

2009 SENATE TRANSPORTATION

SB 2261

# 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2261

Senate Transportation Committee

Check here for Conference Committee

Hearing Date: January 29, 2009

Recorder Job Number: 8115

Committee Clerk Signature

*Judy Hauget*

**Senator Lee** opened the hearing on SB 2261 relating to establishment of primary and excess automobile liability coverages for rental vehicles.

**Senator Hogue** introduced the bill. The purpose of SB 2261 is to correct the unequal treatment of car rental companies in ND as compared to car dealerships, service stations, garages, and parking lots that also rent or loan cars out. Written testimony #1. By adding the renting in the section it says if you rent a vehicle in ND, it is your coverage that will provide the primary coverage.

**Senator Potter** said he thought that was the situation already. When I rent a car I turn down the excess coverage and my own personal care coverage covers it. What is the difference?

**Senator Hogue** said when renting a vehicle in ND our statues applies.

**Senator Nething** asked what the effect of the cost of insurance to the driver if this bill were to pass.

**Senator Hogue** said he couldn't speak to that but maybe someone in the room could.

**Senator Lee** asked why the rental companies feel that they need this.

**Senator Hogue** said that the issue is the rent a car companies would suggest that if you rent their car and you are involved in an accident whether it is your fault or not, your company should step forward first. It is a fairness argument.

**Tom Kelsch** representing the rental companies wanted to address Senator Potter's question.

This section applies when there are two policies in affect. If you were not insured and you were dishonest, the car rental company as the owner of the vehicle would have to cover it. This addresses who pays first for liability damage that you would cause to someone else's property.

**Hadley Freng**, a business manager for Hansen Lease and Rental, and Hansen Lease and Rental of Fargo testified in support of SB 2261. Written Testimony #2.

**Senator Nething** wanted to know what would happen to rates for individual renting the cars. He asked if it would go down.

**Freng** didn't know.

**Daren Leier** General Manager of Hertz in Grand Forks and Fargo and a registered lobbyist for Avis, Budget, and Alamo/National Rent a Car Companies in Fargo testified in support of SB 2261. Written Testimony #3.

**Jack McDonald** representing Enterprise Rent a Car testified in support of SB 2261. He handed out an information sheet #4.

Opposing Testimony

**Kent Olson** NDPIA testified against SB 2261. The bill sounds easy and it just adds renting. The answer is simple; also, it is called cost. Your insurance cost will go up. He explained how auto insurance in ND followed the vehicle. He went on to explain Collision Travel Waivers and who is primary.

**Senator Nething** asked about cost and are we talking a lot of dollars for this coverage.

**Olson** said it was minimal dollars. He said it was more principal than dollars. He said we are shifting cost to all the people that have cars.

Neutral Testimony

**Larry Maslowski** Department of Transportation said that their department had no position and they were here for information. Explained some case laws that have taken place.

**Senator Nething** asked if he saw anything in the change that would be detrimental to the consumer.

**Maslowski** said he sees none either way.

Closed the hearing on SB 2261.

**Senator Nething** moved a Do Pass.

**Senator Potter** seconded.

Roll call vote: 5-1-0

Senator Nething will carry the bill.

SB 2241

Committee work on SB 2241/Senator Potter delayed vote on SB 2241. 6-0-0

Date: 1-29-09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2261

Senate Transportation Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  Other

Motion Made By Senator Nething Seconded By Senator Potter

Senator	Yes	No	Senator	Yes	No
Chairman Senator Gary Lee	✓		Senator Tom Fiebiger	L	
Senator George Nodland		L	Senator Richard Marcellais	L	
Senator Dave Nething	L		Senator Tracy Potter	L	

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Nething

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

**REPORT OF STANDING COMMITTEE (410)**  
January 29, 2009 1:26 p.m.

**Module No: SR-18-1200**  
**Carrier: Nething**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2261: Transportation Committee (Sen. G. Lee, Chairman) recommends DO PASS**  
(5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2261 was placed on the  
Eleventh order on the calendar.

