

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1308

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1308  
January 18, 2011  
13007

☐ Conference Committee

Committee Clerk Signature

*Ellen LeTang*

**Explanation or reason for introduction of bill/resolution:** Relating to establishment of primary and excess automobile liability coverage's for rental vehicles

## Minutes:

**Chairman Keiser:** Opens the hearing on HB 1308.

**Representative Vigesaa~District 23-East Central North Dakota:** Introduce HB 1308. This bill determines who the primary coverage is when a rental company rents a vehicle.

**Chairman Keiser:** Any questions, is there anyone here to testify in HB 1308?

**Thomas D Kelsch~Representing Hanson Lease & Rental out of Grand Forks:** We are supporting this bill. The reason to pass the bill is its fair. The auto dealers, garages, service stations, parking lots and any of those types of entities, that's their primary business for renting vehicles. The renter, the person who is driving the vehicle, their insurance is the primary liability insurance if there is an accident and causes damage to somebody else in North Dakota. Without this bill, a car rental company's insurance that is the primary liability insurance and not the driver, that puts the car rentals at a disadvantage. It's socially responsible and puts it on the driver when they have no control after they lease the car. The 3<sup>rd</sup> reason is brings North Dakota into the same position as the super majority of the other states. It won't affect the insurance rates for the North Dakota residence or policy owners because when you rent cars and 80% of the jurisdictions, you are already primary in other states. There greatest number of renters is from out of state and they are getting the biggest break at the expense of our North Dakota businesses. I would urge a do pass recommendation.

**Vice Chairman Kasper:** If I fly to Texas and rent a car, how will this bill affect me?

**Thomas Kelsch:** It will have no effect; it's the law of that state.

**Representative Nathe:** This is any motor vehicle?

**Thomas Kelsch:** Any type of rentals.

**Representative N Johnson:** If I rent in Minnesota, drive it into North Dakota and have an accident, what covers?

**Thomas Kelsch:** As long as you are in North Dakota, then your policy would be secondary and the car rental would be primary.

**Representative Boe:** If I get in an accident and I liable, wouldn't my insurance end up covering it in the end through the law suit of some sort?

**Thomas Kelsch:** What the North Dakota law says, you get in an accident, it's your fault, the repair will be the responsibility of the rental company, even though you were at fault.

**Representative Boe:** What if I don't own a car; would I still have a liability policy?

**Thomas Kelsch:** Under the law right now, if you don't have any insurance at all and they rented a car to you, the car rental would be primary because you don't have any insurance. If HB 1308 passed, it would still be there.

**Representative Gruchalla:** Is there any data that shows that, a state like North Dakota where a rental is primary, that they rent out safer vehicles?

**Thomas Kelsch:** I don't have any information on that.

**Representative Kreun:** In your earlier comment you said that it wouldn't affect the insurance rates of the driver or renting person because he has it in his policies. Do the rentals reflect an increase in rental rates because car rental companies have to have insurance as well?

**Thomas Kelsch:** The rental companies are in a difficult situation because they are primary, they are having extra liability, but they have other factors that go into the rates.

**Representative Kreun:** Just as a whole, the costs are higher to the car rental company.

**Thomas Kelsch:** Yes, that would be correct.

**Representative M Nelson:** I noticed on lines 9-11, where it applies to, do the rental companies not carry property insurance on their cars? Do they self insure so they would be under this?

**Thomas Kelsch:** I think the reason for the property damage to the car isn't covered because my own personal policy is responsible for the damage to that car. Even under current law for that property damage. This bill isn't addressing the damage I do to the car. This bill is to see who is going to pay first and who will pay second.

**Chairman Keiser:** The American Express advertises, if you pay for your rental with their card, it provides insurance. Are they in a 3<sup>rd</sup> position?

**Thomas Kelsch:** What I think they are talking about is the damage to the vehicle, so you don't have to pay that 12 or 13 dollars a day. I don't know if it goes beyond to liability. If it would, in North Dakota they would still be behind the car rental companies under the current law.

**Chairman Keiser:** Further question? Anyone else here to testify in support on HB 1308?

**Hadley Freng~Business Manager for Hansen Lease & Rental:**

(See attached testimony 1).

**Daren Leier~General Manager of Hertz in Grand Forks & Fargo:**

(See attached testimony 2).

**Representative Ruby:** You mentioned in both of those cases that the renter's insurance paid for the damage to the rental vehicle but not to the other damage. With existing law, why did they even pay the damage to the rental car?

**Daren Leier:** The way the law reads is when you rent a car in North Dakota, it falls under the property damage portion of the liability law. That covers our rental car. It puts the liability for something they do, to something else on to us.

**Chairman Keiser:** Haven't most auto repair shops gotten out of the business because of the liability?

**Daren Leier:** I would suspect that a lot of them have gotten out of the loaners.

**Representative Amerman:** Right now if I rent a car, my insurance covers the damage of your car and if this passes it will also cover the liability part. So if I rented a car and pay X amount of dollars a day for insurance, what do I get for that?

**Daren Leier:** There are a few different types of products that most rental car companies do offer and one of them is a loss damage waiver that would relieve you of any responsibility for the rental car itself. There is a different type of product that is called LIS, which is a liability product which would make us step in on any type of liability situation.

**Chairman Keiser:** If this law passes, as a consumer, I would be wise to buy your insurance product, where as currently, I have more coverage?

**Daren Leier:** As of right now, we cannot for any of the public to purchase any type of products. It would be up to the renter as to how they would feel.

**Chairman Keiser:** Is there anyone else here to testify on HB 1308?

**Matthew Larsgaard~Automobile Dealers Association of North Dakota:**

(See attached testimony 3).

**Jack McDonald~Apperaring on Behalf of Enterprise Rent A Car of the Dakotas & Montana:**

(See attached testimony 4).

**Chairman Keiser:** Do we have any measure of what portion of autos that are rented fall under the rental dealerships versus all the other options listed in this bill.

**Jack McDonald:** I don't any information on that. I would guess that it's the large majority are car rental agencies.

**Chairman Keiser:** Is there anyone else here to testify on HB 1308?

**Evan Mandigo~State Executive for the Independent Insurance Agents for North Dakota:** I don't have anything unique or that hasn't been said other than to say that this is a question of equal treatment of all entities who rent vehicles. I don't think there will be any material impact on the insurance premiums paid by the policy holders in the state.

**Representative Gruchalla:** Are there any higher crash rates for rental vehicles than privately owned vehicles?

**Evan Mandigo:** There is a component within all personal auto filings that contemplate some rental use; I'm not a ratings person. Do rental agencies pay more for liability insurance than you or I, the answer is yes.

**Chairman Keiser:** Is there anyone else here to testify in support, in opposition HB 1308?

**Dale Haake~Represent Nodak Mutual Insurance Company:**

(See attached testimony 5).

**Vice Chairman Kasper:** Does you company have actuaries?

**Dale Haake:** We use actuarial firms.

**Vice Chairman Kasper:** You use them to set your rates?

**Dale Haake:** Yes we do.

**Vice Chairman Kasper:** How do the actuaries go about setting rates for people of North Dakota?

**Dale Haake:** They look at our experience, rates, significant losses, frequency of losses, geographical locations and age dispersion, there is quite a number of factors in determining those things.

**Vice Chairman Kasper:** I would assume is that your actuaries will look at is what was the cause of the accident and what were the circumstances. I would assume that your actuaries would have the information on who is renting vehicle when an accident occurred compared to how many people were driving their own vehicle. Would that be a fair assumption?

**Dale Haake:** Not necessarily, there is certain data that will be available. Companies vary from company to company to what data is retained and used in the actuarial tables. It may not be known what the exact cause of an accident. It could determines if it's a collision loss or other then collision loss, the concept of whether or not the accident is cause by the insurer or by another driver, that would be where there would be a fair amount of information on.

**Vice Chairman Kasper:** I'm not looking for cause, I'm looking for circumstance. You can't come to this committee and say that it's going to raise rates because you don't know that if you don't have that data available.

