

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

912E0628

SENATE BILL NO. 173

Introduced by: Senators Munson, McCracken, Moore, and Olson (Ed) and
Representatives Peterson (Bill), Flowers, Hennies (Thomas), and Olson
(Mel)

1 FOR AN ACT ENTITLED, An Act to authorize a rental car company to offer car rental
2 insurance under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Director," the director of insurance;

6 (2) "Endorsee," an unlicensed employee or agent of a rental car agent who offers, sells,
7 or solicits rental car insurance and meets the requirements of this Act;

8 (3) "Rental agreement," any written master, corporate, group, or individual agreement
9 setting forth the terms and conditions governing the use of a rental car rented or
10 leased by a rental car company;

11 (4) "Rental car," any motor vehicle that is intended to be rented for a period of twenty-
12 eight consecutive days or less, by a driver who is not required to possess a
13 commercial driver's license to operate the motor vehicle and the motor vehicle is
14 either of the following:

- 1 (a) A private passenger motor vehicle, including a passenger van, minivan, or
- 2 sports utility vehicle; or
- 3 (b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross
- 4 vehicle weight of less than twenty-six thousand pounds;
- 5 (5) "Rental car agent," any company that is licensed to offer, sell, or solicit rental car
- 6 insurance pursuant to this Act;
- 7 (6) "Rental car company," any person in the business of providing rental cars to the
- 8 public, including a franchisee;
- 9 (7) "Renter," any person who executes a rental agreement to obtain the use of a vehicle
- 10 from a rental car company.

11 Section 2. For the purposes of this Act, rental car insurance is insurance offered, sold, or
12 solicited in connection with and incidental to the rental of rental cars, other than waiver of the
13 rental car company's right of indemnity for damages to the rental car, whether at the rental office
14 or by pre-selection of coverage in master, corporate, group, or individual agreements, that:

- 15 (1) Is nontransferable;
- 16 (2) Applies only to the rental car that is the subject of the rental agreement; and
- 17 (3) Is limited to the following kinds of insurance:
 - 18 (a) Personal accident insurance for renters and other rental car occupants, for
 - 19 accidental death or dismemberment, and for medical expenses resulting from
 - 20 an accident that occurs with the rental car during the rental period;
 - 21 (b) Liability insurance, which includes uninsured or underinsured motorist
 - 22 coverage, that is not less than the minimum financial responsibility limits
 - 23 required by the law, whether offered separately or in combination with other
 - 24 liability insurance, that provides protection to the renters and to other

1 authorized drivers of a rental car for liability arising from the operation of the
2 rental car during the rental period;

3 (c) Personal effects insurance that provides coverage to renters and other
4 occupants of the rental car for loss of, or damage to, personal effects in the
5 rental car during the rental period;

6 (d) Roadside assistance and emergency sickness protection insurance; and

7 (e) Such other travel or vehicle-related coverage that a rental car company may
8 offer in connection with and incidental to the rental of a rental car as may be
9 approved by the director in rules promulgated pursuant to chapter 1-26.

10 Section 3. No rental car company, and no officer, director, employee, or agent of a rental car
11 company, may offer, sell, or solicit the purchase of rental car insurance unless the person is
12 licensed as an insurance producer or there has been compliance with the requirements of this Act.

13 Section 4. The director may issue to a rental car company that has complied with the
14 requirements of this Act, a license that authorizes the rental car company to act as a rental car
15 agent in accordance with the provisions of this Act, in connection with and incidental to rental
16 agreements, on behalf of any insurer authorized to write such insurance in this state.

17 Section 5. A rental car company may apply to be licensed as a limited lines insurance
18 producer under the terms of this Act if it satisfies all of the requirements of this Act and if it files
19 the following documents with the director:

20 (1) A written application for licensure, signed by the applicant or by an officer of the
21 applicant, in the form or format prescribed by the director that includes a listing of all
22 locations at which the rental car company intends to offer, sell, or solicit rental car
23 insurance;

24 (2) A certificate, by the insurer that is to be named in the rental car agent license, stating

1 that the insurer has satisfied itself that the named applicant is trustworthy and
2 competent to act as its rental car agent limited to this purpose; that the insurer has
3 reviewed the endorsee training and education program required by section 7 of this
4 Act and believes that it satisfies the statutory requirements; and that the insurer will
5 appoint the applicant to act as its rental car agent to offer, sell, or solicit rental car
6 insurance if the license for which the applicant is applying is issued by the director.
7 The certification shall be subscribed by an officer or managing agent of the insurer on
8 a form or format prescribed by the director.

