

SENATE BILL 102

Introduced by Pinsoneault, et al.

1/11	Introduced
1/11	Referred to Judiciary
1/12	Fiscal Note Requested
1/16	Fiscal Note Received
1/16	Fiscal Note Printed
1/20	Hearing
	Died in Committee

1 Senate BILL NO. 102  
2 INTRODUCED BY Tim McConnell Thomas

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING RENTAL CAR  
5 COMPANIES FROM HOLDING RENTERS LIABLE FOR DAMAGES TO RENTAL  
6 CARS; PROVIDING CERTAIN EXCEPTIONS; PROHIBITING RENTAL CAR  
7 COLLISION DAMAGE WAIVERS; PROVIDING FOR ENFORCEMENT BY THE  
8 DEPARTMENT OF COMMERCE; AND PROVIDING AN EFFECTIVE DATE AND  
9 AN APPLICABILITY DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Short title. [Sections 1  
13 through 13] may be cited as the "Collision Damage Waiver  
14 Act".

15 NEW SECTION. Section 2. Purpose. The purpose of  
16 [sections 1 through 13] is to regulate the sale of collision  
17 damage waivers by rental companies by:

18 (1) providing that a person who rents a private  
19 passenger automobile from a rental company under a rental  
20 agreement of 30 continuous days or less is not liable for  
21 damages to the automobile, except in certain specific  
22 situations; and

23 (2) prohibiting an automobile rental company from  
24 providing, offering, or selling to a renter a waiver by the  
25 company of liability for damage to the automobile.

1 NEW SECTION. Section 3. Definitions. As used in  
2 [sections 1 through 13], the following definitions apply:

3 (1) "Authorized driver" means:

4 (a) the renter;

5 (b) the renter's spouse if the spouse is a licensed  
6 driver and satisfies the rental company's minimum age  
7 requirement;

8 (c) the renter's employer or coworker if the employer  
9 or coworker is:

10 (i) engaged in business activity with the renter; and

11 (ii) a licensed driver who satisfies the rental  
12 company's minimum age requirement;

13 (d) any person who operates the private passenger  
14 automobile during an emergency situation or while parking it  
15 at a commercial establishment; and

16 (e) any person expressly listed by the rental company  
17 on the rental agreement as an authorized driver.

18 (2) "Damage" means damage or loss to the rented  
19 private passenger automobile, including loss of use, and any  
20 costs and expenses incident to the damage or loss.

21 (3) "Department" means the department of commerce  
22 provided for in 2-15-1801.

23 (4) "Private passenger automobile" means a motor  
24 vehicle of the private passenger type, including a passenger  
25 van and minivan, that is primarily intended to transport

1 persons.

2 (5) "Rental agreement" means a written agreement of 30  
3 continuous days or less, setting forth the terms and  
4 conditions governing the use of a private passenger  
5 automobile provided by a rental company.

6 (6) "Rental company" means a person in the business of  
7 providing private passenger automobiles to the public.

8 (7) "Renter" means a person who obtains the use of a  
9 private passenger automobile from a rental company under the  
10 terms of a rental agreement.

11 NEW SECTION. Section 4. Immunity from liability for  
12 damages -- exceptions -- venue. (1) In a rental agreement, a  
13 rental company may not hold an authorized driver liable for  
14 damage unless the:

15 (a) damage is caused:

16 (i) intentionally by an authorized driver or as a  
17 result of his willful and wanton misconduct; or

18 (ii) while the authorized driver is engaged in a speed  
19 contest;

20 (b) damage arises out of the:

21 (i) use of the private passenger automobile while  
22 committing or otherwise engaged in a crime in which the  
23 private passenger automobile usage is substantially related  
24 to the nature of the crime;

25 (ii) use of the private passenger automobile to carry a

1 person or property for hire;

2 (iii) use of the private passenger automobile outside  
3 of the United States or Canada, except if the use is  
4 specifically authorized under the rental agreement; or

5 (iv) authorized driver's operation of the private  
6 passenger automobile while legally intoxicated or under the  
7 influence of a drug defined or determined to be illegal  
8 under the law of the state where the damage occurred; or

9 (c) rental transaction is based on information  
10 supplied by the renter with the intent to defraud the rental  
11 company.

12 (2) If the renter is a resident of the United States,  
13 a rental company may bring an action for damages against him  
14 only in the state and county of his primary residence.

15 NEW SECTION. Section 5. Security deposits and waivers  
16 prohibited. (1) A rental company may not require or request  
17 security or a deposit for damage in any form during the  
18 rental period or during the period in which a dispute with a  
19 renter is pending.

20 (2) A rental company may not provide, offer, or sell  
21 to a renter a waiver by the company of liability for  
22 damages that may arise under [section 4(1)].

23 NEW SECTION. Section 6. Enforcement by department --  
24 procedure -- penalty. (1) The department shall prevent a  
25 person from violating any of the provisions of [sections 1

1 through 13].