**Dale Haake:** What I can say is that, whatever the costs that are currently being born by the liability carriers for the rental companies, whatever those dollars are, will be transferred to the policies of North Dakota. When costs go up, the rates will ultimately be adjusted.

**Vice Chairman Kasper:** You stated that studies done in recent years show that the vast majority of car rentals in North Dakota are made of North Dakota citizens whose cars that have been temporally disabled. You heard from Mr Freng, where he gave you exact data for Hertz's, are you disputing the actual facts or it appears you are making an assumption in your testimony which is not valid at all.

**Dale Haake:** I recall sitting here a number of years ago listening to testimony from the rental industry to the statement that I give. The numbers you have came from 2 cities, Fargo and Grand Forks, both of which have active airports, but they are not numbers reflective of what is going on across North Dakota as a whole.

**Vice Chairman Kasper:** I would ask that if you dispute this data, that you could somehow provide us some factual information because you are citing their data which is incorrect according to what they have given us. Your actuaries should know.

**Dale Haake:** I will make that phone call.

**Representative Ruby:** Do you insure the person or the vehicle they are driving?

**Dale Haake:** We insure the vehicle.

**Representative Ruby:** You insure the vehicle but the insurance rate is based on the type of vehicle, the insurance score of the driver and the risk of many factors, so you are insuring both in some ways. You don't think it right that you be insuring your insured when they would be driving a vehicle than what they have on their policy?

**Dale Haake:** When someone comes in we rate the person that owns the vehicle but the insurance is placed upon the vehicle. It follows the vehicle as opposed to the person.

**Representative Ruby:** Your position to the bill would be that you would be insuring a driver that would be operating a different vehicle than what you have on your policy?

**Dale Haake:** That is correct.

**Representative Ruby:** There are other parts that you cover of that driver, that liability for bodily harm for example, that are not part of that vehicle that you are insuring?

**Dale Haake:** That is correct.

**Representative Ruby:** Also, you stated that the rate is dependent on the geographical area, is that correct?

**Dale Haake:** That is correct.

**Representative Ruby:** Do you think it's fair the insurance company of the rental company to pay insurance on a vehicle that may be rated in North Dakota, than to travel across the US and be in other geographical areas that have higher risks without knowing where they might be?

**Dale Haake:** An insurance company that would be insuring a rental organization would have the data of that and the experience of that rental company. They should be able to charge an appropriate rate to cover the risks that that rental company is experiencing and charge accordingly so the insurance company for the rental company is able to make a profit. The cost of that insurance we feel should be born of the patrons of that rental company, the people that are actually renting the car and not spread out by all the policy holders.

**Chairman Keiser:** When you call the actuaries, I think the issue is the way they underwrite is proprietary information. What we are really interested in is do you underwriters for your policies; do they factor in their rating process the current North Dakota law? If they do, what is the impact in dollars on a policy?

**Dale Haake:** I'll get what I can.

**Representative Kreun:** When you have higher losses, don't you increase the cost?

**Dale Haake:** That is exactly what we do.

**Representative Kreun:** So, if we have accidents if rental or you cover them, the consumer is going to pay one way or the other?

**Dale Haake:** That's absolutely correct and we can't distinguish which of our insured can surcharge because they had an accident with a rental car. We raise the policy for all the policy holders or at least all the people within certain classes.

**Representative Kreun:** For the car rentals, they do not have the capabilities doing the research check to see what kind of record they have, but don't you do that on an individual on his car?

**Dale Haake:** We do that type of stuff.

**Representative Kreun:** Don't you have more control over those rates?

**Dale Haake:** Yes, we will do that on an individual bases but if we have a thousand customers throughout the year the rent vehicles with losses, we still have to recoup our losses and we will have to raise the cost for all of our policy holders.

**Representative Kreun:** But in most cases they do individual rates as well, so you have the ability to raise the rate for the individual that is causing the problem before you drop them.

**Dale Haake:** We can raise the rates, but an individual that caused an accident that costs 20,000 dollars, you don't recoup those rates by a surcharge.

**Representative Kreun:** You do put the surcharge on?

**Dale Haake:** Absolutely, surcharges are part of our rating process.

**Representative Kreun:** You do have that control. The other question is you mentioned that you insure the vehicle and not the driver.

**Dale Haake:** The principle is the insurance follows the vehicle. We put insurance on a vehicle. We rate the driver who operates the vehicle. That establishes the charge, but the insurance is on a vehicle.

**Representative Kreun:** When I put an employee in one of my vehicles by my choice, our insurance required a signature that their insurance was primary because they weren't primary. You stated that the profits should come from the rates charged to those who patronize their business and not from the populace as a whole. An insurance company doesn't represent the populace as a whole, you insurance company rates would potentially be different that another insurance company.

**Dale Haake:** My company doesn't represent the company as a whole. What I was referring to is that if my company's costs goes up, they will be absorbed by all of our policy holders. Any other companies costs also go up, theirs will also be absorbed by their policy holders.



**Representative Kreun:** In many cases, insurance companies are already insuring that rental car in other states and around, so the premium is already in there and that would indicate that through the rates of the rental car & insurance, potentially be paying double for that insurance.

**Dale Haake:** I don't know of any insurance company that rates the same from state to state. Most companies have various rates within each individual state, the experience that they have in one state probably wouldn't not reflect, if any, on the experience they have in another state. I can't speak for the industry as a whole. In fact North Dakota rates are one of the lowest in the nation.

**Representative Kreun:** Just in North Dakota situation, I'm in North Dakota, I pay North Dakota insurance and I go to Minnesota to rent a car, I'm still covered, so I'm paying some kind of premium to have that coverage.

**Dale Haake:** Again, I go back to the experience that an insurance company has, it's what they experience in losses that drives the rates.

**Chairman Keiser:** Is there anyone else here to testify in opposition to HB 1308?

**Pat Ward~Represent the Association of North Dakota Insurers:**

(See attached testimony 6, also passed out testimony 7 for North Star).

**Chairman Keiser:** You made reference that major group insurance companies, given that 38 states have transitioned to this law, do they have any data to what happened to their premiums as a result of the shift.

**Pat Ward:** I doubt it.

**Chairman Keiser:** Is there anyone else here to testify in opposition HB 1308, neutral?

**Larry Maslowski~Director of the Property & Casualty Division in North Dakota Insurance Department:** I would echo what Mr Ward said, this is a public policy issue. I don't dispute what Mr Haake said on what things cost. I was asked, if there was going to be any rate increase and I do not think that there will be any significant rate increase. I won't say some company will change their rates if you change this law. If you put this into perspective in terms of what is said, if Mr Ward is correct, it doesn't sound like that big of a difference or problem.

**Chairman Keiser:** When we talked about liability coverage, does that include medical on a claim.

**Larry Maslowski:** Liability would be the personal responsibility to a third party. If it was medical bills a person was asking for, yes.

**Chairman Keiser:** Is there anyone else here to testify in a neutral position on HB 1308? Closes the hearing on HB 1308. What are the wishes of the committee? We will hold it.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1308  
January 18, 2011  
13011

☐ Conference Committee

Committee Clerk Signature

*Ellen LeTang*

**Explanation or reason for introduction of bill/resolution:** Relating to establishment of primary and excess automobile liability coverage's for rental vehicles

## Committee Work Minutes:

**Chairman Keiser:** Opens the work session on HB 1308.

**Representative Kreun:** HB 1308 basically becomes a policy making decision by this body to change one word to include renting. From the information that I've understood is there is not a great deal of economic change to the consumer. That was one of the concerns in the last bill is that there was going to be an economic cost to the consumer. I think as a consumer, we are paying twice. We are paying through our own insurance because we are covered in other states and we pay through the rental process of the car itself. By putting this together in one package for the rental companies, there would be a saving by the consumer.