2009 HOUSE TRANSPORTATION

SB 2261

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2261**

House Transportation Committee

Check here for Conference Committee

Hearing Date: **5 march 2009**

Recorder Job Number: 10333 (begins at 6 min, 20 sec)

Committee Clerk Signature



Minutes:

**Chairman Ruby opened the hearing of SB 2261.**

**Thomas Kelsch, of the Kelsch Law Firm, representing Hansen Lease and Rental, Hansen Investments and Auto Bahn, testified in favor of the bill. (Attachment 1)**

**Representative Weisz:** Just to be clear—if I rent a car in ND you are saying their liability kicks in first. If I rent a car in MN today, my liability will kick in first and the rental car company's would kick in.

**Kelsch:** That's correct. And if you rent a car in ND today instead of you take your car in to be repaired at the auto dealer and they give you a loaner or they charge you for that loaner then your policy would primary and theirs would be secondary. If they have given out all their loaners and send you down to Hertz, now it just switches around and the Hertz policy is primary and yours is secondary.

Right now even in ND if you rent a car from Hertz and you damage that car, your personal policy would pay for that damage even right now. This would be covering the liability damage to somebody else.

**Representative Delmore:** Years ago when you put a rental car on a credit card, there were some credit cards that also covered that. Is that still true?



**Kelsch:** I will leave that up to the rent people. I believe it is true; I don't if all credit card companies provide that benefit. I would doubt that.

**Representative Thorpe:** I guess this isn't quite a fair question for you being the prime sponsor isn't here. Ordinarily we like to know what brought this forward. Was there some reason? Is there a lawsuit we're going to try to cover here? What's behind this bill?

**Kelsch:** We have two people from the industry who will tell why they have asked for this legislation. It's exactly that situation where somebody rents a car from one of our companies and runs in to a street light pole and causes some damage. The insurance company for that driver will pay for the damage to the rental car but they won't pay for the damage that you cause if you are at fault. That becomes a damage the car rental insurance company has to pay for either out of their own pocket or out of their own insurance. It goes against their record and not the person who caused the accident.

**Representative Thorpe:** Right now then, they would pay for the damage to the vehicle, but because ND law now states that the rental company has primary liability, your liability on your car would not be the primary. It would go back to the rental car company. Is that right under present law?

**Kelsch:** That's correct. And we are asking in this legislation to make it the same as if you rented the car from your car dealership or the car rental company--that there is no difference in liability.

**Representative Thorpe:** I heard you say excess. So, if you go over excess in your policy does the rental car company take the bite if this passes?

**Kelsch:** Yes. Right now your personal policy would be excess and the car rental company is primary. If this bill would pass, your personal policy would be primary and the car rental company's would be covering the excess—on liability.

**Representative Gruchalla:** On page 2 you had that we're going to treat everybody as in the surrounding states. You reference SD, MT, etc., are we the only state that does this?

**Kelsch:** No. There are 38 states and the DC and Puerto Rico that have the driver's liability as primary and the car rental companies as secondary or not at all. There are 9 states that have the car rental companies as primary. There are three that I haven't been able to find yet. The vast majority have it the driver primary.

**Representative Gruchalla:** Is this then a trend? Are other states moving away from the way ND is presently doing this?

**Kelsch:** It is my understanding that this has been a change going this way. I don't know the complete history. My understanding is that this was a battle that insurance companies fought before and haven't been fighting as much because they have lost in some of the bigger states.

**Representative Griffin:** If this bill were to pass, how big of an impact would it have on insurance premiums for consumers?

**Kelsch:** I'm not an expert in that. I would guess that it would not have much impact. There is somebody from the insurance department that may be able to testify to that. In Senate testimony it was brought out that it would not have much impact. Part of the reason is your ND policy when you go to these other 38 states and rent, you are primary. You are probably more likely to rent a car in one of those 38 states than you are in ND. If you do rent in ND you might rent from your dealer or service stations and your policy is primary in those situations. I would doubt it would change your insurance rates. That's just an educated guess on my part.

**Representative Kelsch:** How many North Dakotan rent cars in ND? I rent, but my company has the coverage for that. I can't see that it would be a huge impact to premiums.