2 (2) Upon receiving notice that a person has violated  
3 any of the provisions of [sections 1 through 13], the  
4 department shall immediately direct the person giving the  
5 notice either to appear before the director of the  
6 department or to make a written statement showing probable  
7 cause of a violation. If probable cause is shown, the  
8 department shall:

9 (a) make its own investigation;

10 (b) within 60 days of the finding of probable cause  
11 make a written report of its investigation; and

12 (c) mail a copy of its findings to the person  
13 initially giving notice of a violation.

14 (3) (a) If the department, after an investigation,  
15 has reason to believe that a person has engaged in any  
16 course of conduct or done any act in violation of [sections  
17 1 through 13] and if it appears to the department that a  
18 proceeding by it would be in the interest of the public, it  
19 shall issue and serve upon the person a complaint stating  
20 the charges and containing a notice of a hearing at a place  
21 and upon a day not less than 5 days after the service of the  
22 complaint.

23 (b) A complaint may be amended by the department in  
24 its discretion at any time 5 days prior to the issuance of  
25 an order based on it.

1 (c) The person complained against may appear at the  
2 place and time and show cause why an order should not be  
3 entered by the department requiring the person to stop the  
4 violation of the law charged in the complaint.

5 (d) Any person may make application and upon good  
6 cause shown may be allowed by the department to intervene  
7 and appear in the proceeding by counsel or in person.

8 (e) The testimony in the proceeding must be in  
9 writing and filed with the department.

10 (f) If upon the hearing the department believes that  
11 the act or conduct in question is prohibited by [sections 1  
12 through 13], it shall make written findings of fact and  
13 issue and cause to be served on the person charged an order  
14 requiring him to stop the act or conduct.

15 (g) Until a transcript of the record in the hearing  
16 has been filed in a district court, the department may at  
17 any time, upon notice in the manner it considers proper,  
18 modify or set aside, in whole or in part, a report or an  
19 order made or issued by it under this section.

20 (4) A court reviewing an order of the department may  
21 issue a writ within its jurisdiction if such an action is  
22 considered necessary to prevent injury to the public  
23 pending the outcome of the suit.

24 (5) To the extent that the order of the department is  
25 affirmed, the court shall issue its own order commanding

1 obedience to the terms of the order of the department.

2 (6) Proceedings under this section must be given  
3 precedence over other civil cases pending in the district  
4 court and must be in every way expedited.

5 (7) A person who violates an order of the department  
6 after it has become final and while the order is in effect  
7 shall forfeit and pay to the state a penalty of not more  
8 than \$1,000 for each violation.

9 (8) The remedies and method of enforcement of  
10 [sections 1 through 13] provided for in this section are  
11 concurrent and in addition to the other remedies provided in  
12 [sections 1 through 13].

13 NEW SECTION. Section 7. Investigations. (1) The  
14 department, for the purpose of conducting hearings and  
15 investigations considered necessary for the exercise of the  
16 powers vested in it by [sections 1 through 13], has access  
17 at all reasonable times to evidence concerning a person  
18 being investigated or proceeded against if the evidence  
19 relates to any matter under investigation or in question.  
20 The department may copy such evidence. The department may  
21 issue subpoenas requiring the attendance and testimony of  
22 witnesses and the production of any evidence that relates to  
23 any matter under investigation or in question before the  
24 department or before its duly authorized agent conducting  
25 the investigation. An agent, duly authorized by the

1 department for those purposes, may administer oaths and  
2 affirmations, examine witnesses, and receive evidence. The  
3 attendance of witnesses and the production of evidence may  
4 be required from any place in this state at any designated  
5 place of hearing.

6 (2) Upon application by the department in a case of  
7 contumacy or refusal to obey a subpoena issued to a person,  
8 the district court within the district where the inquiry is  
9 carried on or where a person guilty of contumacy or refusal  
10 to obey is found, resides, or transacts business has  
11 jurisdiction to issue to that person an order requiring him  
12 to appear before the department or its duly authorized agent  
13 and to produce evidence if so ordered or to give testimony  
14 regarding the matter under investigation. Failure to obey  
15 the order of the court may be punished by the court as a  
16 contempt.

17 (3) A person may not be excused from attending and  
18 testifying or from producing books, records, correspondence,  
19 documents, or other evidence in obedience to the subpoena of  
20 the department on the ground that the testimony or evidence  
21 required of him may tend to incriminate him or subject him  
22 to a penalty or forfeiture. However, no compelled testimony  
23 or evidence or any information directly or indirectly  
24 derived from such testimony or evidence may be used against  
25 the witness in a criminal prosecution. Nothing in this

section prohibits the department from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the department determines in its discretion that the ends of justice would be served by such an action. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

**NEW SECTION. Section 8. Department authority.** To accomplish the objectives and to carry out the duties prescribed by [sections 1 through 13], the department, in addition to other powers conferred upon it by [sections 1 through 13], may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry. However, none of the powers conferred by [sections 1 through 13] may be used for the purpose of compelling any person to furnish testimony or evidence that might tend to incriminate him or subject him to a penalty or forfeiture. Information obtained pursuant to the powers conferred by [sections 1 through 13] may not be made public or be disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

**NEW SECTION. Section 9. Service of process -- how made.** Service of any notice, demand, or subpoena under [sections 1 through 13] must be made personally within this

state. However, if personal service cannot be made, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

**NEW SECTION. Section 10. Duties of county attorney and attorney general.** Upon request, the county attorney shall assist the department in the commencement and prosecution of actions pursuant to [sections 1 through 13]. The county attorney or the attorney general, on request of the department or a county attorney, may initiate all procedures and prosecute actions in the same manner as that provided for the department. If an action is prosecuted by the county attorney alone or the attorney general on request of the county attorney, the person prosecuting shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney or attorney general shall report on the matter to the department within 30 days of the final disposition of the matter.

