

5743

2015-2016 Regular Sessions

I N S E N A T E

June 1, 2015

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to certain rental vehicle protections

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 396-z of the general business law, as amended by
2 chapter 731 of the laws of 2006, is amended to read as follows:
3 S 396-z. Rental vehicle protections. 1. For the purposes of this
4 section: (a) "Authorized driver" [shall mean] MEANS: (i) the person to
5 whom the vehicle is rented if a licensed driver; (ii) such person's
6 spouse if licensed and at least eighteen years of age; (iii) any person
7 who operates the vehicle during an emergency situation to a medical
8 facility; or (iv) any licensed driver expressly listed on the rental
9 agreement as an authorized driver.
10 (b) "Rental agreement" means any written agreement setting forth terms
11 and conditions governing the RENTER'S OR ANY authorized driver's use of
12 a rental vehicle[, as defined in section one hundred thirty-seven-a of
13 the vehicle and traffic law,] for a period not to exceed thirty contin-
14 uous days.
15 (c) "Rental vehicle company" means any person or organization, or any
16 subsidiary or affiliate, including a franchisee, in the business of
17 providing rental vehicles to the public from locations in this state.
18 (d) "Optional vehicle protection" means a rental vehicle company's
19 agreement not to hold an authorized driver liable for all or part of any
20 damage or loss to the rented vehicle, any loss of use of the rented
21 vehicle, or any storage, impound, towing or administrative charges for
22 which [the] AN authorized driver may be liable. The term "optional vehi-
23 cle protection" shall encompass within its meaning other similar terms
24 that may be used by rental vehicle companies, such as but not limited to

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD10891-02-5

1 "Collision Damage Waiver", "CDW", "Damage Waiver", "Loss Damage Waiver",
2 "LDW", and "Physical Damage Waiver".

3 (e) "Renter" means a person or entity that obtains the use of a
4 [private passenger] RENTAL vehicle from a rental vehicle company under
5 terms of a rental agreement.

6 (f) "Consolidated facilities charge" means the allowable recovery by a
7 rental vehicle company from its renters of those fees, including any
8 taxes or fees paid on such fees, for the finance, design, construction
9 and operation of consolidated airport facilities and or the finance,
10 design, construction and operation of common use transportation systems
11 that move passengers between airport terminals and [those consolidated]
12 airport car rental facilities. The aggregate amount to be collected
13 shall not exceed the reasonable costs, as determined annually by an
14 independent audit paid for by the airport operator or its governing
15 entity, to finance, design, construct and operate those facilities and
16 common use transportation systems. The consolidated [facility] FACILI-
17 TIES charge shall apply only to vehicle rentals occurring at vehicle
18 rental locations subject to the imposition of such charge by an airport
19 operator or its governing entity.

20 (g) "Concession recovery fee" means the allowable recovery by a rental
21 vehicle company from its renters of those fees, including any taxes or
22 fees paid on such fees, which an airport operator or its governing enti-
23 ty imposes on a rental vehicle company's applicable revenues OR RENTAL
24 TRANSACTIONS, as defined and stated in a concession agreement that
25 authorizes a rental vehicle company to operate at an airport located in
26 this state. The concession recovery fee shall apply only to vehicle
27 rentals occurring at vehicle rental locations subject to the imposition
28 of such fee by an airport operator or its governing entity.

29 (h) "Airport fees" means [the] consolidated [facility charge] FACILI-
30 TIES CHARGES and/or [the] concession recovery [fee as those terms are
31 defined herein] FEES.

32 (i) "Concession agreement" means an agreement, permit or license
33 entered into between an airport operator or its governing entity and
34 rental vehicle company setting forth the terms and conditions under
35 which the rental vehicle company may transact its rental business at
36 such airport.

37 (j) "Consolidated airport facilities" means those buildings or phys-
38 ical structures, including, but not limited to, parking garages, parking
39 areas and fueling systems, constructed by or on behalf of the airport
40 operator or its governing entity to be jointly used by all rental vehi-
41 cle companies operating at such airport pursuant to a concession agree-
42 ment.