**Kelsch:** I think you are right. It isn't often that it happens.

**Phil Medina Freng, city manager for Hansen, Lease and Rental and Hanson**

**Investments, Grand Forks,** and registered lobbyist for **Avis in Grand Forks,** testified in support of the bill. **(Attachment 2 & 3)**

**Representative Delmore:** Can you tell me whether credit cards still offer coverage?

**Medina:** Yes, you still see some of that. It just depends on the credit card you have. I know AmEx will cover.

**Representative Delmore:** What is your usual charge for the insurance? Can you give me a range?

**Medina:** The rates can range from \$21.95 to \$25 per day. The liability coverage we offer our customers is \$12.95 per day.

**Representative Thorpe:** Could you share with the Committee what savings you could realize if this bill were to pass?

**Medina:** I can't say exactly what the savings would be. It would be a savings—our premiums are getting higher and higher in our business. We are getting claims that are bigger and bigger and we are starting to see it affect our business more. Numberwise, I really couldn't. . .

**Representative Thorpe:** I asked this earlier. Is there anything behind this bill? Is there any litigation out there someplace that depends on what we do with this bill?

**Medina:** No. There is nothing I know of. Basically we are starting to see a lot more claims come through. (Gave example of car rented in ND but involved in accident in MN. Car totaled and damage to tractor trailer. The car was totaled. It fell to driver's liability under MN law. If it would have happened in ND, the rental company would have had large liability.)

**Representative Gruchalla:** Presently then, if I rent a car from Hanson and I'm driving down the street and a wheel falls off and I run in to another car and cause damage to it, your insurance company is going to pay for the damage to the other car. Correct?

**Medina:** Yes.

**Representative Gruchalla:** If we pass this, my insurance is going to pay for the damage to that other car?

**Medina:** Yes.

**Representative Gruchalla:** I wonder if that is why the laws are the way they are. It does put the pressure on rental companies to keep safe vehicles.

**Medina:** That would be an exception to have that. We have our vehicles inspected. It is just hard for us to swallow if someone has a rental vehicle for a short amount of time and something we have no control over such as being careless or something like that it falls to us.

**Chairman Ruby:** Are there no clauses in there that put the liability on you if there is some neglect or mechanical failure that causes the accident.

**Medina:** Not to my knowledge.

**Tom Kelsch:** We're talking liability here. The scenario with the wheel falling off I don't believe the driver's policy would cover it unless you were determined to be at fault. If the wheel falls off the company would be at fault. We are talking about only liability coverage where you have been determined to be at fault in causing the accident. That's when this would come in to play.

**Representative Gruchalla:** So policies are written that way—whoever is at fault?

**Kelsch:** That's what the statute says as far as liability and who has to pay. We are required to have insurance on every car we own and that we rent out including liability insurance for injury to some third party that vehicle causes. You also as a driver have insurance and your policy has liability coverage when you drive that vehicle. So we have two policies that cover the same vehicle and cover the same accident and liability if the driver causes that liability.

Under current law the car rental company is the primary and yours would be excess. If we

change the law and this passes, we just switch who is primary and who is excess around. It doesn't change who is liable.

**Representative Heller:** On the 3<sup>rd</sup> page of your testimony you say that Hertz is looking in to the possibility of bringing lawsuit against the car renter. In the 8 other states that have insurance like we do, have you ever sued a car renter in one of those other states?

**Medina:** No. Not to my knowledge.

**Representative Thorpe:** On this handout, the states listed for secondary on excess coverage—you have 25 states listed. . . .

**Representative Frantsvog:** I want to know if there is anything in the rental agreement that says you may bring a lawsuit against the individual.

**Medina:** No.

**Daren Leier, general manager of Hertz in Fargo and registered lobbyist for Avis, Budget, and Alamo/National,** testified in support of the bill. **(Attachment 4 & 5)**

**Jack McDonald, representing Enterprise,** testified in favor of the bill. It seems there is a certain element of fairness involved here. People should be treated the same way. We join in with the other rental car companies and ask you to pass this bill.

**Representative Kelsch:** In December I was in a car accident. It was not my fault. The young lady that hit me was cited and at fault. My car went in to Schwann Pontiac and through the insurance company they sent me to Enterprise for a rental car and they were covering the payment for that rental car. If I would have been in an accident during that time and I would have caused damages, how would that have worked?

**McDonald:** Enterprise would have been stuck with the bill. If Schwann given you a loaner, it would have been different. That's why we feel this is unfair.

