3) refer the issue to the National Association of Attorneys General. **1985 Proc. II 239.**

The NAIC staff support counsel indicated that the National Association of Attorneys General held hearings on car rental insurance in the summer of 1988, and were strongly considering adopting the NAIC approach of prohibiting the product. **1989 Proc. I 170.**

#### Section 5. Practices Prohibited

The exceptions to the liability of the renters were to be few and narrowly drawn because room for interpretation only served to the detriment of the consumer. **1988 Proc. II 179.**

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Cited to the Proceedings of the NAIC

#### Section 5 (cont.)

The subgroup considered a number of alternative approaches to solve the problem of perceived abuses. It was suggested that (1) states could define the collision damage waiver as insurance; (2) counter personnel of rental agencies could be licensed; (3) a model could be developed which would mandate minimum auto policy benefits to include the coverage of rental vehicles; (4) the Unfair Trade Practices Act could be amended to afford a presumption of “doing the business of insurance” when the inclusion of insurance-type coverages exceeded 10% of the net cost of the bailment contract; (5) states could mandate disclosure of insurance coverages and the possibility of duplicate coverage under auto owners policies; (6) or include a provision that the lessee could not be held liable for damage except in specified instances. The subgroup could have chosen more than one approach but decided that the sixth one would go far to end abuses. **1988 Proc. II 192.**

#### Section 6. Penalties

#### Section 7. Effective Date

The Subgroup of Rental Car Insurance was charged with the task of considering the model further to see why some states have had difficulty passing the model. The NAIC model has also been introduced in Congress. **1989 Proc. II 206.**

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### Chronological Summary of Actions

*June 1986: Adopted model act which regulates the waiver like insurance, with provisions for licensing, form filing and rate filing requirements and a disclosure requirement.*

*June 1988: Replaced earlier model with model which essentially prohibits the collision damage waiver.*

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**Proceedings Citations**

Cited to the Proceedings of the NAIC

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