43 (K) "RENTAL VEHICLE" MEANS A RENTAL VEHICLE AS DEFINED IN SECTION ONE
44 HUNDRED THIRTY-SEVEN-A OF THE VEHICLE AND TRAFFIC LAW, BUT EXCLUDING
45 FREIGHT VANS, VEHICLES WITH A GROSS VEHICLE WEIGHT RATING EXCEEDING TEN
46 THOUSAND POUNDS, AND ANY VEHICLE REGISTERED AS A COMMERCIAL MOTOR VEHI-
47 CLE IN ANY STATE.

48 2. (a) A rental vehicle company shall not charge more than [nine
49 dollars] THE FOLLOWING AMOUNTS per full or partial twenty-four hour
50 rental day for optional vehicle protection [if the manufacturer's
51 suggested retail price of the rental vehicle is not greater than thirty
52 thousand dollars. A rental vehicle company shall not charge more than
53 twelve dollars per full or partial twenty-four hour rental day for
54 optional vehicle protection]:

55 (I) NINE DOLLARS if the manufacturer's suggested retail price of the
56 rental vehicle is NOT greater than [thirty] TWENTY thousand dollars;

1 (II) TWELVE DOLLARS IF THE MANUFACTURER'S SUGGESTED RETAIL PRICE OF
2 THE RENTAL VEHICLE IS GREATER THAN TWENTY THOUSAND DOLLARS BUT NOT
3 GREATER THAN THIRTY-FIVE THOUSAND DOLLARS; AND

4 (III) FIFTEEN DOLLARS IF THE MANUFACTURER'S SUGGESTED RETAIL PRICE OF
5 THE RENTAL VEHICLE IS GREATER THAN THIRTY-FIVE THOUSAND DOLLARS.

6 (b) A rental vehicle company shall not sell optional vehicle
7 protection unless the [authorized driver] RENTER agrees to the purchase
8 of such protection in writing at or prior to the time the rental agree-
9 ment is executed.

10 (c) A rental vehicle company shall not void optional vehicle
11 protection except for one or more of the following reasons:

12 (i) The damage or loss is caused intentionally or as a result of will-
13 ful, wanton, or reckless conduct of the driver[.];

14 (ii) The damage or loss arises out of the driver's operation of the
15 vehicle while intoxicated or impaired by the use of alcohol or drugs[.];

16 (iii) The rental vehicle company entered into the rental transaction
17 based on fraudulent or materially false information supplied by the
18 renter or authorized driver[.];

19 (iv) The damage or loss arises out of the use of the vehicle while
20 engaged in the commission of a crime other than a traffic infraction[.];

21 (v) The damage or loss arises out of the use of the vehicle to carry
22 persons or property for hire, to push or tow anything, while engaged in
23 a speed contest, operating off road, or for driver's training[.];

24 (vi) The damage or loss arises out of the use of the vehicle by a
25 person other than: an authorized driver; a duly licensed parent or child
26 OF THE RENTER WHO IS over the age of eighteen thereof [who] AND perma-
27 nently resides in the same household; or a parking valet or parking
28 garage attendant for compensation and in the normal course of employ-
29 ment[.];

30 (vii) The damage or loss arises out of the use of the vehicle outside
31 of the continental United States when that use is not specifically
32 authorized by the rental agreement[.]; OR

33 (viii) The RENTER, AND authorized driver [has], IF DIFFERENT, HAVE
34 failed to comply with the requirements for reporting damage or loss as
35 set forth in subdivision five of this section.