**Representative Kelsch:** It was the insurance company of the young lady that hit me that sent me to Enterprise. They said they would provide me with a rental car. Who was liable at that point?

**McDonald:** I believe in your situation Enterprise would still be liable. For the damage to the vehicle itself, it is your responsibility to carry insurance. It's the liability to the other car that is the issue.

**Representative Schmidt:** In our part of the country there are a lot of deer. What happens if I rent from Enterprise and smack a deer and do \$4000 worth of damage? Is my comprehensive going to pay for fixing that car?

**McDonald:** I'm not sure.

**Kelsch:** You are right in talking about comprehensive coverage there. So your insurance policy would cover the damage to the rental car. All this bill is dealing with is the third party.

**There was no further support of SB 2261.**

**Dale Haake, representing Nodak Mutual Insurance,** testified in opposition to the bill.

**(Attachment 6)**

**Chairman Ruby:** I have had repairs done by either dealerships or body shops and they have taken to rental companies. I didn't pay the bill, they did. In that instance whose insurance was in play here?

**Haake:** I believe that who pays for the rental vehicle is immaterial. What is important is that there is a rental agreement with a rental car company, the policy for the rental car company would be paying the primary liability coverage.

**Chairman Ruby:** You can kind of understand where they are coming from. The companies have to assume the risk of people "driving like a rental." They are being held responsible for someone who doesn't know the city very well. In listening to the discussion it seems it's a

hindrance to be a rental car company in ND because other states have a different application of the law than we do. It seems if that driver knows that it is his personal responsible for any damage he causes. . . .

**Haake:** As far as the number rental agreements that are made in ND that made to people from ND versus people from out of state, several years ago I remember testimony that involved rental cars. At that time the testimony was that the vast majority of rental agreements that are entered into in ND are with citizens of ND. I don't have the statistics on that. I am depending on testimony that pertained to other bills and was made by other people.

**Representative Frantsvog:** In your statement you say that insurance companies cannot distinguish which of their policy holders will rent a vehicle so the added cost will shared by all policy holders. What is your estimate of what that would cost?

**Haake:** I am not an actuary. I honestly cannot answer that. If the rental companies are experiencing significant costs in their insurance then whatever that amount is we are transferring that to the citizens of ND.

**Representative Kelsch:** One of the concerns I have and I do rent cars frequently is that it is often difficult to find a car to rent in Bismarck especially during certain times of the year. All these companies that are here today are national companies and given the fact that it is difficult enough to rent cars here, what kind of effect does having a law that does separate us from all of the other states do to national businesses like this that do operate in the state of ND and would like to continue to operate in the state but potentially because of increased costs have to make decisions. We know that with the economy the way it is there are a lot of national businesses that are making tough decisions and closing down offices. What's your perspective on that?

**Haake:** I do not have knowledge of nor have the audacity to speak to what a national company might do. I do know how their fees are structured. I know that if I go to an airport rental office I pay more than I pay if I go to a rental office in the middle of Fargo. I know they have the ability to modify their fees to those degrees.

**Representative Kelsch:** That's airport fees. They have to pay a fee to be in the airport.

**Representative Potter:** Let me know if I am correct on this because you got in to the increased cost of insurance to consumers in ND. Right now for myself, I was thinking that I was paying on my insurance for renting a car in another state. I'm thinking I am already paying the premium to my insurance company. Am I correct?

**Haake:** The premiums you are paying are undoubtedly based on the experience that your company has had with their policy holders. The more losses they have the more premium they charge to cover those losses. I doubt they are charging a surcharge for that potential. They are simply reacting to the experience they have realized with all their policy holders. Most policies have what they call an extra-territorial provision. That means if you venture to another state, your policy will comply with the terms of that other state. I'm sure those things are factored in but not broken out. It simply goes back to the experience your company has. There is a greater exposure and greater losses to that company by having to take on additional risks and they must make the difference up with increased premiums/

**Representative Delmore:** Do you have any statistics on states where laws like this have been passed whether there has been an increase in rates?

**Haake:** Unfortunately I do not. This bill crept up on caught me off guard. When it was heard in the Senate I had lost one of my sons just prior to that and was not focused very well on this issue.



