

1989 Senate Bill 10

Date of enactment: **April 26, 1990**  
Date of publication\*: **May 10, 1990**

# 1989 WISCONSIN ACT 328

AN ACT to amend subchapter V (title) of chapter 344; and to create 344.57 to 344.579 of the statutes, relating to: liability for damages to rental private passenger vehicles, collision damage waivers, granting rule-making authority and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Subchapter V (title) of chapter 344 of the statutes is amended to read:

## CHAPTER 344

### SUBCHAPTER V

#### FINANCIAL RESPONSIBILITY FOR RENTED

#### AND HUMAN SERVICES VEHICLES

(PRECEDES S. 344.51)

SECTION 2. 344.57 to 344.579 of the statutes are created to read:

**344.57 Definitions applicable to ss. 344.57 to 344.579.** In ss. 344.57 to 344.579:

(1) "Accident" means collision of a private passenger vehicle with another object or other upset of the private passenger vehicle while in operation.

(2) "Authorized driver" means, in connection with a private passenger vehicle under a rental agreement, all of the following:

(a) The spouse of the renter, if the spouse is a licensed driver and meets any minimum age requirement in the rental agreement.

(b) A person listed in the rental agreement as an authorized driver.

(c) The renter's employer, employe or co-worker, if the employer, employe or co-worker engages in a business activity with the renter, is a licensed driver and meets the rental company's minimum age requirement.

(d) A person who operates the private passenger vehicle during an emergency or while parking the private

passenger vehicle at a commercial or private establishment.

(3) "Damage waiver" means a contractual provision under which a rental company agrees for a charge not to hold a renter or authorized driver liable for damage or loss related to a private passenger vehicle rented by the renter.

(4) "Private passenger vehicle" means a type 1 automobile.

(5) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a private passenger vehicle provided for rent by a rental company.

(6) "Rental company" means a person in the business of providing private passenger vehicles for rent to the public.

(7) "Renter" means the person who rents a private passenger vehicle from a rental company under a rental agreement.

**344.572 Applicability to rental agreements.** (1) Except as provided in sub. (2), ss. 344.574, 344.576 and 344.578 apply to all rental agreements concerning private passenger vehicles rented from locations in this state for a period of 30 consecutive days or less.

(2) Sections 344.574, 344.576 and 344.578 do not apply to a rental agreement under which a person rents from a motor vehicle dealer licensed under s. 218.01 a private passenger vehicle owned by the dealer if the private passenger vehicle is rented only for use while a vehicle owned or leased by the person or which the per-

son has agreed to purchase is being serviced, repaired, manufactured or delivered.

(3) If a rental agreement is subject to ss. 344.574, 344.576 and 344.578, any provision of the rental agreement that violates any requirement of ss. 344.574, 344.576 and 344.578 is void.

**344.574 Limited liability for damage.** (1) DAMAGE TO PRIVATE PASSENGER VEHICLE. (a) Unless a renter purchases a damage waiver offered in accordance with s. 344.576, a rental company may hold the renter liable to the extent permitted under subs. (2) to (4) for physical or mechanical damage to the rented private passenger vehicle that is caused by any of the following:

1. An accident occurring while the private passenger vehicle is under the rental agreement.

2. The renter or an authorized driver who is using the private passenger vehicle, intentionally or by his or her reckless or wanton misconduct.

(b) Unless a renter purchases a damage waiver offered in accordance with s. 344.576, a rental company may hold an authorized driver liable to the extent permitted under subs. (2) to (4) for physical or mechanical damage to the rented private passenger vehicle that is caused by any of the following:

1. An accident occurring while the private passenger vehicle is operated by the authorized driver and is under the rental agreement.

2. The authorized driver who is using the private passenger vehicle, intentionally or by his or her reckless or wanton misconduct.

(2) LIMITS ON LIABILITY. (a) The total liability of a renter or authorized driver under sub. (1) for damage to a rented private passenger vehicle may not exceed all of the following:

1. The lesser of:

a. The actual and reasonable costs that the rental company incurred to repair the private passenger vehicle or that the rental company would have incurred if the private passenger vehicle had been repaired, which shall reflect any discounts, price reductions or adjustments available to the rental company.

b. The fair market value of that private passenger vehicle immediately before the damage occurred, as determined in the customary market for the sale of that private passenger vehicle.

2. Actual and reasonable costs incurred by the rental company for towing the private passenger vehicle and for storage of the private passenger vehicle for no more than 2 days.