36 (d) A customer may void optional vehicle protection at no charge with-
37 in twenty-four hours of purchase provided that the customer: (i) has
38 rented the vehicle for two or more days, (ii) appears in person at any
39 branch of the vehicle rental company together with the vehicle that
40 shall be subject to inspection, and (iii) signs a cancellation form
41 provided by the rental vehicle company. AFTER TWENTY-FOUR HOURS OF
42 PURCHASE, A CUSTOMER MAY TERMINATE OPTIONAL VEHICLE PROTECTION AT ANY
43 TIME, PROVIDED THE CUSTOMER (I) APPEARS IN PERSON AT ANY BRANCH OF THE
44 VEHICLE RENTAL COMPANY TOGETHER WITH THE VEHICLE THAT SHALL BE SUBJECT
45 TO INSPECTION; (II) SIGNS A CANCELLATION FORM PROVIDED BY THE RENTAL
46 VEHICLE COMPANY; AND (III) PAYS THE OPTIONAL VEHICLE PROTECTION CHARGE
47 FOR ANY FULL OR PARTIAL RENTAL DAY OR PORTION OF A DAY DURING WHICH THE
48 OPTIONAL VEHICLE PROTECTION WAS IN EFFECT.

49 3. Subject to the provisions of subdivisions six, seven, and nine of
50 this section, a rental vehicle company may hold an authorized driver
51 liable for actual damage to, or loss of, a rental vehicle, provided
52 that: (a) any claim for such damage shall be based on a physical survey
53 and shall be made upon the return of the rental vehicle, unless SUCH
54 SURVEY IS PRECLUDED WHEN THE VEHICLE IS returned by automation [or],
55 RETURNED after-hours [which precludes such survey], OR THE VEHICLE IS
56 RECOVERED BY THE RENTAL COMPANY, in which event, any claim must be made

1 within ten days after return OR RECOVERY; and (b) any charge for repair
2 of such damage shall be limited to actual and reasonable costs and shall
3 be assessed and billed separately and apart from the rental agreement.
4 For purposes of this subdivision, "returned by automation" means a
5 return acknowledged by machine receipt and where there is no interaction
6 with rental vehicle company personnel; and "after-hours" return means a
7 return after normal business hours and in which the keys [and rental
8 agreement] are [deposited in] RETURNED TO the rental vehicle company
9 [office] VIA A DROP BOX OR OTHER PROCESS OFFERED BY THE RENTAL VEHICLE
10 COMPANY.

11 4. (a) Any rental vehicle company which states or permits to be stated
12 the rental costs of a rental vehicle in any advertisement shall state
13 conspicuously, in plain language and in conjunction with the advertised
14 rental cost of the vehicle, the daily rate of the applicable optional
15 vehicle protection, that the rate constitutes an additional daily charge
16 to the renter, that the purchase of such protection is optional, and
17 that prospective renters should examine their credit card protections
18 and automobile insurance policies for rental vehicle coverage.

19 (b) Where a written advertisement, including all print media, contains
20 the statement of the rental cost of the vehicle, the disclosure required
21 by this section shall be printed in type no less than ten point type.

22 (c) When the video presentation of a television or internet advertise-
23 ment by the rental vehicle company contains the written statement of the
24 rental cost of a vehicle, the depiction of the cost of the optional
25 vehicle protection shall be clear and conspicuous.

26 (d) When a radio advertisement or the audio presentation of a tele-
27 vision advertisement contains the statement of the rental cost of the
28 motor vehicle, the oral statement of the rental cost shall immediately
29 be accompanied by an oral statement of the cost of the optional vehicle
30 protection.

31 (e) When a telephone inquiry for the rental cost of a vehicle is made
32 to a rental vehicle company, the representative of the rental vehicle
33 company shall, in response to an inquiry by the caller, STATE THAT ADDI-
34 TIONAL OPTIONAL PRODUCTS THAT MAY BE OFFERED BY THE RENTAL VEHICLE
35 COMPANY ARE NOT INCLUDED IN THE DAILY RENTAL RATE. OPTIONAL PRODUCTS
36 INCLUDE, BUT ARE NOT LIMITED TO, OPTIONAL VEHICLE PROTECTION AND
37 OPTIONAL LIABILITY PROTECTION. IF AN INQUIRY IS MADE REGARDING OPTIONAL
38 VEHICLE PROTECTION, THE AGENT SHALL provide the cost of the optional
39 vehicle protection and state that the purchase of such protection is
40 optional and that the renter's personal automobile insurance or credit
41 card may provide coverage.

