

COLLISION DAMAGE WAIVER MODEL ACT

Table of Contents

Section 1.	Title of Chapter
Section 2.	Scope
Section 3.	Purpose
Section 4.	Definitions
Section 5.	Practices Prohibited
Section 6.	Penalties
Section 7.	Effective Date

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.

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).*