9 Section 6. An employee or agent of a rental car agent may be an endorsee authorized to
10 offer, sell, or solicit rental car insurance under the authority of the rental car agent license if all
11 of the following conditions have been satisfied:

- 12 (1) The employee or agent is eighteen years of age or older;
- 13 (2) The employee or agent has not committed any act set forth in chapter 58-30;
- 14 (3) The employee or agent has completed a training and education program;
- 15 (4) The rental car company, at the time it submits its rental car agent license application
16 pursuant to section 5 of this Act, also submits a list of the names of all endorsees to
17 its rental car agent license. The list shall be updated and submitted to the director
18 quarterly. However, endorsees may sell, offer, and solicit rental car insurance as soon
19 as they meet the requirements as set forth in this section. Each list shall be retained
20 by the rental car company for a period of five years from submission; and
- 21 (5) The rental car company submits to the director with its initial rental car agent license
22 application and annually thereafter a certification, subscribed by an officer of the
23 rental car company on a form or format prescribed by the director, stating both of the
24 following:

1 (a) That no person other than an endorsee offers, sells, or solicits rental car
2 insurance on its behalf or while working as an employee or agent of the rental
3 car agent; and

4 (b) That all endorsees have completed the training and education program required
5 by this Act.

6 Section 7. Each rental car agent shall provide a training and education program for each
7 endorsee prior to allowing an endorsee to offer, sell, or solicit rental car insurance. The training
8 and education program may be conducted at remote locations or through videotape or any means
9 approved by the director in rules promulgated pursuant to chapter 1-26. The training and
10 education program shall meet the following minimum standards:

11 (1) Each endorsee shall receive instruction about the kinds of insurance specified in this
12 Act that are offered for sale to prospective renters;

13 (2) Each endorsee shall receive training about the requirements and limitations imposed
14 on car rental agents and endorsees by this Act. That training shall include specific
15 instruction that the endorsee is prohibited by law from making any statement or
16 engaging in any conduct, express or implied, that would lead a renter to believe:

17 (a) That the purchase of rental car insurance is required in order for the renter to
18 rent a motor vehicle;

19 (b) That the renter does not have insurance policies in place that already provide
20 the coverage being offered by the rental car company pursuant to this Act; and

21 (c) That the endorsee is qualified to evaluate the adequacy of the renter's existing
22 insurance coverages.

23 The director may request to review the training and education program at any time.

24 Section 8. An endorsee's authorization to offer, sell, or solicit rental car insurance expires

1 when the endorsee's employment with the rental car company is terminated.

2 Section 9. The rental car agent shall retain for a period of five years from the date of each
3 transaction records which enable it to identify the name of the endorsee involved in each rental
4 transaction in which a renter purchased rental car insurance.

5 Section 10. No insurance may be offered, sold, or solicited pursuant to this Act unless:

6 (1) The rental period of the rental car agreement is twenty-eight consecutive days or less;

7 (2) At every location where rental agreements are executed, the rental car agent or
8 endorsee prominently displays and makes available brochures or other written
9 materials to each renter who purchases rental car insurance that:

10 (a) Summarize the material terms, exclusions, limitations, and conditions of
11 coverage offered to renters, including the identity of the insurer;

12 (b) Describe the process for filing a claim if the renter elects to purchase coverage;

13 (c) Make information available to the consumer that the rental car insurance
14 offered, sold, or solicited by the rental car agent may provide a duplication of
15 coverage already provided by other sources of the renter's, and that such
16 insurance is not required as a condition of renting the motor vehicle;

17 (d) Provide the rental car agent's name, address, telephone number, and license
18 number;

19 (e) Makes available information that, if purchased, the insurance offered by the
20 limited lines producer to the renter is primary coverage over any other
21 insurance coverages applicable to the renter;

22 (3) Evidence of the rental car insurance coverage is stated in the rental agreement;

23 (4) Any cost for the rental car insurance is separately itemized in the rental agreement
24 unless preselection of coverage is made in a master, corporate, or group agreement.

1 Section 11. No rental car agent may:

2 (1) Advertise, represent, or otherwise portray itself or any of its employees or agents as
3 licensed insurers or insurance producers; or

4 (2) Pay any person, including a rental car agent endorsee, any compensation, fee, or
5 commission that is dependent solely on the placement of insurance under the license
6 issued pursuant to this Act. Nothing in this Act prohibits production payments or
7 incentive payments that are not dependent solely upon the sale of rental car insurance.

8 Section 12. If a rental car company violates any provision of this Act, the director may
9 revoke or suspend the license of a rental car company or take other action as authorized under
10 Title 58.