**Representative Kreun:** I would make a motion for a Do Pass on HB 1308.

**Vice Chairman Kasper:** Second.

**Chairman Keiser:** Further discussion. I can support this. The reality is that risk has to be paid for and how can you best manage risk. I believe that following the driver is a manageable risk. This seems a more direct approach to managing risk. I think this is a good approach.

**Representative Amerman:** I believe I can support the bill because that will not be a significant cost to the consumer. However, down the road, if it has cost consumers, I will be on board to repeal of what we did today.

**Roll Call was taken on HB 1308 for a Do Pass with 12 yeas, 1 nays, 1 absent and Representative Kreun is the carrier.**

Date: Jan 18 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1308

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Kreun Seconded By V Chair Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	Ab	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson		✓
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 12 No 1  
Rep Kreun V Chair Kasper

Absent 1

Floor Assignment Rep Kreun

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1308: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1308 was placed on the Eleventh order on the calendar.

2011 SENATE TRANSPORTATION

HB 1308

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Transportation Committee**  
Lewis and Clark Room, State Capitol

HB 1308  
March 18, 2011  
15687

☐ Conference Committee



## **Explanation or reason for introduction of bill/resolution:**

Relating to establishment of primary and excess automobile liability coverage's for rental vehicles.

## **Minutes:**

*Written testimony*

**Senator G. Lee** opened the hearing on HB 1308.

**Jack McDonald** appearing on behalf of Enterprise Rent A Car of the Dakotas and Montana testified in support of HB 1308. Written testimony #1

**Senator Nething** asked if this change will make his insurance the primary insurance on a rental care.

**Mr. McDonald** answered yes unless you had some special insurance that you purchased through the rental company.

**Representative Vigesaa**, District 23, lent his support for HB 1308. The purpose of the bill is that companies that rent vehicles can have their liability insurance be secondary. In the current law companies that rent vehicles are the primary insurer while anyone engaged in the business of selling, repairing, servicing, storing, leasing or parking motor vehicles and they loan, rent or lease a vehicle to any other person or organization they are the secondary insurer. He believes that rental companies should also be secondary.

**Tom Kelsch**, representing Hanson Lease and Rental testify in support of HB 1308. He said that two years ago they were in front of the Senate Transportation committee testifying for the same bill. It passed the Senate with a 45 to 1 vote and they are asking for the same recommendation. This bill does not deal with the damage to the rental vehicle. This is only dealing with the liability. Information list of Rental Car Company Liability attachment #2

**Mr. Kelsch** summarized **Hadley Freng's** written testimony. Mr. Freng is the business manager for Hansen Lease and Rental, Fargo. Written testimony #2.a  
He also gave to the committee written testimony from **Matthew Larsgaard**, Automobile Dealers Association of North Dakota in support of HB 1308. See attachment # 2.b

**Daren Leier**, General Manager of Hertz in Grand Fork and Fargo and a registered lobbyist for Avis, Budget, and Alamo/National Rent a Car Companies in Fargo testified in support of HB 1308. Written testimony #3

**Senator Mathern** asked why they didn't require clients to add that liability coverage.

**Mr. Leier** replied that the way the law is written in North Dakota, they cannot force the public to take out additional products with them.

**Evan Mandigo**, State Executive for North Dakota Association of Independent Insurance Agents, testified in support of HB 1308. The current law has a gap. He believes that HB 1308 cures that gap by adding the single word rental into the definition of whose coverage is primary. It is his opinion that this additional component is not going to add a measurable amount of impact on auto insurance rates.

**Senator Lee** asked how it would affect the rates for the rental company in terms of insurance that they purchase.

**Mr. Mandigo** said that he wasn't equipped to answer that but he would suggest that it probably would go down if they could measure it.

**Senator Lee** asked for **opposing testimony**.

**Dale Haake**, representing Nodak Mutual Insurance Company spoke in opposition to HB 1308. In addition to his written testimony he stated that a very similar bill was just defeated by the Arizona Legislature, SB 1401. He also questioned Mr. Mandigo's testimony and he personally does not believe his position is necessarily representative of the Insurance Industry as a whole. Written testimony #4

**Senator Sitte** said that if most of the time rental cars go to people who live out of state, she would assume that North Dakotans are already paying higher rates for the occasions that they go out of state and rent. She clarified that in forty other states our insurance has to be the primary.

**Mr. Haake** replied that is correct, if you go to a state and rent a car where the renter's coverage is primary. Insurance rates are based upon the previous year's experience, how this company did on all their liability claims and what they expect to happen this year. He stated that the point is, when a company must take on additional exposure and handle additional claims, that constitutes additional cost and somewhere along the line that money has to be recouped.

**Senator Mathern** asked if he sells any policies that have any added fees if you rent or a credit if you don't.

**Mr. Haake** replied no and added that he is not aware of any company that would have such a provision.

**Senator Oehlke** asked how many claims they have paid out on damage to a rental vehicle for the last three years. He asked specifically for information on the amounts of damage and number of claims.

**Mr. Haake** said that he would get that information for the committee.

**Pat Ward** representing the Association of North Dakota Insurers, State Farm and the Property and Casualty Insurance Association of America testified in opposition to HB 1308. Written testimony #5

**Senator Oehlke** asked if Mr. Ward could get the same information from his companies that he asked Mr. Haake for, specifically how many claims they have paid out in the last three years on the damage of those rented autos.

**Mr. Ward** said he really didn't think there would be that many.

There was no neutral testimony.

**Senator Lee** closed the hearing on HB 1308.



# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Transportation Committee**  
Lewis and Clark Room, State Capitol

HB 1308  
March 24, 2011  
15974

☐ Conference Committee

*Hauge*

**Explanation or reason for introduction of bill/resolution:**

**Minutes:**

*Committee Work/Action*

**Senator G. Lee** opened discussion on HB 1308 relating to establishment of primary and excess automobile liability coverage's for rental vehicles.

**Senator Oehlke** handed out information that he had requested from Dale Haake of Nodak Mutual Insurance. He said that they were not able to narrow it down to where the accidents occurred but companywide in the last three years they have had 41 claims with a total of \$70, 534 in total payments. See attachment #1

A short discussion followed on insurance rates. Senator Oehlke said that personally he didn't think it would affect the rates on anybody's insurance policies simply because the losses that are happening on rental vehicles are happening in other states where it is already primary. North Dakotans don't typically rent cars in North Dakota.

**Senator Nodland** moved a **Do Pass**.

**Senator Sitte** seconded.

Roll call vote: 5-0-1. **Motion passed.**

Carrier is **Senator Oehlke**.

Date: 3-24-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1308

Senate Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider \_\_\_\_\_

Motion Made By Senator Nodland Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Chairman Gary Lee	✓		Senator Tim Mathern	✓	
Vice Chairman Dave Oehlke	✓				
Senator Dave Nething					
Senator George Nodland	✓				
Senator Margaret Sitte	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Oehlke

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1308: Transportation Committee (Sen. G. Lee, Chairman)** recommends **DO PASS**  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1308 was placed on the  
Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1308**

## Testimony of Hadley Freng in Support of House Bill 1308

Chairman Keiser and members of the House Industry Business and Labor Committee, my name is Hadley Freng. I am the business manager for Hansen Lease and Rental, and Hansen Lease and Rental of Fargo. These companies own two Hertz Rent A Car locations in Grand Forks and the four Hertz locations in Fargo. I am also a registered lobbyist for Avis in Grand Forks.

It is on behalf of these companies that we requested that House Bill 1308 be introduced. The car rental companies felt that North Dakota was treating car rental companies unfairly by placing the burden of primary liability insurance on the car rental company for cars rented in North Dakota.

We did a check of how other states treat the priority for liability insurance between the car renter's auto insurance and the rental car companies insurance. Forty jurisdictions in the US including 38 states, the District of Columbia and Puerto Rico treat the car renter's auto liability insurance as primary and the car rental company's insurance as secondary, or excess coverage. Only nine states including North Dakota treat the car rental company's insurance as the primary liability insurance. We have not yet

been able to determine how three states treat the priority of coverage. I have attached a listing of the states and how they treat priority of liability insurance.