42 (f) Any rental vehicle company that offers optional vehicle protection
43 to [an authorized driver] A RENTER shall [inform] DISCLOSE TO the
44 [authorized driver in posted signs or in pamphlets, written in plain
45 language, of all of the information required to be disclosed by this
46 section. The requirements of this paragraph shall be deemed to be satis-
47 fied if the rental vehicle company places] RENTER THE FOLLOWING INFORMA-
48 TION ON the posted signs or pamphlets prominently and conspicuously
49 DISPLAYED OR OFFERED where they may be easily seen or reached by custom-
50 ers:

51 "NOTICES

52 THE FOLLOWING IS A SUMMARY OF RENTER'S RIGHTS AND OBLIGATIONS. FOR
53 COMPLETE DETAILS, REFER TO THE RENTAL AGREEMENT.

54 OPTIONAL VEHICLE PROTECTION (OVP): THIS CONTRACT OFFERS, FOR AN ADDI-
55 TIONAL CHARGE, OVP TO COVER YOUR FINANCIAL RESPONSIBILITY FOR DAMAGE OR

1 LOSS TO THE RENTAL VEHICLE. THE PURCHASE OF OVP IS OPTIONAL AND MAY BE
2 DECLINED. BEFORE DECIDING WHETHER TO PURCHASE OVP, YOU MAY WISH TO
3 DETERMINE WHETHER YOUR CREDIT CARD, OR YOUR VEHICLE INSURANCE, AFFORDS
4 YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE, AND THE AMOUNT OF DEDUCT-
5 IBLE UNDER SUCH COVERAGE.

6 OVP - WHEN VOID: OVP IS VOID AND SHALL NOT APPLY TO THE FOLLOWING
7 SITUATIONS:

8 1. IF THE DAMAGE OR LOSS IS CAUSED AS A RESULT OF OPERATOR'S INTEN-
9 TIONAL ACTS; WILLFUL, WANTON, OR RECKLESS CONDUCT; OR OPERATION OF THE
10 VEHICLE WHILE INTOXICATED OR IMPAIRED BY THE USE OF DRUGS;

11 2. THE RENTER, OR AUTHORIZED DRIVER, PROVIDES FRAUDULENT OR MATERIALLY
12 FALSE INFORMATION TO THE RENTAL VEHICLE COMPANY;

13 3. THE DAMAGE OR LOSS ARISES OUT OF THE USE OF THE RENTAL VEHICLE:

14 (A) WHILE ENGAGED IN THE COMMISSION OF A CRIME, OTHER THAN A TRAFFIC
15 INFRACTION;

16 (B) THE USE OF THE VEHICLE TO CARRY PERSONS OR PROPERTY FOR HIRE, TO
17 PUSH OR TOW ANYTHING, WHILE ENGAGED IN A SPEEDING CONTEST, OPERATING OFF
18 ROAD, OR FOR DRIVER'S TRAINING;

19 (C) BY A PERSON OTHER THAN AN AUTHORIZED DRIVER, A DULY LICENSED
20 PARENT OR CHILD OVER THE AGE OF 18 WHO PERMANENTLY RESIDES IN THE SAME
21 HOUSEHOLD, OR A PARKING VALET OR A PARKING GARAGE ATTENDANT FOR COMPEN-
22 SATION AND IN THE NORMAL COURSE OF EMPLOYMENT;

23 (D) OUTSIDE OF THE CONTINENTAL UNITED STATES WHEN NOT SPECIFICALLY
24 AUTHORIZED BY THE RENTAL AGREEMENT;

25 (E) EITHER THE RENTER OR AUTHORIZED DRIVER HAS FAILED TO COMPLY WITH
26 THE REQUIREMENTS FOR REPORTING DAMAGE OR LOSS AS SET FORTH IN THE RENTAL
27 AGREEMENT.

28 OVP - DAMAGE REPORTING REQUIREMENTS: IF THE RENTAL VEHICLE SUSTAINS
29 DAMAGE OR LOSS, THE RENTER AND AUTHORIZED DRIVER ARE REQUIRED TO
30 COMPLETE AND RETURN AN INCIDENT REPORT NOTICE TO THE RENTAL VEHICLE
31 COMPANY.

