

SENATE BILL REPORT

SSB 5944

As Passed Senate, February 9, 2018

Title: An act relating to negligent entrustment by rental car agencies.

Brief Description: Concerning negligent entrustment by rental car agencies.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senator Becker).

Brief History:

Committee Activity: Law & Justice: 1/22/18, 2/01/18 [DPS].

Floor Activity:

Passed Senate: 2/09/18, 46-1.

Brief Summary of First Substitute Bill

- Asserts that any person who rents a motor vehicle to another person without ensuring the person has a valid driver's license may be held liable for negligent entrustment.
- Provides alternative methods for verifying identity besides a signature comparison with the driver's license.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5944 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Tim Ford (786-7423)

Background: When a person rents a car and gets into a vehicle accident that is the fault of the rental car driver, a victim has limited remedies for holding a rental car agency liable.

As part of the Safe, Accountable, Flexible and Efficient Transportation Equity Act, Congress passed the Graves Amendment preventing states from holding rental or leasing agencies vicariously liable for their driver's negligence, except when the owner itself was negligent or engaged in criminal wrongdoing. Victims who have been injured by the driver of a rental car

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have therefore sought to hold a rental car agency liable under the theory of negligent entrustment. Negligent entrustment of a vehicle occurs when the person entrusting the vehicle knows or should know at the time, the driver is not competent. Negligent entrustment is usually based on one of three theories: 1) the renter was impaired in some way at the time of the rental; 2) the renter was not qualified to drive (by way of an expired or suspended license); or 3) the renter had a poor driving record.

It is unlawful in the state of Washington for any person to rent a motor vehicle to another unless the person renting the vehicle has a valid driver's license in this state or under the laws of the state or country of their residence. The person renting the vehicle must inspect the driver's license of the person and compare the signature on the license to the person's signature at the time of renting. In many states, including Washington, it is possible to verify the status of a person's driver's license online. Notwithstanding, courts have generally held that a rental car agency does not have an obligation to verify a license beyond a visual inspection. Washington courts have not confronted this issue directly.

The provision of insurance by a rental car agency is regulated by statute. A renter cannot be required to purchase rental car insurance from a rental car agency as a condition of renting the vehicle and the rental car agency cannot be called on to evaluate the adequacy of the renter's existing insurance coverage.

Summary of First Substitute Bill: A person who rents a motor vehicle to another person may be held liable for negligent entrustment if the person renting the vehicle does not:

- ensure the rental driver is duly licensed as a vehicle driver for the kind of motor vehicle being rented; and
- visually inspect the vehicle driver's license of the person and verify the person's signature; or
- comparing the driver's license with use of other photo identification in combination with credit or debit card information.

This provision may not be construed to require any person renting a motor vehicle to confirm the validity of the driver's license beyond confirming that the driver's license is facially valid and the signature on the driver's license matches the signature of the person renting the vehicle.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: A veteran was riding a motorcycle in Washington state and was hit by a foreign national driving a rental car. The foreign national gave three different addresses and three different phone numbers, and then shortly after the accident he left the country. When investigated, the rental agent admitted that she could not

read the credential presented to rent the car and did not know whether it was a driver's license. The issue relating to facial validity needs improvement. Under the Graves law a rental agency is not required to check a database. The bill requires that the credential appears facial valid.

CON: This an effort to codify common law for what is already available in court. It may lead to unintended consequences, perhaps negligent entrustment for borrowing a car or in the employment context. This appears to be an effort to assign liability to a rental car agency. The liability should be with the negligent driver.

Currently the industry is moving away from using signatures as a means of verifying the identity of renters. Most signatures rarely match using a track pad or an electronic signature pad. Photo identification is the key. We also use a credit card with the photo identification. There needs to be more flexibility to use other methods to verify a renter's identity other than just signatures.

Persons Testifying: PRO: Senator Randi Becker, Prime Sponsor; Tony Shapiro, Hagens Berman; Davey Nicholas, citizen.

CON: Mel Sorenson, Property Casualty Insurers Association of America; Jeff Gombosky, Enterprise Holdings; Mike Rendon, Enterprise Holdings; Justin Lisonbee, Enterprise Holdings.

Persons Signed In To Testify But Not Testifying: None.