What this means is that if you travel to California, Florida, Nevada, Washington, or 36 other jurisdictions, and rent a car your auto liability insurance policy is primary and the car rental company's insurance would be secondary. However, if a resident from one of those 40 jurisdictions came to North Dakota and rented a car, the North Dakota car rental company's insurance is the primary liability insurer responsible for liability caused by the car renter. The car rental companies I represent do not believe that this is fair and House Bill 1308 has been introduced to correct this problem.

The opposition to this bill has been from Insurance companies argues that most of the cars rented in North Dakota are rented to North Dakotans, while their cars were being repaired. The records of Hertz in Fargo and Grand Forks do not support this claim. We had 23,819 rentals last year, of those only 25% (5,975), were to ND residents, 75% were to out of state residents. Of the 23,819 rentals, only approximately 10 %, (2,400) were replacement rentals while the car was being repaired.

As a car rental company in North Dakota, we don't obtain a motor vehicle driving record for the renters. We are prohibited from asking about the renter's insurance, and we can't force the renter to take out supplemental liability insurance on the vehicle. In addition we are prohibited from bundling the insurance into the cost of the rental. Bundling means charging an additional amount for insurance premium for the driver and including it in the rate. Car rental companies like Hertz have national rate plans so that the car rental rates are the same throughout the country. In states like North Dakota where the liability coverage is primary for the car rental company this puts the rental company at an economic disadvantage.

At Hertz we take great efforts to keep our insurance premiums lower, by attempting to reduce claims. However, we can't control the actions of our car renters. The result is that we are liable for claims that we did not cause and they are being reported against our insurance and we believe that this is adversely affecting our insurance rates. We believe that if the car renter causes damage he should have the higher liability insurance rates not the car rental company.

Opponent insurance companies also argue that HB 1308 will increase premiums for ND drivers. According to the North Dakota Insurance Department this change would not change premiums for North Dakotans.

Thank you for your time. I ask that you bring North Dakota in line with the vast majority of US jurisdictions and that you treat car rental companies the same as car dealers, garages and service stations with liability insurance for rental cars, and that you put the personal responsibility for liability on the driver who caused the damage.

I urge a "DO PASS" recommendation on House Bill 1308



## RENTAL CAR COMPANY LIABILITY

<u>Secondary Coverage</u>	<u>Secondary Coverage</u>	<u>Primary Coverage</u>
1. Alabama	27. North Carolina	1. Arizona
2. Alaska	28. Ohio	2. Maryland
3. California	29. Oklahoma	3. Massachusetts
4. Colorado	30. Oregon	4. Michigan
5. Connecticut	31. Pennsylvania	5. New York
6. Delaware	32. Puerto Rico	6. North Dakota
7. District of Columbia (DC)	33. Rhode Island	7. South Carolina
8. Florida	34. South Dakota	8. Virginia
9. Georgia	35. Tennessee	9. West Virginia
10. Hawaii	36. Texas	
11. Illinois	37. Utah	
12. Indiana	38. Vermont	
13. Iowa	39. Washington	
14. Kansas	40. Wisconsin	
15. Kentucky		
16. Louisiana		
17. Maine		
18. Minnesota		
19. Mississippi		
20. Missouri		<u>Unknown</u>
21. Montana		1. Arkansas
22. Nebraska		2. Idaho
23. Nevada		3. Wyoming
24. New Hampshire		
25. New Jersey		
26. New Mexico		

## Testimony of Daren Leier in Support of HB 1308

Chairman Keiser and members of the House Industry Business and Labor Committee, my name is Daren Leier. I have been in the rental car business for the past 21 years and have been the general manager of Hertz in Grand Forks and Fargo for the past seven years. I am also a registered lobbyist for Avis, Budget, and Alamo\National Rent a Car Companies in Fargo.

Under North Dakota law when a renter leases one of Hertz's cars, and then is involved in an accident that damages the car, the renter's automobile insurance liability policy will pay for the damage to the rental car. HB 1308 was drafted to cover the situation where the renter also damaged some other property with the rental car. I have attached a letter from Auto-Owners Insurance. In that case a renter had crashed into a City of West Fargo street light pole. Auto -Owners paid for the damage to the Hertz Rent-a-Car and I asked the agent whether Auto-Owners was going to pay for the damage caused to the light pole. The agent at first said yes, then said wait, this is North Dakota I don't think we have cover liability in North Dakota. Hertz then received this letter denying coverage, and indicating that under North Dakota Century Code Section 26.1-40-17, the priority for

payment for the damage to the light pole went to the owner of the vehicle Hertz.

Another example was where a renter ran into the Red Carpet Car wash in Fargo with one of our rental cars. The renter's auto policy paid for the minor damage to the rental car, but there was \$7,000 damage to the car wash building that Hertz's insurance as the owner of the car had to pay. Hertz and the other car rental companies did not think this was fair. These accidents were not Hertz's fault. Hertz could not prevent them, but Hertz's insurance had to pay for the damage, and Hertz believes that if anyone should have higher liability rates as a result of an accident it should be the renter who was at fault for the accident not the car rental company.

The vast majority of car rental business that is done at airport locations are rentals to out-of state people. The majority of rentals at Hertz's downtown locations are rentals for people whose cars are being repaired. This shows the unfairness of North Dakota's current law. If someone has their car in for repair and either rents a car or receives a loaner from the auto dealer, or a service garage, and then causes an accident with that rental car, the renter's auto insurance is the primary liability insurance. However, if the person takes his car in for repair to Bill Barth Ford or Eide Ford, and the dealer has rented all of their loaners out, they will send them to a rental car

company. If the renter causes an accident with the rental company car it is the car rental company's insurance that is primary.

The purpose of HB 1308 is to treat car rental companies the same as car dealerships, garages or service stations who also rent cars to people in North Dakota, and puts the primary liability where it belongs, on the driver who caused the damage.

I want to thank you for your time and I encourage you to give a "DO

**PASS" Recommendation to HB 1308.**

AUTO-OWNERS INSURANCE COMPANY  
AUTO-OWNERS LIFE INSURANCE COMPANY  
HOME-OWNERS INSURANCE COMPANY  
OWNERS INSURANCE COMPANY  
PROPERTY-OWNERS INSURANCE COMPANY  
SOUTHERN-OWNERS INSURANCE COMPANY



February 28, 2008

Hertz Rent A Car  
Attention: Daren  
4000 S. Main Ave. Unit D  
Fargo, ND 58103

BRANCH CLAIM OFFICE  
1809 22nd Street, SW, Suite 100 • P.O. Box 2001  
Willmar, Minnesota 56201-7001  
320-235-5119 FAX 320-235-9644  
1-888-873-4575  
WWW.AUTO-OWNERS.COM

RE: Our Insured: :  
Our Claim No.:  
Date of Loss: 12-3-07

Dear Daren:

This follows up on your request for the language in the North Dakota statute that determines the priority of coverage for property damage in the event of a motor vehicle accident. The first of the language comes from Chapter 39-08 Regulations governing operators under the North Dakota Motor Vehicle Law. Section 39-08-20 Driving without liability insurance prohibited - Penalty.

**39-08-20 Driving without liability insurance prohibited - Penalty.**

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.

What this means is that the "owner" of any vehicle must carry insurance if they drive or allow anyone else to drive their vehicle, and the limits currently for North Dakota are \$50,000/\$100,000/\$50,000. This reflects \$50,000 because of bodily injury to or death of one person in any one accident, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$50,000 because of injury to or destruction of property of others in any one accident.

North Dakota Statute also does establish the priority of coverage for liability in certain instances under Statute 26.1-40-17. as follows:

**26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances.** When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any

Page 2

other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

You will notice that the priority of coverage differs when the vehicle involved is owned by a business that is engaged in the selling, repairing, servicing, storing, leasing, or parking motor vehicles. The statute does not say companies engaged in the business of "renting" vehicles, so therefore, the priority of coverage goes back to the "owner", that being the rental car company.

