

FEB 19 2007  
COMMERCE AND REGULATION

HOUSE FILE 2410  
BY ALONS

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act requiring a watercraft rental company to offer a collision  
2 damage waiver to customers and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2410

1 Section 1. NEW SECTION. 462A.7A WATERCRAFT RENTAL --  
2 COLLISION DAMAGE WAIVER.

3 1. For the purposes of this section:

4 a. "Authorized operator" means any of the following:

5 (1) A customer to whom a watercraft is rented.

6 (2) A person expressly listed by a rental company on a  
7 rental agreement as an authorized operator.

8 (3) A customer's spouse, if the spouse satisfies the  
9 rental company's minimum age requirement.

10 (4) A customer's employer or coworker, if the employer or  
11 coworker is engaged in a business activity with the customer  
12 to whom the watercraft is rented and satisfies the rental  
13 company's minimum age requirement.

14 b. "Collision damage waiver" means a contract or  
15 contractual provision, whether separate from or part of a  
16 rental agreement, whereby the rental company agrees, for a  
17 charge, to waive claims against an authorized operator for  
18 all, or any portion of, damages to the rental watercraft, loss  
19 due to theft of the rental watercraft, or damages resulting  
20 from the loss of use of the rental watercraft.

21 c. "Customer" means a person entering into a rental  
22 agreement and obtaining the use of a rental watercraft from a  
23 rental company under the terms of the rental agreement.

24 d. "Rental agreement" means a written contract containing  
25 the terms and conditions for the use of a rental watercraft by  
26 a customer for a term of sixty days or less.

27 e. "Rental company" means a person in the business of  
28 providing rental watercraft to customers.

29 f. "Rental watercraft" means any vessel which through the  
30 buoyance of water floats upon the water and is capable of  
31 carrying one or more persons, and which, upon the execution of  
32 a rental agreement, is made available to a customer for the  
33 customer's use or other authorized operator's use.

34 2. A rental company shall not hold, or attempt to hold, an  
35 authorized operator liable for physical damage to a rental

1 watercraft, loss due to theft of a rental watercraft, or  
2 damages resulting from the loss of use of a rental watercraft,  
3 unless the rental company offers the customer a collision  
4 damage waiver under the terms and conditions described in  
5 subsection 3, or unless one or more of the following apply:

6 a. The damage or loss is caused intentionally by an  
7 authorized operator or is a result of the authorized  
8 operator's willful, abusive, reckless, or wanton misconduct.

9 b. The damage or loss arises out of the authorized  
10 operator's operation of the rental watercraft while  
11 intoxicated or under the influence of a drug.

12 c. The damage or loss is caused while the authorized  
13 operator is engaged in a race, training activity, contest, or  
14 use of the rental watercraft for an illegal purpose.

15 d. The rental agreement is based on false or misleading  
16 information supplied by the customer or an authorized  
17 operator.

18 e. The damage or loss is caused by operating the rental  
19 watercraft other than on navigable waters.

20 f. The damage or loss arises out of the use of the rental  
21 watercraft to transport persons or property for hire or to  
22 push or tow anything other than as set forth in the rental  
23 agreement.

24 g. The damage or loss occurs while the rental watercraft  
25 is operated by an operator other than an authorized operator.

26 h. The damage or loss arises out of the use of the rental  
27 watercraft outside the continental United States unless such  
28 use is specifically authorized by the rental agreement.

29 i. The damage or loss is attributable to theft which  
30 occurs with the prior knowledge or knowing participation of an  
31 authorized operator, or which is attributable to the  
32 authorized operator leaving the rental watercraft unattended  
33 with the keys in the rental watercraft.

34 This section does not alter the liability of a customer or  
35 authorized operator for bodily injury or the death of another

1 and for property damage other than to the rental watercraft in  
2 accordance with the rental agreement. This section does not  
3 prohibit a rental company from accepting or negotiating master  
4 contracts with companies or governmental entities in advance  
5 of need whereby the companies or governmental entities  
6 specifically agree to assume liability in exchange for rate  
7 concessions. This section does not prohibit a rental company  
8 from entering into agreements with insurance companies to  
9 provide replacement watercraft to insurance company customers  
10 whereby the insurance company agrees to assume the risk of  
11 loss.