**Representative Gruchalla:** I have the same question. We need to know from a company that is selling insurance in adjoining states to see if their rates are comparable to ours that aren't operating the same way we are.

**Haake:** I can see if I can get something as quickly as can.

**There was no further testimony in opposition to SB 2261.**

**Mike Andring, property and casualty actuary, for the ND Insurance Department,** testified **neutral** on the bill. ND requires owners of vehicles to carry liability insurance and our liability insurance follows the vehicle. The exception is for is when a vehicle is in for repair or you are test driving a vehicle if you have an accident and cause some damage to a third party, your liability coverage is primary. This bill would ask to put rental car agencies under that same exception. We do get complaints on this from time to time. Insured involved in this kind of accident where there is damage to a third party there is haggling over the claim payment. Largely it is because the rental agency is not aware that their insurance primary.

**Representative Thorpe:** The other people in the testimony do a lot of those belong to car companies, repair shops, and all those different entities, do they get coverage through garage keepers liability?

**Andring:** They may have some kind of garage keepers' liability policy but because of this exception my policy would be primary.

**Representative Thorpe:** As far as damage to the vehicle I realize that. In case of doing some damage to someone else's property then this garage keepers insurance would that take care of the liability.

**Andring:** We need break this out in two pieces here. If I am test driving a car and damage the car that is covered by my insurance as primary. If I damage a third party that is also

covered by my primary policy. It is not covered under the garage keepers. Garage keepers' liability would cover if their repair shop did some damage to a person's vehicle.

**Representative Vigesaa:** Does the Insurance Department keep track of claims reported.

**Andring:** No.

**Pat Ward, representing various insurance interests,** testified neutral on the bill. A simple of thumb for the way auto insurance works in ND, the insurance follows the car normally. The one exception is the garage liability policy. This bill puts rental vehicles in with that. If I test drive a car it's an exception because then it follows the driver. I don't know what the statistics are, but I know a number of states do it this way.

**Representative Gruchalla:** Would your average insurance premium go up for auto insurance in this state if we pass this bill?

**Ward:** There would be a shift of that cost. In terms of your premium and my premium it wouldn't be noticeable. What's going to happen is it is going to be shifted to ALL insurance consumers. The one thing about the system we have in place now requires people to buy the insurance when they rent to vehicle and they buy the coverage rather than the whole group of us all.

**Representative Thorpe:** The reason I asked about the garage keepers policy is that I assumed that was the reason for the difference in how ND addresses the two different types of rentals under our present law. Is there a difference between the bill this way or the way it has been. Does it have any effect on that?

**Ward:** It's not going to change the garage liability issue. That's going to stay the way it has been. The only thing that will change is that you will add the same kind of protection to the rental companies that garages and the people who sell cars have.

**Representative Potter:** You mentioned we could limit the insurance just to the people who rent cars by the rental business charging for liability insurance. Can they mandate that you have to buy liability insurance?

**Ward:** It is optional and most of us do not take it.

**Representative Vigesaa:** Do you know statewide how many accidents involve rental cars in a year's time. Is there any tracking device?

**Ward:** I'm sure there is but I'm just not sure who keeps those.

**There being no further testimony, Chairman Ruby closed the hearing of SB 2261.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2261**

House Transportation Committee

Check here for Conference Committee

Hearing Date: **6 March 2009**

Recorder Job Number: 10353

Committee Clerk Signature

*Jan Prindle*

Minutes:

**Chairman Ruby opened discussion of SB 2261.**

This dealt with rental companies and the issue that we are different than the other states around us as far as how we apply liability. What would the Committee like to do with this?

**Representative Frantsvog:** Does anybody know if there is an agency that regulates fees charged by car rental agencies? Or can they charge whatever their hearts desire? Or is it driven by nothing more than competition?

**Representative Kelsch:** I do believe there are some federal requirements that they have to meet but other than that I think it is just based on competition.

**Representative Frantsvog:** Your point about the airport businesses charging more for the airport fee would that airport fee be more than the normal rental of a building downtown?