We are in receipt of the bill from the City of West Fargo for the repair to the street light fixture that was damaged in this occurrence. Because of the priority of coverage outlined above, the primary source of coverage for the damage to the street light fixture would come from the liability insurance covering your vehicle. For this reason, Owners Insurance Company must respectfully deny your claim for damage to the street light fixture.

If you have or obtain any information which may be relevant or may change the facts or circumstances as stated above, please forward the information to my attention immediately. Please feel free to contact me if you have any further questions or concerns.

Sincerely,

AUTO-OWNERS INSURANCE COMPANY

*Karen Skaggs*

Karen Skaggs  
Office Claims Representative

KS/bl  
cc: File  
Enc.

House Bill 1308  
Testimony before House Industry, Business, and Labor Committee  
Matthew C. Larsgaard  
Automobile Dealers Association of North Dakota  
January 18, 2011

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in support of House Bill 1308 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.

Under North Dakota law, an automobile dealership is subject to the following insurance mandates if the dealership loans, rents, or leases a vehicle to a person who is involved in an accident where bodily injury or property damage arises:

- 1) If the person *does not* have insurance and the dealership's insurance extends coverage to the person, then the dealership's insurance is primary.
- 2) If the person *does* have insurance, then their coverage is primary. If the dealership's insurance also extends coverage to that person, then the dealership's insurance is considered excess.

Independent rental car companies are not currently included under provision 1 & 2 and their insurance would be considered primary.

Approximately 7% of our members own independent, stand alone rental car companies with "primary" insurance policies. In conducting their business operations they assume and accept a certain level of risk. Likewise, when an individual gets behind the wheel of a vehicle they too assume the risks and responsibilities associated with the operation of that vehicle.

Currently, we have unfair situation in that one person is being held responsible for another person's actions. Our rental businesses are being held primarily responsible for the driving behavior of the rentees. We respectfully ask that his inequity be corrected and the risks of driving a motor vehicle be placed on the appropriate party; the driver.

Matthew C. Larsgaard  
Automobile Dealers Association of North Dakota

Testimony 4

Tuesday, January 18, 2011

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE  
HB 1308

CHAIRMAN KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of Enterprise Rent A Car of the Dakotas and Montana. We strongly support HB 1308 and urge a do pass.

This is really an equity or fairness bill, and not really one concerning insurance rates. It would simply put car rental companies on equal footing with car dealerships, service stations, garages and parking lots that also loan or rent automobiles.

Today, if you have a car accident and take your car into a body shop for repair, they will give you a loaner to use while your car is being repaired. If the body shop or dealership gives you one of their vehicles as a loaner, and you subsequently have an accident with that loaner, your auto insurance would have to cover it. However, had the body shop had an agreement with Enterprise and you got an Enterprise vehicle, then Enterprise would have been on the hook.

All we're asking here is for a level playing field.

Therefore, we urge you to give this bill a DO PASS. If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.



**DO NOT PASS HB 1308**

My name is Dale Haake and I represent my employer, Nodak Mutual Insurance Company. I am here today to ask that you vote "Do Not Pass" on HB 1308.

A basic insurance principle in North Dakota law is that liability insurance follows the vehicle, and not the person. This holds true when we loan our vehicle to a friend, when we drive a vehicle owned by our employer, and also when we rent a vehicle. For our employer or for a rental car company, the cost of that insurance is one of the costs of doing business. All businesses have costs, and all businesses must make a profit if they are to survive. The money required to cover those costs of doing business and producing a profit come from what they charge the people who patronize them. Yet this bill proposes to take a cost of doing business for a privately owned retail business and pass it on to the general public. It proposes to do this by absolving them of the responsibility of providing liability insurance for the cars they rent.

No insurance company has the ability to identify which of their policy holders will rent a car and which will not. When that insurance company realizes increased costs due to having to cover losses which had formerly been covered by the carrier for the rental car company, they will recoup those increased costs by charging higher premiums.

However, since they cannot distinguish between the insured's that rent and those that do not, they will raise the rates for all of their drivers, or all of the people within a certain class. Since relatively few people rent cars on any regular basis, and many people never rent cars, this means that all of the policy holders in North Dakota will be paying

for those few people who do rent cars.

It may be argued that this cost will largely be passed to out of state people and their carriers. However, studies done in recent years show that the vast majority of car rentals in North Dakota are made to North Dakota citizens whose cars have been temporarily disabled, and relatively few rentals are made to tourists or out of state business people. That means that when these costs are shifted, they are shifted directly onto the people of North Dakota.

It may also be argued that many states across the nation have similar laws, and it is time North Dakota fell in line with these other states. It is true that many states do have laws such as is being proposed here. However, each and every one of those other states also have higher average insurance premiums being paid by their citizens than does North Dakota. Perhaps those other states would do well to look to North Dakota.

No one is suggesting the car rental companies do not deserve to make a reasonable profit on their rentals. However, that profit should come from the rates charged to those who patronize their business, and not from the populace as a whole. It simply is contrary to public interest, and contrary to moral justice to ask the citizens of North Dakota to subsidize a privately owned retail business. For that reason I ask that you vote **"DO NOT PASS"** on this bill.

Thank you.

**TESTIMONY IN OPPOSITION TO HOUSE BILL 1308**

Good Morning Chairman Keiser and Members of the House IBL Committee:

My name is Patrick Ward. I am an attorney with Zuger Kirmis & Smith law firm here in Bismarck. I represent the Association of North Dakota Insurers in opposition to HB 1308.

An identical bill was presented last session by the rental car companies and was killed on the House floor. I have been instructed to oppose this bill by both domestic and national insurance companies. Dale Haake will be here from Nodak Mutual to testify in opposition to this bill.

In addition, I have received contacts from Nationwide, State Auto, and numerous other state and regional carriers to oppose this bill.

North Dakota is fortunate to have some of the lowest automobile insurance premiums in the country. We are always one of the two or three lowest. There are many reasons that go into why North Dakota has lower auto insurance than other states, but those reasons include sensible laws and policies like this one.

Under current North Dakota law, if you are involved in an accident driving a rental car, the rental car company's insurance is primary and your personal automobile coverage is excess. That is not the case when you borrow a car from a garage while your car is being repaired. In that case, your personal auto coverage is primary and the garage owner's coverage is excess.

What this bill does, although the change looks simple, is put rental car companies into the same status in North Dakota as garage owners or car

dealers. The problem with that is that it would then make personal auto insurance primary on every rental situation in North Dakota. This could make personal auto coverage more expensive. Clearly, rental car companies can build the cost of insurance into their rental rates just as other businesses do.

We strongly urge a Do Not Pass on HB 1308.

P:\PWARD\Legislative 2011\Testimony - HB 1308.doc

# North Star

A Personable Company - Keeping You on Course

January 17, 2011

RE: House Bill 1308

Dear Chairman Keiser and Members of the House IBL Committee,

North Star Mutual is opposed to House Bill 1308 to make automobile rental insurance excess in coverage for rental vehicles to a personal auto insurance policy.

Sincerely,



Peter Hellie, Senior Vice President  
North Star Mutual Insurance Company

#1

Friday, March 18, 2011

SENATE TRANSPORTATION COMMITTEE  
HB 1308

CHAIRMAN LEE AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of Enterprise Rent A Car of the Dakotas and Montana. We strongly support HB 1308 and urge a do pass.

This is really an equity or fairness bill, and not really one concerning insurance rates. It would simply put car rental companies on equal footing with car dealerships, service stations, garages and parking lots that also loan or rent automobiles.

Today, if you have a car accident and take your car into a body shop for repair, they will give you a loaner to use while your car is being repaired. If the body shop or dealership gives you one of their vehicles as a loaner, and you subsequently have an accident with that loaner, your auto insurance would have to cover it. However, had the body shop had an agreement with Enterprise and you got an Enterprise vehicle, then Enterprise would have been on the hook.