32 OVP - RIGHT TO INSPECT VEHICLE DAMAGES: THE RENTER, AUTHORIZED DRIVER,
33 OR HIS/HER INSURER, HAS THE RIGHT TO REQUEST AN INSPECTION OF THE VEHI-
34 CLE DAMAGES WITHIN SEVENTY-TWO HOURS OF THE RETURN OF THE VEHICLE. FAIL-
35 URE OF THE RENTER, AUTHORIZED DRIVER, OR HIS/HER INSURER TO REQUEST AN
36 INSPECTION WITHIN SEVENTY-TWO HOURS OF RETURN SHALL BE DEEMED A WAIVER
37 OF THE RIGHT TO INSPECT THE DAMAGED VEHICLE."

38 (g) The following disclosure notice shall be made on the face of the
39 rental agreement either by stamp, label or as part of the written
40 contract or on any other written document provided to the [authorized
41 driver at the time such driver takes possession of the vehicle] RENTER
42 UPON EXECUTION OF SUCH CONTRACT, AND shall be set apart in boldface type
43 and in no smaller print than ten point type:

44 "NOTICE: This contract offers, for an additional charge, optional
45 vehicle protection to cover your financial responsibility for damage or
46 loss to the rental vehicle. The purchase of optional vehicle protection
47 is optional and may be declined. You are advised to carefully consider
48 whether to purchase this protection if you have rental vehicle collision
49 coverage provided by your credit card or automobile insurance policy.
50 Before deciding whether to purchase optional vehicle protection, you may
51 wish to determine whether your credit card or your vehicle insurance
52 affords you coverage for damage to the rental vehicle and the amount of
53 deductible under such coverage."

54 (h) The contract shall also include in boldface type and in no smaller
55 print than ten point type[, in plain language, any other conditions or
56 exclusions applicable to the optional vehicle protection. The] THE

1 CONDITIONS AND EXCLUSIONS SET FORTH IN PARAGRAPH (C) OF SUBDIVISION TWO
2 OF THIS SECTION. UPON THE IDENTIFICATION OF DAMAGE TO THE RENTAL VEHICLE
3 BY THE rental vehicle company, SUCH RENTAL VEHICLE COMPANY shall [also]
4 inform the [authorized driver] RENTER of his or her right to inspect the
5 vehicle pursuant to paragraph (c) of subdivision five of this section.

6 5. (a) Upon IDENTIFICATION OF DAMAGE BY THE RENTAL VEHICLE COMPANY AT
7 THE return of the vehicle, termination of the rental contract, or within
8 ten days if returned by automation [or], RETURNED after-hours, OR RECOV-
9 ERED BY THE RENTAL VEHICLE COMPANY, the rental vehicle company shall
10 furnish an incident report form and a notice, pursuant to this para-
11 graph, of the [authorized driver's] RENTER'S obligation to execute and
12 return to the rental vehicle company a complete and accurate incident
13 report describing any physical and/or mechanical damage. If the vehicle
14 is returned by automation [or], RETURNED after-hours, OR RECOVERED BY
15 THE RENTAL VEHICLE COMPANY, such incident report form and notice shall
16 be mailed by overnight delivery service or certified mail, return
17 receipt requested, and another copy of such notification shall be sent
18 by regular mail. The rental vehicle company shall retain for six years a
19 copy of such notice and the certified mail return receipt.

20 (b) Upon return of the vehicle, or within seventy-two hours if the
21 return is by automation or after-hours, [the] AN authorized driver or
22 his or her insurer must notify the rental vehicle company that they wish
23 to inspect the damaged vehicle. The inspection must be completed within
24 seven days of the return date of the vehicle. If [the] AN authorized
25 driver or his or her insurer does not request this inspection within the
26 seventy-two hour period, [the] AN authorized driver or his or her insur-
27 er will be deemed to have waived this right.