(b) A rental company may not hold the renter or authorized driver liable for any of the following:

1. Loss or damage to the private passenger vehicle resulting from a cause other than that described in sub. (1) (a) 1. or 2. with respect to the renter or sub. (1) (b) 1. or 2 with respect to the authorized driver.

2. Loss of use of the private passenger vehicle.

3. Any administrative charges, including the cost of appraisal, or other costs or expenses that are incidental to the damage to the private passenger vehicle.

4. Any other charge unless expressly permitted under par. (a).

(c) A rental company may not hold the renter liable for any amounts that the rental company has recovered from an authorized driver. A rental company may not hold an authorized driver liable for any amounts that the rental company has recovered from the renter.

(4) INSPECTION AND ESTIMATES. A rental company may not collect or attempt to collect the amount described in sub. (2) (a) from the renter or authorized driver or the insurer of the renter or authorized driver unless the rental company satisfies all of the following:

(a) Allows the renter or authorized driver who may be liable under sub. (1) (b) and the insurer of the renter or authorized driver to inspect the unrepaired rented private passenger vehicle within 2 working days after the rental company is notified of the damage. Upon receiving notice of the damage, the rental company shall promptly notify the renter or authorized driver who may be liable under sub. (1) (b) of his or her right and his or her insurer's right to inspect the private passenger vehicle.

(b) Obtains at least 2 estimates from competing repair shops on the costs of repairing the private passenger vehicle, makes a copy of each estimate available upon request to the renter or authorized driver who may be liable under sub. (1) (b) or the insurer of the renter or authorized driver who may be liable under sub. (1) (b) and submits a copy of each estimate with any claim to collect the amount described in sub. (2) (a).

**344.576 Damage waivers.** (1) OFFER AND SALE RESTRICTED. A rental company may not offer or sell a damage waiver in conjunction with a rental agreement unless the terms of the damage waiver comply with sub. (2) and the renter is provided the notice required under sub. (3).

(2) TERMS. Every damage waiver shall provide that the rental company may not hold the renter or authorized driver liable for any amount that the renter or authorized driver might otherwise be liable for under s. 344.574 (2) (a) for damage to the rented private passenger vehicle, unless any of the following applies:

(a) The damage is caused by the renter or authorized driver intentionally or by his or her reckless or wanton misconduct.

(b) The damage occurs while the renter or authorized driver operates the private passenger vehicle in this state while under the influence of an intoxicant or other drug, as described under s. 346.63 (1) (a) or (b) or (2m).

(c) The damage occurs while the renter or authorized driver operates the private passenger vehicle in another state while under the influence of an intoxicant or other drug, as described in the laws of that state.

**1989 Senate Bill 10**

(d) The damage occurs while the renter or authorized driver is engaged in a race or speed or endurance contest.

(e) The damage occurs while the renter or authorized driver is using, or has directed another to use, the private passenger vehicle in the commission of a misdemeanor or felony, as those terms are defined in s. 939.60.

(f) The damage occurs while the renter or authorized driver uses the private passenger vehicle to carry persons or property for hire.

(g) The damage occurs while the renter or authorized driver uses the private passenger vehicle outside of the United States or Canada, unless use outside the United States or Canada is permitted under the rental agreement.

(h) The damage occurs while the private passenger vehicle is operated on a surface not intended for use by private passenger vehicles.

(i) The renter provided misleading or false information to the rental company, causing the rental company to rent the private passenger vehicle when the rental company would not have otherwise done so, or on terms to which it would not have otherwise agreed.

(j) The renter or the authorized driver who was operating the private passenger vehicle when an accident occurred fails to promptly report to the police and rental company the accident resulting in damage to the private passenger vehicle.

(3) NOTICE. (a) A rental company that offers or sells a damage waiver shall provide to each renter a written notice that is in the form required by rule under par. (c) and that includes all of the following:

1. An explanation of the total costs that the renter or authorized driver may be liable for under s. 344.574 (2) (a).

2. A statement that the liability of the renter or authorized driver under s. 344.574 (2) (a) may be covered by the renter's or authorized driver's personal motor vehicle insurance policy or by an agreement under which the renter or authorized driver has obtained a credit card.