All we're asking here is for a level playing field.

Therefore, we urge you to give this bill a DO PASS. If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

## RENTAL CAR COMPANY LIABILITY

### Secondary Coverage

1. Alabama
2. Alaska
3. California
4. Colorado
5. Connecticut
6. Delaware
7. District of Columbia (DC)
8. Florida
9. Georgia
10. Hawaii
11. Illinois
12. Indiana
13. Iowa
14. Kansas
15. Kentucky
16. Louisiana
17. Maine
18. Minnesota
19. Mississippi
20. Missouri
21. Montana
22. Nebraska
23. Nevada
24. New Hampshire
25. New Jersey
26. New Mexico

### Secondary Coverage

27. North Carolina
28. Ohio
29. Oklahoma
30. Oregon
31. Pennsylvania
32. Puerto Rico
33. Rhode Island
34. South Dakota
35. Tennessee
36. Texas
37. Utah
38. Vermont
39. Washington
40. Wisconsin

### Primary Coverage

1. Arizona
2. Maryland
3. Massachusetts
4. Michigan
5. New York
6. North Dakota
7. South Carolina
8. Virginia
9. West Virginia

### Unknown

1. Arkansas
2. Idaho
3. Wyoming

**Testimony of Hadley Freng in Support of House Bill 1308**

Chairman Lee and members of the Senate Transportation Committee, my name is Hadley Freng. I am the business manager for Hansen Lease and Rental, and Hansen Lease and Rental of Fargo. These companies own two Hertz Rent A Car locations in Grand Forks and the four Hertz locations in Fargo. I am also a registered lobbyist for Avis in Grand Forks.

It is on behalf of these companies that we requested that House Bill 1308 be introduced. The car rental companies felt that North Dakota was treating car rental companies unfairly by placing the burden of primary liability insurance on the car rental company for cars rented in North Dakota.

We did a check of how other states treat the priority for liability insurance between the car renter's auto insurance and the rental car companies insurance. Forty jurisdictions in the US including 38 states, the District of Columbia and Puerto Rico treat the car renter's auto liability insurance as primary and the car rental company's insurance as secondary, or excess coverage. Only nine states including North Dakota treat the car rental company's insurance as the primary liability insurance. We have not yet been able to determine how three states treat the priority of coverage. I



have attached a listing of the states and how they treat priority of liability insurance.

What this means is that if you travel to California, Florida, Nevada, Washington, or 36 other jurisdictions, and rent a car your auto liability insurance policy is primary and the car rental company's insurance would be secondary. However, if a resident from one of those 40 jurisdictions came to North Dakota and rented a car, the North Dakota car rental company's insurance is the primary liability insurer responsible for liability caused by the car renter. The car rental companies I represent do not believe that this is fair and House Bill 1308 has been introduced to correct this problem.

The opposition to this bill has been from Insurance companies argues that most of the cars rented in North Dakota are rented to North Dakotans, while their cars were being repaired. The records of Hertz in Fargo and Grand Forks do not support this claim. We had 23,819 rentals last year, of those only 25% (5,975), were to ND residents, 75% were to out of state residents. Of the 23,819 rentals, only approximately 10 %, (2,400) were replacement rentals while the car was being repaired.

As a car rental company in North Dakota, we don't obtain a motor vehicle driving record for the renters. We are prohibited from asking about the renter's insurance, and we can't force the renter to take out supplemental liability insurance on the vehicle. In addition we are prohibited from bundling the insurance into the cost of the rental. Bundling means charging an additional amount for insurance premium for the driver and including it in the rate. Car rental companies like Hertz have national rate plans so that the car rental rates are the same throughout the country. In states like North Dakota where the liability coverage is primary for the car rental company this puts the rental company at an economic disadvantage.

At Hertz we take great efforts to keep our insurance premiums lower, by attempting to reduce claims. However, we can't control the actions of our car renters. The result is that we are liable for claims that we did not cause and they are being reported against our insurance and we believe that this is adversely affecting our insurance rates. We believe that if the car renter causes damage he should have the higher liability insurance rates not the car rental company.

Opponent insurance companies also argue that HB 1308 will increase premiums for ND drivers. According to the North Dakota Insurance

Department, and even insurance company representatives this change would not change premiums for North Dakotans.

Thank you for your time. I ask that you bring North Dakota in line with the vast majority of US jurisdictions and that you treat car rental companies the same as car dealers, garages and service stations with liability insurance for rental cars, and that you put the personal responsibility for liability on the driver who caused the damage.

I urge a "DO PASS" recommendation on House Bill 1308

House Bill 1308  
Testimony before Senate Transportation Committee  
Matthew C. Larsgaard, MBA  
Automobile Dealers Association of North Dakota  
March 18, 2011

Mr. Chairman and members of the committee. My name is Matthew Larsgaard and I am appearing in support of House Bill 1308 on behalf of the Automobile Dealers Association of North Dakota which consists of the franchised new car dealers in our state.

Under North Dakota law, an automobile dealership is subject to the following insurance mandates if the dealership loans, rents, or leases a vehicle to a person who is involved in an accident where bodily injury or property damage arises:

- 1) If the person *does not* have insurance and the dealership's insurance extends coverage to the person, then the dealership's insurance is primary.
- 2) If the person *does* have insurance, then their coverage is primary. If the dealership's insurance also extends coverage to that person, then the dealership's insurance is considered excess.

Independent rental car companies are not currently included under provision 1 & 2 and their insurance would be considered primary.

Approximately 7% of our members own independent, stand alone rental car companies with "primary" insurance policies. In conducting their business operations they assume and accept a certain level of risk. Likewise, when an individual gets behind the wheel of a vehicle they too assume the risks and responsibilities associated with the operation of that vehicle.

Currently, we have unfair situation in that one person is being held responsible for another person's actions. Our rental businesses are being held primarily responsible for the driving behavior of the rentees. We respectfully ask that his inequity be corrected and the risks of driving a motor vehicle be placed on the appropriate party; the driver.

Mr. Chairman, thank you for the opportunity to testify.

Matthew C. Larsgaard, MBA  
Automobile Dealers Association of North Dakota

## Testimony of Daren Leier in Support of HB 1308

Chairman Lee and members of the Senate Transportation Committee, my name is Daren Leier. I have been in the rental car business for the past 21 years and have been the general manager of Hertz in Grand Forks and Fargo for the past seven years. I am also a registered lobbyist for Avis, Budget, and Alamo\National Rent a Car Companies in Fargo.

Under North Dakota law when a renter leases one of Hertz's cars, and then is involved in an accident that damages the car, the renter's automobile insurance liability policy will pay for the damage to the rental car. HB 1308 was drafted to cover the situation where the renter also damaged some other property with the rental car. I have attached a letter from Auto-Owners Insurance. In that case a renter had crashed into a City of West Fargo street light pole. Auto -Owners paid for the damage to the Hertz Rent-a-Car and I asked the agent whether Auto-Owners was going to pay for the damage caused to the light pole. The agent at first said yes, then said wait, this is North Dakota I don't think we have cover liability in North Dakota. Hertz then received this letter denying coverage, and indicating that under North Dakota Century Code Section 26.1-40-17, the priority for

payment for the damage to the light pole went to the owner of the vehicle Hertz.

Just this winter there was another accident where one of our renters crashed into another car and caused over \$5,300 damage to the other car. Hertz's liability insurance had to pay for the damage to the other car caused by the renter. Hertz and the other North Dakota car rental companies did not think this is fair.

These accidents were not Hertz's fault. Hertz could not prevent them, but Hertz's insurance had to pay for the damage, and Hertz believes that if anyone should have higher liability rates as a result of an accident it should be the renter who was at fault for the accident not the car rental company.