28 (c) If the [authorized driver] RENTER declines or fails to complete
29 and return the incident report required pursuant to paragraph (a) of
30 this subdivision, the rental vehicle company shall, no sooner than
31 [twenty] TEN days after the mailing of notification pursuant to such
32 paragraph (a), mail another copy of the incident report together with a
33 letter stating that the [authorized driver] RENTER has declined or
34 otherwise failed to complete and return the incident report. Such mail-
35 ing shall be by overnight delivery service or certified mail, return
36 receipt requested, and another copy of such notification by regular
37 mail, with proof of mailing by production of a certificate of mailing
38 from the post office. [Within seventy-two hours of return of the vehi-
39 cle, the authorized driver or his or her insurer must notify the rental
40 vehicle company that he or she wishes to inspect the damaged vehicle.
41 The inspection must be completed within seven days of the return date of
42 the vehicle. If the authorized driver or his or her insurer does not
43 request this inspection within the seventy-two hour period, the author-
44 ized driver or his or her insurer will be deemed] SHOULD THE RENTER OR
45 HIS OR HER INSURER WISH TO INSPECT THE DAMAGED VEHICLE, THE RENTAL
46 COMPANY MUST RECEIVE A WRITTEN REQUEST FOR SUCH INSPECTION WITHIN SEVEN-
47 TY-TWO HOURS OF THE RETURN OR RECOVERY OF THE VEHICLE. IF THE RENTAL
48 COMPANY DOES NOT RECEIVE SUCH TIMELY WRITTEN NOTIFICATION OF THE RENTER
49 OR HIS OR HER INSURER'S REQUEST TO INSPECT THE DAMAGED VEHICLE, THE
50 RENTER AND HIS OR HER INSURER SHALL BE DEEMED to have waived this right.
51 If the rental vehicle company determines the damaged vehicle to be a
52 total loss and subject to salvage, such seventy-two hour period for
53 notification or waiver of the wish to inspect the damaged vehicle shall
54 not apply, and the [authorized driver] RENTER or his or her insurer
55 shall have ten business days from the [authorized driver's] RENTER'S
56 receipt of notification from the rental vehicle company pursuant to

1 paragraph (a) of this subdivision to inspect the damaged vehicle, unless
2 the rental vehicle company agrees to provide access to such damaged
3 vehicle beyond the ten business days provided herein. Within the limits
4 provided in this paragraph, the rental vehicle company shall identify
5 the repairer of, and provide access to, the damaged vehicle, in order to
6 verify the nature and extent of damages, repairs and repair costs,
7 and/or repair estimates.

8 (d) All notices shall be mailed to the [authorized driver's] RENTER'S
9 address as stated on his or her license, or other address as designated
10 by him or her ON THE RENTAL AGREEMENT.

11 (e) The [authorized driver] RENTER shall complete and return the inci-
12 dent report within ten days of the receipt of the notice.

13 (f) The notice required by this subdivision shall be in at least
14 twelve point bold face type and shall contain the statement: "Failure to
15 completely and accurately fill out and return an incident report within
16 ten days of receipt of this notice may make the [authorized driver]
17 RENTER liable for damages sustained to the rental vehicle. Except where
18 the damaged vehicle is determined to be a total loss and subject to
19 salvage, [the] AN authorized driver or his or her insurer has seventy-
20 two hours from the return OR RECOVERY of the vehicle to notify the
21 rental vehicle company that he or she wishes to inspect the damaged
22 vehicle. The inspection must be completed within seven business days of
23 the return OR RECOVERY date of the vehicle. If the [authorized driver
24 or his or her insurer does not request this] RENTAL VEHICLE COMPANY DOES
25 NOT RECEIVE NOTIFICATION FROM AN AUTHORIZED DRIVER OR HIS OR HER INSURER
26 REQUESTING SUCH inspection within the seventy-two hour period, [the]
27 SUCH authorized driver [or] AND his or her insurer will be deemed to
28 have waived this right. If the rental vehicle company determines the
29 damaged vehicle to be a total loss and subject to salvage, such seven-
30 ty-two hour period for notification or waiver of the wish to inspect the
31 damaged vehicle shall not apply, and such right to inspect the damaged
32 vehicle shall expire ten business days from EITHER the [authorized driv-
33 er's] RENTER'S receipt of this notice from the rental vehicle company at
34 the return of the vehicle, or THE RENTER'S receipt of the first mailing
35 of this notice in the event [of return of] the vehicle IS RETURNED by
36 automation [or], RETURNED after hours OR RECOVERED BY THE RENTAL VEHICLE
37 COMPANY. Upon request of [the] AN authorized driver or his or her insur-
38 er, we will provide a copy of our estimate of the costs of repairing the
39 damaged motor vehicle."