**Representative Kelsch:** I am guessing you would have overhead and other things. The airport fees are flat out required fees and I can't tell you if they would be more or less. In order to do business in the airport you are required to pay those airport fees. Just like when you get a taxicab at the airport, they charge you extra because they have to pay airport fees to be allowed to come into the airport. I don't think there is that much of a difference in rentals. Sometimes you do get a little better deal renting off airport property.

**Chairman Ruby:** I think most major airports in the state do it in the same way and what they do is have only so many spaces for car rentals and they bid those spaces every 3 or 4 years. You actually go through a sealed bidding process to be able to set up your shop in a specific space. A lot of the car rental agencies that are off airport, will come and pick you up. There is a bidding process and they pay some pretty fair prices just to have the ability to be on site.

**Representative Griffin:** I think if we pass this we will save premiums for the car rental companies and since North Dakotans don't really rent cars in ND, it sounded like it would have negligible impact on our insurance premiums. **I move Do Pass.**

**Representative Kelsh: Second.** I had a conversation with an insurance representative who said your premiums aren't going to go up if this bill passes because it is already built in to the premium. It's not going to go up.

**Chairman Ruby:** According to 40 different states and territories, we have a hindrance in our law compared to them.

**Representative Vigesaa:** I have an auto dealership and occasionally we rent out a vehicle. I certainly expect that the driver of the car's insurance should cover the car. If they make a mistake along the way someplace and damage my vehicle, why should I be liable for the liability? I can see why the rental companies have problems turning someone loose in these vehicles and then be totally liable.

**Chairman Ruby:** The only problem I was having problems with is it is upon the rental vehicle and . . .

(Unstructured discussion.)

**Representative Schmidt:** I haven't rented a car for a long time but I remember it wasn't much for me to rent. If you have a driver's license you can rent a car. Is that all it takes? I think it's up to the rental companies to be awful careful who they rent to.

**Representative Vigesaa:** The only thing that made any sense on the opposing view was that the people who are renting the cars are the ones that are paying for the insurance and that's going to change.

**Representative Kelsch:** You are already paying because they have to build it in with the thought that you may rent in another of the 40 states.

**A roll call vote was taken: Yes: 12, No: 1, Absent: 1 (Weisz)**

**Representative Griffin will carry the bill.**

Date: 3/6/09

Roll Call Vote #: \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2261

House TRANSPORTATION Committee

Check here for Conference Committee

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

Action Taken  Do pass  Don't Pass  Amended

Motion Made By Griffin Seconded By Keloch

Representatives	Yes	No	Representatives	Yes	No
Representative Ruby - Chairman	✓		Representative Delmore	✓	
Rep. Weiler - Vice Chairman	✓		Representative Griffin	✓	
Representative Frantsvog	✓		Representative Gruchalla		✓
Representative Heller	✓		Representative Potter	✓	
Representative R. Kelsch	✓		Representative Schmidt	✓	
Representative Sukut	✓		Representative Thorpe	✓	
Representative Vigesaa	✓				
Representative Weisz					

Total Yes 12 No 1

Absent 1

Bill Carrier Griffin

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

**REPORT OF STANDING COMMITTEE (410)**  
March 6, 2009 1:31 p.m.

**Module No: HR-41-4235**  
**Carrier: Griffin**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2261: Transportation Committee (Rep. Ruby, Chairman) recommends DO PASS**  
**(12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2261 was placed on the**  
**Fourteenth order on the calendar.**



2009 TESTIMONY

SB 2261

Sponsor Testimony in Favor of SB 2261

Chairman Lee, Members of the Senate Transportation Committee, my name is Senator David Hogue. I submitted this bill at the request of several North Dakota car rental companies. The purpose of SB 2261 is to correct the unequal treatment of car rental companies in North Dakota as compared to car dealerships, service stations, garages, and parking lots that also rent or loan cars out.

Under §26.1-40-17 N.D.C.C., as interpreted by the Federal District Court in the case of Travelers Industry Co. v. American Motorist Insurance Co. 766 F. Supp 804 (ND 1991), if someone in North Dakota rents a car from a car dealership, service station, garage, or parking lot, the driver's insurance coverage is the primary liability insurance in the case of the driver causing an accident.

If that same driver rents a car from a car rental company in North Dakota, the car rental company's insurance is the primary insurance and is liable to pay for damages caused by the driver. The driver's policy is only excess coverage.