The vast majority of car rental business that is done at airport locations are rentals to out-of state people. The majority of rentals at Hertz's downtown locations are rentals for people whose cars are being repaired. This shows the unfairness of North Dakota's current law. If someone has their car in for repair and either rents a car or receives a loaner from the auto dealer, or a service garage, and then causes an accident with that rental car, the renter's auto insurance is the primary liability insurance. However, if the person takes his car in for repair to Bill Barth Ford or Eide Ford, and the

dealer has rented all of their loaners out, they will send them to a rental car company. If the renter causes an accident with the rental company car it is the car rental company's liability insurance that is primary.

The purpose of HB 1308 is to treat car rental companies the same as car dealerships, garages or service stations who also rent cars to people in North Dakota, and puts the primary liability where it belongs, on the driver who caused the damage.

I want to thank you for your time and I encourage you to give a "DO

PASS" Recommendation to HB 1308.

AUTO-OWNERS INSURANCE COMPANY  
AUTO-OWNERS LIFE INSURANCE COMPANY  
HOME-OWNERS INSURANCE COMPANY  
OWNERS INSURANCE COMPANY  
PROPERTY-OWNERS INSURANCE COMPANY  
SOUTHERN-OWNERS INSURANCE COMPANY



February 28, 2008

Hertz Rent A Car  
Attention: Daren  
4000 S. Main Ave. Unit D  
Fargo, ND 58103

BRANCH CLAIM OFFICE  
1809 22nd Street, SW, Suite 100 • P.O. Box 2001  
Willmar, Minnesota 56201-7001  
320-235-5119 FAX 320-235-9644  
1-888-873-4575  
WWW.AUTO-OWNERS.COM

RE: Our Insured:  
Our Claim No.:  
Date of Loss: 12-3-07

Dear Daren:

This follows up on your request for the language in the North Dakota statute that determines the priority of coverage for property damage in the event of a motor vehicle accident. The first of the language comes from Chapter 39-08 Regulations governing operators under the North Dakota Motor Vehicle Law. Section 39-08-20 Driving without liability insurance prohibited - Penalty.

**39-08-20 Driving without liability insurance prohibited - Penalty.**

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.

What this means is that the "owner" of any vehicle must carry insurance if they drive or allow anyone else to drive their vehicle, and the limits currently for North Dakota are \$50,000/\$100,000/\$50,000. This reflects \$50,000 because of bodily injury to or death of one person in any one accident, \$100,000 because of bodily injury to or death of two or more persons in any one accident, and \$50,000 because of injury to or destruction of property of others in any one accident.

North Dakota Statute also does establish the priority of coverage for liability in certain instances under Statute 26.1-40-17. as follows:

**26.1-40-17. Establishment of primary and excess automobile liability coverages in certain instances.** When an automobile insurance policy which includes only automobile liability coverage, uninsured motorist coverage, underinsured motorist coverage, automobile medical payments coverage, and basic or optional excess no-fault benefits is in force for anyone engaged in the business of selling, repairing, servicing, storing, leasing, or parking motor vehicles and the owner of the vehicles loans, rents, or leases a vehicle to any



Page 2

other person or organization and the vehicle is involved in an accident out of which bodily injury or property damage arises, the following is applicable:

1. If no other automobile insurance policy is in force at the time of the accident for the person or organization to whom the vehicle was loaned, rented, or leased, the coverage provided by the motor vehicle owner's automobile policy extends to the borrower, rentee, or lessee in the event the owner's automobile insurance policy extends coverage to the borrower, rentee, or lessee.
2. If another automobile insurance policy is in force for the person or organization to whom the vehicle was loaned, rented, or leased, any coverage provided by the motor vehicle owner's automobile insurance policy is excess coverage only but limited, however, by the terms of the owner's applicable automobile insurance policy. The policy afforded the person or organization to whom the vehicle was loaned, rented, or leased is primary.

You will notice that the priority of coverage differs when the vehicle involved is owned by a business that is engaged in the selling, repairing, servicing, storing, leasing, or parking motor vehicles. The statute does not say companies engaged in the business of "renting" vehicles, so therefore, the priority of coverage goes back to the "owner", that being the rental car company.

We are in receipt of the bill from the City of West Fargo for the repair to the street light fixture that was damaged in this occurrence. Because of the priority of coverage outlined above, the primary source of coverage for the damage to the street light fixture would come from the liability insurance covering your vehicle. For this reason, Owners Insurance Company must respectfully deny your claim for damage to the street light fixture.

If you have or obtain any information which may be relevant or may change the facts or circumstances as stated above, please forward the information to my attention immediately. Please feel free to contact me if you have any further questions or concerns.

Sincerely,

AUTO-OWNERS INSURANCE COMPANY

*Karen Skaggs*

Karen Skaggs  
Office Claims Representative

KS/bj  
cc: File  
Enc.

## IN OPPOSITION TO BILL HB 1308

Chairman Lee, members of the Senate Transportation Committee, my name is Dale Haake, and I represent my employer, Nodak Mutual Insurance Company. I am here Today to ask that you vote "Do Not Pass" on HB 1308.

You have been told that the passage of this bill is needed in order for the rental car companies to be treated fairly, as they were not included in 26.1-40-17 when it was originally drafted. Well, possibly there is a little unfairness in this statute. However, the real unfairness is the unfairness to the people of North Dakota. I will explain.

The problem with this statute is that the word "rents" (line 13 of the bill) was included when it was originally drafted. We all understand that the renting of a car from one entity to another is a business transaction. A basic principle of any business is that what you charge your customer must be sufficient to cover your expenses and still leave you with an appropriate profit. It is also well understood that the income you receive from your business should come from the people who patronize your business. This bill creates an actual subsidy for anybody in the car rental business, and that subsidy will be paid by the citizens of North Dakota as a whole.

No insurance company has the ability to identify which of their policy holders will rent a car and which will not. When an insurance company experiences increased costs due to having to handle additional claims, they will recoup those increased costs by raising the cost of their insurance. When rates are raised, they are raised for all policy holders,

both those who rent vehicles and those who never rent.

Surely there are out of state people who come to North Dakota and rent vehicles, but I suspect that occurs mostly in the two towns with the largest airports. Certainly it is not out of state people who do most of the renting in Valley City, Bowman, Wahpeton, or Rugby. This means it will be North Dakota insurance policies that will be covering these vehicles.

No one is suggesting the car rental companies do not deserve to make a reasonable profit. However, that profit should come from the rates charged to those who patronize their business. The only way the cost of insurance can be paid for by those patrons is for the primary insurance to remain with the rental vehicle and for the cost of that insurance to be built into the rental rates. When it comes to fairness, the best way to achieve true fairness is for the word "rents" to be taken out of 26.1-40-17, thereby treating all parties that rent cars equally. It is simply contrary to public interest, and contrary to moral justice to ask the citizens of North Dakota to subsidize a privately owned retail business. For that reason I ask that you vote **"DO NOT PASS"** on this bill.

I would also like to add that a similar bill was just defeated in the Arizona Legislature. That bill was Arizona SB 1401.

Thank you.

**TESTIMONY IN OPPOSITION TO HOUSE BILL 1308**  
**Senate Transportation Committee**  
**March 18, 2011**

Good Morning Chairman Lee and Members of the Senate Transportation Committee:

My name is Patrick Ward. I am an attorney with Zuger Kirmis & Smith law firm here in Bismarck. I represent the Association of North Dakota Insurers, State Farm, and the Property and Casualty Insurance Association of America in opposition to HB 1308.

An identical bill (SB 2261) was presented last session by the rental car companies and was killed on the House floor. Dale Haake will be here from Nodak Mutual to testify in opposition to this bill. In addition, I have received contacts from Nationwide, State Auto, American Family, and numerous other state and regional carriers who oppose this bill. The rental car companies tried to change a similar Arizona statute this year. That bill was killed.

