House
Legislative
Analysis
Section

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

EXEMPT CAR RENTAL COMPANIES FROM INSURANCE LICENSURE

House Bill 6448 (Substitute H-1)
First Analysis (12-3-02)

Sponsor: Rep. Andrew Richner
Committee: Insurance and Financial Services

THE APPARENT PROBLEM:

In the course of renting motor vehicles, rental car companies often sell collision damage waiver (CDW) coverage. This coverage shifts the liability for collision damage from the person renting the vehicle to the rental car company. Under this coverage, the rental car company agrees not to hold the renter responsible for accidental damage or loss and will pay for the damages to the vehicle, provided that the renter has not violated the terms of the rental agreement. If a person declines this coverage (as it is not mandatory) or is not covered by his or her personal automobile insurance, he or she accepts all responsibility for damages to the vehicle and is liable for the full value of the vehicle. In recent years, there has been some dispute as to whether this coverage is actually considered insurance and, therefore, whether rental car agents would have to be licensed insurance agents in order to offer this coverage. Further, there has been a growing concern among those in the rental car industry that the provision of insurance by an rental car company for its fleet of vehicles could be construed to mean that these agencies are, indeed, insurance providers. Thus, legislation has been introduced to clarify this matter.

THE CONTENT OF THE BILL:

The bill would amend the Insurance Code to specify that a certificate of authority to transact insurance in the state would not be required for the sale of any travel or auto-related insurance coverages by a motor vehicle rental company or its officers or employees in connection with and incidental to the rental of a motor vehicle. In addition, the bill would exempt from licensure as an "insurance producer" (a person who sells, solicits, or negotiates insurance) a person whose only sale of insurance is for travel or auto-related insurance sold in connection with and incidental to the rental of a motor vehicle for no more than 90 days. For purposes of the bill, "motor vehicle" would be defined as a motorized vehicle designed for transporting passengers or goods, including trucks with a gross vehicle weight of more than 26,000 pounds that do not require the operator to possess a commercial driver license.

MCL 500.402c and 500.1202

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

By explicitly exempting rental car companies from being considered to be insurance companies (and, likewise, exempting individual employees of a rental car company from being considered to be insurance producers), the bill clarifies any residual confusion arising out of the dispute over the true extent to which these companies and their employees provide insurance-related services to their customers. Car rental companies are not in the business of providing insurance policies to their customers. The insurance-related services provided by rental car companies are merely ancillary to the principal activities of these companies (renting motor vehicles). Additionally, other 'coverages' provided by these agencies, namely the CDW coverage, are not considered to be insurance coverages. As such, it becomes necessary, as a simple matter of clarification, to exempt rental care companies and their employees from licensure as an insurance provider.

Against:

Quite simply, this bill is not necessary. First, the Office of Financial and Insurance Services (OFIS) reports that it does not consider CDW coverage nor the insurance-related activities of rental car companies and their employees as meeting the requirements necessary for licensure as an insurance producer. Secondly, OFIS reports that there have

been several courts, though none in Michigan, that have ruled that CDW is not considered insurance because there is no transfer of risk, just the retention of risk by the owner of rental vehicles (that is, the rental car companies). Further, it is presumed that the necessity of the bill was based, in large part, on a provision in the federal Gramm-Leach-Bliley Act of 1999 (Public 106-102). Under that act, during the three years following the date of enactment (November 12, 1999) there is the presumption that no insurance licensing, appointment, or education requirements impose by state law apply to parties who lease or rent motor vehicles and provide insurance in connection with, *and incidental to*, the lease or rental of a motor vehicle. Many in the rental car industry believe that the recent expiration of this provision could open the door to a requirement that rental car companies and employees be licensed insurers. However, it is believed by OFIS that since this provision was permitted to expire with little fanfare, the apparent problem that prompted the inclusion of this provision in 1999 is unfounded, thereby signaling that there is neither the desire nor the necessity to bring the insurance-related activities of rental car companies under the Insurance Code.

POSITION:

The Car and Truck Rental and Leasing Association supports the bill. (11-14-02)

The Office of Financial and Insurance Services does not support the bill. (11-14-02)

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.