SB 2261 treats everyone who rents vehicles in North Dakota the same. Car rental companies would be treated the same as those in the business of selling, repairing, servicing, storing, leasing or parking motor vehicles.

SB 2261 puts the primary liability on the driver, the person who caused the damage, not the car rental company. If the driver causes damage, he should have to higher liability rate not the car rental company.

SB 2261 treats North Dakota car rental companies the same as car rental companies in all of the surrounding states: South Dakota, Montana, Minnesota, Wisconsin, Nebraska, and Iowa.

There are a number of people representing the car rental insurance business who can testify in more detail concerning the problem that SB 2261 addresses.

Thank you for your time, and I would urge a "Do Pass Recommendation" on SB 2261.

## Testimony of Hadley Freng in Support of Senate Bill 2261

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 Senate Bill 2261 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 Senate Bill 2261 has been introduced to correct this problem.

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.

As a result of this problem, Hertz has looked at the possibility of bringing a lawsuit against the car renter for the liability damage that they caused while driving one of our cars, and that Hertz was required to pay under North Dakota Century Code § 26.1-40-17. We believe that the car renter may be ultimately personally liable for the liability damage that was their fault.

However Hertz would rather not sue its customers and felt that the best way to solve the problem was through this legislation. Only if the legislative is unsuccessful will Hertz possibly resort to litigation against the renters.

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 when as far as liability insurance for rental cars.

I urge a "DO PASS" recommendation on Senate Bill 2261

#2

RENTAL CAR COMPANY LIABILITY

Secondary on Excess Coverage

Primary Coverage

Unknown

1. Alabama

1. Arizona

1. Arkansas

2. Alaska

2. Maryland

2. Idaho

3. California

3. Massachusetts

3. Wyoming

4. Colorado

4. Michigan

5. Connecticut

5. New York

6. Delaware

6. North Dakota

7. District of Columbia (DC)

7. South Carolina

8. Florida

8. Virginia

9. Georgia

9. West Virginia

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

*Same  
handover  
given to  
House.*



- 
- 
- 
- 
26. New Mexico
  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

## Testimony of Daren Leier in Support of SB 2261

#3

*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.

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

*Same handover  
given to House.*

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

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.

# Attachment #1

## Testimony in Favor of SB 2261

Chairman Ruby, Members of the Senate Transportation Committee, my name is Thomas D. Kelsch, with the Kelsch Law Firm. I represent Hansen Leas and Rental, Hansen Investments and Auto Bahn. These companies operate the Hertz and Avis Rent a Car Companies in Grand Forks and Fargo. Senator David Hogue the prime sponsor on this bill is unable to attend this hearing. This bill was introduced at the request of these North Dakota car rental companies. The purpose of SB 2261 is to correct the unequal treatment of car rental companies in North Dakota as compared to car dealerships, service stations, garages, and parking lots that also rent or loan cars out.

Under §26.1-40-17 N.D.C.C., as interpreted by the Federal District Court in the case of Travelers Industry Co. v. American Motorist Insurance Co. 766 F. Supp 804 (ND 1991), if someone in North Dakota rents a car from a car dealership, service station, garage, or parking lot, the driver's insurance coverage is the primary liability insurance in the case of the driver causing an accident.

If that same driver rents a car from a car rental company in North Dakota, the car rental company's insurance is the primary insurance and is liable to pay for damages caused by the driver. The driver's policy is only excess coverage.

SB 2261 treats everyone who rents vehicles in North Dakota the same. Car rental companies would be treated the same as those in the business of selling, repairing, servicing, storing, leasing or parking motor vehicles.

SB 2261 puts the primary liability on the driver, the person who caused the damage, not the car rental company. If the driver causes damage, he should have to higher liability rate not the car rental company.

SB 2261 treats North Dakota car rental companies the same as car rental companies in all of the surrounding states: South Dakota, Montana, Minnesota, Wisconsin, Nebraska, and Iowa.

There are a number of people representing the car rental insurance business who can testify in more detail concerning the problem that SB 2261 addresses.

Thank you for your time. The Senate passed this bill with a vote of 45-1 and I would urge this committee to recommend a "Do Pass" on SB 2261.