40 (g) For purposes of this subdivision, an "incident report" shall be
41 defined as a motor vehicle accident report pursuant to section six
42 hundred five of the vehicle and traffic law or any similar appropriate
43 form furnished by the rental vehicle company.

44 (h) Provided, however, if [the] AN authorized driver is physically
45 incapable of completing the report, the requirements of this subdivision
46 shall lapse until after he or she is able to complete the report and is
47 notified that he or she must complete and return the report as required
48 by paragraph (b) of this subdivision.

49 (i) Provided, further, THE RENTAL VEHICLE COMPANY MUST, AT LEAST twen-
50 ty days prior to commencing an action against the [authorized driver,
51 the rental vehicle company must prove] RENTER PROVIDE the [authorized
52 driver had] RENTER an additional opportunity to [provide] COMPLETE AND
53 SUBMIT the incident report by providing a second notice, along with
54 another incident report, by certified mail, return receipt requested,
55 and another copy of such notice and report by regular mail, with proof
56 of mailing by production of a certificate of mailing[; and if]. IF the

1 [authorized driver] RENTER provides the rental vehicle company with a
2 completed incident report within fifteen days of the receipt of the
3 notice, the provisions of this subdivision shall be deemed satisfied.

4 6. (a) A rental vehicle company may hold an authorized driver liable
5 to the extent permitted under this chapter for physical or mechanical
6 damage to the rental vehicle that occurs during the time the rental
7 vehicle is under the rental agreement; provided, however, that [a
8 renter] AN AUTHORIZED DRIVER shall not be liable for [mechanical damage
9 unrelated to an accident, nor for] any normal wear and tear or [other]
10 mechanical damage that could reasonably be expected from normal use of
11 the vehicle[, except in instances where abuse or neglect by the driver
12 is shown]. For the purposes of this subdivision, "actual and reasonable
13 costs" shall mean the repair price reduced by all discounts paid by the
14 rental vehicle company to the repairer of the vehicle, including costs
15 for towing, storage, and impound fees.

16 (b) The total liability of an authorized driver under paragraph (a) of
17 this subdivision for damage to a motor vehicle shall not exceed the
18 lesser of:

19 (i) the actual and reasonable costs that the rental vehicle company
20 incurred to repair the motor vehicle or that the rental vehicle company
21 would have incurred if the motor vehicle had been repaired, which shall
22 reflect any discounts, price reductions, or adjustments available to the
23 rental vehicle company; or

24 (ii) the fair market value of the motor vehicle immediately before the
25 damage occurred, as determined in the applicable market for the retail
26 sale of the motor vehicle, less any net disposal proceeds.

27 (c) The total liability of an authorized driver under paragraph (a) of
28 this subdivision for loss of a motor vehicle shall not exceed reasonable
29 costs incurred by the rental vehicle company for the loss due to theft
30 of the rental vehicle up to its fair market value, as determined by the
31 applicable market for the retail sale of that vehicle if it is estab-
32 lished that an authorized driver failed to exercise reasonable care or
33 that an authorized driver committed, or aided or abetted in the commis-
34 sion of, the theft of the rental motor vehicle.

35 (d) Damages incurred by rental vehicle companies for the loss of use
36 of a rental vehicle and related administrative fees shall not be recov-
37 ered [from authorized drivers] FROM THE RENTER, ANY AUTHORIZED DRIVER,
38 OR HIS OR HER INSURER.

39 (e) A rental vehicle company shall not hold an authorized driver
40 liable for any amounts that the rental vehicle company recovers from any
41 other party.