**NEW SECTION. Section 11. Injunctions -- damages -- production of evidence.** (1) The attorney general or a person injured by a violation of [section 4 or 5] may maintain an action to enjoin a continuance of an act in violation of [section 4 or 5] and for the recovery of damages. If in such action the court finds that the defendant is violating or has violated any of the provisions of [section 4 or 5],

1 it shall enjoin the defendant from a continuance of the  
2 violation. It is not necessary to allege or prove actual  
3 damages to the plaintiff.

4 (2) In addition to such injunctive relief, the  
5 plaintiff is entitled to recover from the defendant three  
6 times the amount of actual damages sustained.

7 (3) A defendant in an action brought under this  
8 section may be required to testify under the Montana Rules  
9 of Civil Procedure. In addition, the books and records of a  
10 defendant may be brought into court and introduced into  
11 evidence by reference. No information so obtained may be  
12 used against the defendant as a basis for a criminal  
13 prosecution.

14 NEW SECTION. Section 12. Department to institute  
15 suit. Upon the third violation of any of the provisions of  
16 [section 4 or 5] by any rental company, the department shall  
17 institute suits or quo warranto proceedings in a court of  
18 competent jurisdiction for the forfeiture of the charter,  
19 rights, franchises or privileges, and powers exercised by  
20 such rental company and to permanently enjoin it from  
21 transacting business in this state. If in such action the  
22 court finds that the rental company is violating or has  
23 violated any of the provisions of [section 4 or 5], it shall  
24 enjoin the rental company from doing business in this state  
25 permanently or for such time as the court orders or shall

1 annul the charter or revoke the franchise of such rental  
2 company.

3 NEW SECTION. Section 13. Penalty. A rental company  
4 that is convicted of a violation of [section 4 or 5] shall  
5 be fined not less than \$500 or more than \$1,000 for each  
6 violation.

7 NEW SECTION. Section 14. Extension of authority. Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

11 NEW SECTION. Section 15. Codification instruction.  
12 [Sections 1 through 13] are intended to be codified as an  
13 integral part of Title 30, chapter 14, and the provisions of  
14 Title 30, chapter 14, apply to [sections 1 through 13].

15 NEW SECTION. Section 16. Saving clause. [This act]  
16 does not affect rights and duties that matured, penalties  
17 that were incurred, or proceedings that were begun before  
18 [the effective date of this act].

19 NEW SECTION. Section 17. Severability. If a part of  
20 [this act] is invalid, all valid parts that are severable  
21 from the invalid part remain in effect. If a part of [this  
22 act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are  
24 severable from the invalid applications.

25 NEW SECTION. Section 18. Applicability. [This act]

LC 0411/01

1 applies to private passenger automobile rental agreements  
2 entered into in this state on or after [the effective date  
3 of this act].

4 NEW SECTION. **Section 19.** Effective date. [This act]  
5 is effective July 1, 1989.

-End-



## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB102, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


SB102 would prohibit rental car companies from holding renters liable for damages to rental cars except in certain instances and prohibit rental car collision damage security deposits and waivers, providing for investigation and enforcement by the Department of Commerce.

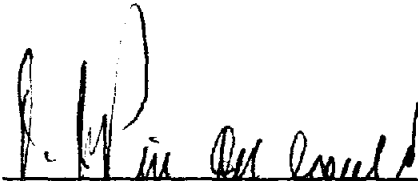
ASSUMPTIONS:

1. Administration would be handled by the Consumer Affairs Bureau of the Department of Commerce.
2. There will be 12 complaints per year, six of which will require contract investigators at an average cost of \$1,000 each plus travel expenses.
3. There will be one lawsuit annually at a cost of \$4,000.
4. Rental company fine revenue would be minimal and would be deposited to the general fund.
5. The potential district court impact is assumed to be negligible.

FISCAL IMPACT:

	<u>Current</u>	<u>FY90</u>		<u>Current</u>	<u>FY91</u>	
	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Dept. of Commerce						
Operating Expenses	-0-	\$12,000	\$12,000	-0-	\$11,000	\$11,000
<u>Funding:</u>						
General Fund	-0-	\$12,000	\$12,000	-0-	\$11,000	\$11,000

  
 RAY SHACKLEFORD, BUDGET DIRECTOR  
 OFFICE OF BUDGET AND PROGRAM PLANNING  
 DATE 1/14/89

  
 R.J. PINSONEAULT, PRIMARY SPONSOR  
 DATE 1-16-89

Fiscal Note for SB102, as introduced

**SB 102**