12 If a damaged rental watercraft is not repaired, damages  
13 shall not exceed the fair market value of the watercraft, as  
14 determined in the customary market for that watercraft, less  
15 salvage or actual sale value, plus additional license and tax  
16 fees incurred because of the sale, plus administrative fees.  
17 A claim shall not be made for loss of use if a damaged rental  
18 watercraft is not repaired.

19 3. A rental company may offer a collision damage waiver  
20 under the following terms and conditions:

21 a. All restrictions, conditions, and exclusions must be  
22 printed in the rental agreement, or on a separate sheet or  
23 document, in ten point or larger type; or written in pen and  
24 ink or typewritten in or on the face of the rental agreement  
25 in a blank space provided for such restrictions, conditions,  
26 and exclusions. The rental agreement may provide that the  
27 collision damage waiver may be voided under the conditions set  
28 forth in subsection 2, paragraphs "a" through "i".

29 b. The rental agreement, separate sheet, or document must  
30 clearly and conspicuously state both the daily and estimated  
31 total charge for the collision damage waiver.

32 c. The rental agreement, separate sheet, or document given  
33 to the customer prior to entering into the rental agreement  
34 must display in ten point or larger type, the following  
35 notice:

1 NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A  
2 COLLISION DAMAGE WAIVER TO COVER ALL OR PART OF YOUR  
3 RESPONSIBILITY FOR DAMAGE TO THE RENTAL WATERCRAFT.

4 BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE  
5 WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN INSURANCE  
6 AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL WATERCRAFT AND  
7 THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE  
8 COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT  
9 MANDATORY AND MAY BE DECLINED.

10 The customer must separately acknowledge that the customer  
11 received the above notice, that the customer desires to  
12 purchase the collision damage waiver, and the terms of the  
13 collision damage waiver to which the customer agrees.

14 d. The watercraft rental company shall not pay commissions  
15 to a rental counter agent or representative for selling  
16 collision damage waivers and shall not consider volume of  
17 sales of collision damage waivers in an employee evaluation or  
18 determination of promotion.

19 However, notwithstanding whether a rental company offers a  
20 collision damage waiver under the provisions of this  
21 subsection, the rental company shall not hold an authorized  
22 operator liable for damage or loss due to theft except where  
23 subsection 2, paragraph "i" applies.

24 4. Unfair or deceptive acts or practices in offering or  
25 providing collision damage waivers include, but are not  
26 limited to, the following:

27 a. A representation connected with the advertisement or  
28 rental of a watercraft that the purchase of a collision damage  
29 waiver is mandatory.

30 b. Failure to provide disclosures as required by this  
31 section.

32 c. Failure to disclose in a manner likely to be noticed  
33 and comprehended in an advertisement, as defined in section  
34 714.16, subsection 1, paragraph "a", the availability of a  
35 collision damage waiver, and the cost of the waiver.

1 d. Misrepresentation of a customer's need for a collision  
2 damage waiver, personal accident insurance, or personal  
3 effects insurance.

4 EXPLANATION

5 This bill provides that a watercraft rental company cannot  
6 hold a customer liable for damages to a rental watercraft,  
7 except under specified circumstances, unless the rental  
8 company offers the customer a collision damage waiver, for an  
9 additional charge, to cover all or part of the customer's  
10 liability, as part of the rental agreement. The bill also  
11 provides that a rental company shall not represent that the  
12 purchase of a collision damage waiver is mandatory or  
13 misrepresent a customer's need to have a collision damage  
14 waiver, personal accident insurance, or personal effects  
15 insurance.

16 A violation of the provisions of this bill is a simple  
17 misdemeanor pursuant to Code section 462A.13. A simple  
18 misdemeanor is punishable by confinement for no more than 30  
19 days or a fine of at least \$50 but not more than \$100 or by  
20 both.

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