This "garage owner's liability" statute has been on the books here since 1969. This bill would shift the cost and primary insurance responsibility from rental car companies to renters. Why shouldn't they be held to the same responsibility as other companies and drivers to insure their own cars? In the case of out of state renters, injured persons or property owners would have to pursue the out of state driver and insurance company on claims. It would provide rental car companies another opportunity to sell additional coverages to renters at the rental desk

To illustrate that this is not really a very big problem for the rental companies, I have attached Mr. Leier's testimony from SB 2261 last session, which is virtually identical to what he gave in the House this session. You will note that he gives the EXACT same two anecdotal examples for why this is needed then as now, someone running into a light pole in West Fargo and a Red Carpet Car Wash in Fargo. It struck me then as now, "who in the heck takes a rental car to the car wash!"

Note also that the letter he attaches from Auto Owners, explaining no coverage existed in the light pole case, is from February 2008, over 3 years ago. If this is such a serious problem, why are there no new examples since the 2009 session. This statute has been this way since 1969. The code was revised in 1985 and it was kept. It was judicially interpreted not to protect car rental agencies in a North Dakota Supreme Court decision in 1991. No one has tried to change it until 2009.

Be wary of representations about these laws in other states, because each state has unique laws in this area.

North Dakota is fortunate to have some of the lowest automobile liability insurance premiums in the country. If not the lowest, we are always one of the two or three lowest. There are many reasons that go into why North Dakota has lower auto insurance than other states, but those reasons include sensible laws and common sense policies like this one.

Under current North Dakota law, if you are involved in an accident driving a rental car, the rental car company's insurance is primary and your personal

automobile coverage is excess. As we say in the business, "the insurance usually follows the car, not the driver." When you let your brother or your wife's cousin drive your car, he is covered because the insurance is on the car, not the driver, so you do not have to worry about whether or how much coverage he has.

The proponents talk about fairness and a level playing field; however, the case is different when you rent a car (and pay good money to do so) than when you test drive one at a dealer or a garage loans you a car while your vehicle is in the shop for repairs (usually gratis). Rental car companies can build the cost of the insurance into the rental price and spread that cost ONLY among their renters, just like the printer builds the cost of the ink into the newspaper or the carpenter or plumber builds the cost of his WSI insurance into his bid.

It makes good sense that your own insurance would be primary when you borrow a car for a test drive, or a valet parks your car at a garage, or for a short time from a garage while your car is being repaired. In that case, your personal auto coverage is primary and the garage owner's coverage is excess.

What this bill does, although the change looks simple, is put rental car companies into the same status in North Dakota as garage owners or car dealers, but they are not the same. This bill will make the renter's personal auto insurance primary on every rental situation in North Dakota. This could make personal auto coverage more expensive for all North Dakotans, not just people who rent cars here.

What happens when you pay extra to buy their insurance? Will that shift primary risk back to them under this statute? It is not clear to me. Is this a way

for them to sell more insurance at the rental counter? Clearly, rental car companies can build the cost of insurance into their rental rates just as other businesses do. There is no compelling reason here for you to change existing law.

We strongly urge a Do Not Pass on HB 1308.

P:\PWARD\Legislative 2011\Testimony - HB 1308.doc

2009 Senate

#3

Testimony of Daren Leier in Support of SB 2261

Same given  
to House.

Chairman Lee and members of the Senate Transportation Committee, my name is Daren Leier. I have been in the rental car business for the past 19 years and have been the general manager of Hertz in Grand Forks and Fargo for the past five years. I am also a registered lobbyist for Avis, Budget, and Alamo\National Rent a Car Companies in Fargo.

Under North Dakota law when a renter leases one of Hertz's cars, and then is involved in an accident that damages the car, the renter's automobile insurance liability policy will pay for the damage to the rental car. SB 2261 is was drafted to cover the situation where the renter also damaged some other property with the rental car. I have attached a letter from Auto-Owners Insurance from last February. In that case a renter had crashed into a City of West Fargo street light pole. Auto -Owners paid for the damage to the Hertz Rent-a-Car and I asked the agent whether Auto-Owners was going to pay for the damage caused to the light pole. The agent at first said yes, then said wait, this is North Dakota I don't think we have cover liability in North Dakota. Hertz then received this letter denying coverage, and indicating that under North Dakota Century Code Section



26.1-40-17, the priority for payment for the damage to the light pole went to the owner of the vehicle Hertz.

Another example was where a renter ran into the Red Carpet Car wash in Fargo with one of our rental cars. The renter's auto policy paid for the minor damage to the rental car, but there was \$7,000 damage to the car wash building that Hertz's insurance as the owner of the car had to pay. Hertz and the other car rental companies did not think this was fair. These accidents were not Hertz's fault. Hertz could not prevent them, but Hertz's insurance had to pay for the damage, and Hertz. Hertz believes that if anyone should have higher liability rates as a result of an accident it should be the renter who was at fault for the accident not the car rental company.

The vast majority of car rental business that is done at airport locations are rentals to out-of state people. The majority of rentals at Hertz's downtown locations are rentals for people whose cars are being repaired. This shows the unfairness of North Dakota's current law. If someone has their car in for repair and either rents a car or receives a loaner from the auto dealer, or a service garage, and then causes an accident with that rental car, the renter's auto insurance is the primary liability insurance. However, if the person takes his car in for repair to Bill Barth Ford or Eide Ford, and the dealer has rented all of their loaners out, they will send them to a rental car

company. If the renter causes an accident with the rental company car it is the car rental company's insurance that is primary.

★ The purpose of SB 2261 is to treat car rental companies the same as car dealerships or service stations who also rent cars to people in North Dakota.

I want to thank you for your time and I encourage you to give a **"DO PASS"**

**Recommendation to SB 2261.**

Oehlke, H. Dave

Commi Hae Work

3-24-11

From: Dale Haake [dhaake@nodakmutual.com]  
To: Monday, March 21, 2011 8:07 AM  
Subject: Oehlke, H. Dave  
Info for HB 1308

Follow Up Flag: Follow up  
Flag Status: Flagged

Senator Oelkhe,

Nodak Mutual was able to extract a certain amount of information regarding claims involving cars our insured had rented. Unfortunately, this is partial information, which I will explain.

We have identified 41 claims from 2008 through 2010 which absolutely deal with damage done to a car rented to one of our insureds. Where the rental took place, we have no idea. This was done by doing a search of an "accident code" which identifies the loss description as involving a rental vehicle. These codes have been used by Nodak for a number of years, and were used in the past for analyzing the types of losses we were experiencing, and it was quite accurate while we input our own losses into our system. Unfortunately, about 5 years ago we switched to using an outside vendor for entering loss notices into our system. These people were not near so careful in the selection of the accident code, and a huge number of the claims ended up with the code for "other", which was an easy way out for the loss taker. That has made the accurate use of this code system worthless when it comes to seeking total numbers of a certain type of loss.

The 41 claims that were absolutely identified resulted in payments of \$70,534.

Seeing the number of claims which were identified, and knowing how the vendor was coding losses, I know for certain the number is a fair deal higher. How much higher, I can not tell.

Presently, if a car rented to my insured is hit by another driver and the liability of the other driver is very clear, the carrier or the other driver may take care of the damages. There may be PIP claims, but those are taken care of by the carrier for the rental company, so there is a good chance we would never even hear of the loss. If HB 1308 is passed, the number of claims coming to our attention would increase simply because it would require involvement in more of the coverages.

My best guess is that a more correct number of losses for this time period would be closer to 80, given the unidentifiable coding and those files where the damage is paid by the adverse driver. Should the liability coverage change, this would result in exposure for PD, BI, PIP, UM, and UIM, all of which do not now exist.

Please note that Nodak Mutual has approximately 8% of the auto market share. I can only assume that the experience we are realizing would be roughly similar for the rest of the market.

I realize this is not absolute conclusive data, but it was the best I could get, and my speculations are as close as I can make them, knowing how the loss coding has been done over the past few years. I hope it is of use to you.

Dale A. Haake  
Director of Casualty Claims  
Nodak Mutual Insurance Group  
701-298-4202