# Attachment #2

## Testimony of Phil Medina in Support of Senate Bill 2261

Chairman Ruby and members of the House Transportation Committee, my name is Phil Medina Freng. I am the Grand Forks city manager for Hansen Lease and Rental and Hansen Investments. These companies own two Hertz Rent A Car locations in Grand Forks. I am also a registered lobbyist for Avis in Grand Forks.

It is on behalf of these companies that we requested that Senate Bill 2261 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 Senate Bill 2261 has been introduced to correct this problem.

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.

As a result of this problem, Hertz has looked at the possibility of bringing a lawsuit against the car renter for the liability damage that they caused while driving one of our cars, and that Hertz was required to pay under North Dakota Century Code § 26.1-40-17. We believe that the car renter may be ultimately personally liable for the liability damage that was their fault.

However Hertz would rather not sue its customers and felt that the best way to solve the problem was through this legislation. Only if the legislative is unsuccessful will Hertz possibly resort to litigation against the renters.

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 when as far as liability insurance for rental cars.

I urge a "DO PASS" recommendation on Senate Bill 2261

Attachment # ~~6~~ 6

## IN OPPOSITION TO SB 2261

### Dale Haake Representing Nodak Mutual Insurance

I am here to testify in opposition to SB 2261, and to ask that you vote "Do not pass" on this bill.

This bill, if passed, would require any automobile insurance policy issued in North Dakota to provide the primary liability coverage for any vehicle which the insured rents.

You will note that 26.1-40-17 currently requires that the primary liability coverage for a loaned, rented or leased vehicle be provided by the operator's own insurance if the vehicle belongs to a business which sells, repairs, services, stores, leases, or parks vehicles. So, what is the distinction between these businesses and a car rental company?

To begin with, when a vehicle is leased, it is typically done under a contract which requires the lessee to insure that specific vehicle in a manner similar to how it would be insured if the lessee owned the vehicle. This works just fine, as the insurance carrier issues a policy for that specific vehicle and collects an appropriate premium for the risk.

All of the other businesses earn their money from operations other than the providing of vehicles for a charge. The fact is, in today's business world, few of these organizations even rent vehicles to their customers. Rather, if a vehicle is to be provided a customer, it is more common that it is provided on a loaned basis and without charge. Since the business is not collecting revenue for this service, it is not at all unreasonable to ask the borrower to provide liability coverage from his own policy.

In contrast, a rental car company makes its money solely from the renting of vehicles to others. A fundamental principle of North Dakota insurance law is that liability coverage follows the vehicle, and not the operator. This bill is proposing that a private business, a car rental company, be allowed to shift a cost of doing business to each and every automobile policy holder in North Dakota. Among the citizens of North Dakota there are people who rent vehicles on a regular basis, and there are people who seldom, if ever, rent a vehicle. Insurance companies can not distinguish which of their policy holders will rent a vehicle, so the added cost of providing liability coverage to rental vehicles will be shared by all policy holders.

I would not expect a rental car company to simply absorb the costs of insuring their vehicles. They have every right to a fair and reasonable profit for their services. This cost, however, should be passed on to those people who patronize their business, and not be subsidized by the populace as a whole. You, as legislators, would never vote to levy a tax on your constituents for the purpose of defraying operating costs of a private business, yet this is exactly what this bill would be doing to each person who purchases an auto policy.

*Resolved*

~~There are additional problems with this bill. As written, this bill would require an insurance policy written on a private passenger auto to provide liability coverage for any type of motor vehicle which the policy holder may chose to rent. This would include motorcycles, large triple axle farm trucks, huge RV campers, and even 18 wheel tractor trailer units. While it may not have been the intent of the bill to extend coverages to this degree, that is exactly what would happen if this bill is passed as written. This is totally unfair to the liability insurance carrier, as they have no control over what their insured might rent, yet this bill requires them to extend coverage to vehicle classes never~~

intended to be covered, ~~and~~ most certainly not rated for.

I urge you to vote against the passage of this bill, and that car rental companies continue to pass on their overhead costs to those people who rent from them. However, if you are unswayed by my argument, I ask that this bill at least be modified so that it is limited to vehicles of the private passenger automobile class.

Thank you for your consideration of my request.