3. A list of any exceptions to the damage waiver imposed in accordance with sub. (2) (a) to (j).

4. An explanation of the right of inspection under s. 344.574 (4) (a).

5. The address and telephone number of the office of consumer protection in the department of justice.

6. Any other information required by rule under par. (c).

7. A line for the renter's signature.

(b) A rental company that offers or sells a damage waiver shall provide the notice described in par. (a) to each renter before the renter enters into a rental agreement. The rental company shall give the renter one copy of the notice signed by the renter and shall retain one copy in its files.

(c) The department of justice shall promulgate rules specifying the form of the notice required under par. (a), including the size of the paper and the type size and any

highlighting of the information described in par. (a). The rule may specify additional information that must be included in the notice and the precise language that must be used.

**344.577 Advertisement or representation. (1)**

DEFINITION. In this section, "advertisement or representation" means any oral, written or graphic statement which is made in connection with the solicitation of the rental of a private passenger vehicle.

(2) DAMAGE WAIVER CHARGE. If a rental company or an employe or agent of a rental company disseminates or makes in this state an advertisement or representation that includes a statement of the rental rate for a private passenger vehicle available for rent from a location in this state, the advertisement or representation shall also include a statement of the charge for any damage waiver offered by the rental company in conjunction with the rental of that private passenger vehicle and a statement that purchase of the damage waiver is optional.

**344.578 Credit card for deposit or damages. (1)**

PROHIBITED DEPOSITS; COLLECTION OF DAMAGES. A rental company may not use credit available pursuant to a credit card belonging to a renter as a deposit for damages for which the renter may be held liable under s. 344.574 (2) (a) or for any other charges, except as provided in sub. (2). If a rented private passenger vehicle is damaged, the rental company may use credit available pursuant to a credit card belonging to the renter as payment for the damages for which the renter is liable under s. 344.574 (2) (a) only if the rental company obtains the renter's authorization to use that credit and the authorization is obtained after the total amount of the renter's liability is determined and before the rental company processes the credit card charge.

(2) DEPOSIT FOR RENTAL FEES. If authorized by the renter, a rental company may use credit available pursuant to a credit card belonging to the renter as a deposit for the estimated cost of the rental, as determined under this subsection. The estimated cost of the rental may not exceed an amount equal to the daily rental rate specified in the rental agreement, which may include the daily charge for a damage waiver if purchased by the renter, multiplied by the number of days specified in the agreement for which the private passenger vehicle is being rented.

**344.579 Violations. (1) PENALTIES.** Whoever violates s. 344.574, 344.576 (1), (2) or (3) (a) or (b), 344.577 or 344.578 may be required to forfeit not less than \$500 nor more than \$1,000 for each violation.

(2) ENFORCEMENT. The department of justice shall investigate violations of ss. 344.574, 344.576 (1), (2) and (3) (a) and (b), 344.577 and 344.578. The department of justice may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of s. 344.574, 344.576 (1), (2)

or (3) (a) or (b), 344.577 or 344.578. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of s. 344.574, 344.576 (1), (2) or (3) (a) or (b), 344.577 or 344.578 if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the recovery of forfeitures authorized under sub. (1).

(3) **DEFENSE.** Proof by a rental company that the rental company began an action to impose liability upon a renter or authorized driver, even though the renter had purchased a damage waiver sold under s. 344.576, because of a good-faith mistake that an exception under s. 344.576 (2) (a) to (j) applied is a defense to a prosecution for a violation of the terms of the damage waiver under s. 344.576 (2).

**SECTION 3. Nonstatutory provisions.** (1) **RULES DEADLINE.** The department of justice shall submit the proposed rules required under section 344.576 (3) (c) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than

## 1989 Senate Bill 10

the first day of the 7th month beginning after the effective date of this subsection.

**SECTION 4. Initial applicability.** (1) **RENTAL AGREEMENTS.** The treatment of sections 344.57 to 344.576, 344.578 and 344.579 of the statutes first applies to rental agreements, as defined in section 344.57 (5) of the statutes, as created by this act, that are entered into, extended, renewed or modified on the effective date of this subsection.

(2) **ADVERTISEMENTS OR REPRESENTATIONS.** The treatment of sections 344.57, 344.577 and 344.579 of the statutes first applies to advertisements or representations, as defined in section 344.577 (1) of the statutes, as created by this act, that are disseminated or made on the effective date of this subsection.

**SECTION 5. Effective dates.** This act takes effect on the first day of the 10th month beginning after publication, except as follows:

(1) The treatment of section 344.576 (3) (c) of the statutes and SECTION 3 (1) of this act take effect on the day after publication.