42 (f) A rental vehicle company shall not collect or attempt to collect
43 the amount described in paragraph (b) of this subdivision unless the
44 rental vehicle company:

45 (i) obtains an estimate from a repair company or an appraiser in the
46 business of providing such appraisals on the cost of repairing the motor
47 vehicle;

48 (ii) provides a copy of the estimate and photographic evidence upon
49 request to the [authorized driver] PARTY who may be liable under para-
50 graph (a) of this subdivision, or the insurer of [the authorized driver]
51 SUCH PARTY; and

52 (iii) submits a copy of the estimate with any claim to collect the
53 amount described in paragraph (b) of this subdivision.

54 (g) [A claim against an authorized driver resulting from damage or
55 loss to a rental vehicle shall be reasonable and rationally related to
56 the actual loss incurred.] A rental vehicle company shall mitigate

1 damages where possible and shall not assert or collect any claim for
2 physical damage which exceeds the amount authorized under paragraph (b)
3 of this subdivision.

4 (h) If insurance coverage exists under the [authorized driver's appli-
5 cable] insurance policy OF THE RENTER OR AUTHORIZED DRIVER, AS APPLICA-
6 BLE, the RENTER OR authorized driver may require that the rental vehicle
7 company submit any claims to the RENTER OR authorized driver's insurance
8 carrier. Upon the request of [an] A RENTER OR authorized driver, the
9 rental vehicle company shall submit any claims to [the authorized driv-
10 er's] SUCH PERSON'S insurance carrier and shall not make any written or
11 oral representations to the contrary, nor shall it make any written or
12 oral representations that it will not negotiate with [the authorized
13 driver's] SUCH insurance carrier.

14 7. (a) No rental vehicle company shall require any security, deposit,
15 or charge for damage in any form, by credit card or otherwise, during
16 the term of the rental agreement or pending resolution of any dispute.

17 (b) [No rental vehicle company shall require a deposit or an advance
18 charge against the credit card of an authorized driver, in any form, for
19 damages to a rental vehicle which is in the authorized driver's
20 possession or control.

21 (c)] No rental vehicle company shall require any payment to the rental
22 vehicle company, upon [the authorized driver's] return OR RECOVERY of
23 the vehicle in a damaged condition, until after the cost of the damage
24 to the vehicle and liability therefor is agreed to between the rental
25 vehicle company and the [authorized driver] RENTER OR HIS OR HER INSUR-
26 ER, or is determined pursuant to law OR CONTRACT; provided, however,
27 that a rental vehicle company is not precluded from presenting a claim
28 to the RENTER OR AN authorized driver, AND APPLICABLE INSURANCE CARRIERS
29 pursuant to other provisions of this section.

30 [(d)] (C) Causes of action concerning the existence of, liability for,
31 and extent and cost of damage to the vehicle shall, where appropriate,
32 be commenced by a rental vehicle company in a commercial claims part in
33 accordance with the limitations and jurisdiction of the appropriate
34 court act.

35 8. No rental vehicle company shall advertise or quote a rental rate
36 that does not include all charges, except taxes or optional items and/or
37 services or any mileage charge, which an authorized driver must pay to
38 obtain a rental vehicle. Provided, however, a rental vehicle company
39 shall be permitted to separately quote and charge airport fees as
40 defined herein, which shall be in addition to the rental rate; and
41 provided further that advertised rental rates that include locations at
42 which airport fees apply shall clearly indicate that additional fees
43 apply.

44 9. No rental vehicle company shall hold any [authorized driver] RENTER
45 liable for any damage to, or loss of, a rental vehicle, as provided by
46 this section, unless the rental vehicle company prominently discloses,
47 on the rental agreement, in at least ten point bold face display, the
48 nature and extent of such liability and such driver's rights and respon-
49 sibilities [under] PURSUANT TO PARAGRAPH (C) OF SUBDIVISION TWO OF THIS
50 SECTION AND PARAGRAPH (G) OF SUBDIVISION FOUR OF this section.

51 10. (a) A rental vehicle company shall not charge in addition to the
52 rental rate, taxes, and mileage charge, if any, any fee which must be
53 paid as a condition of renting the vehicle, such as, but not limited to,
54 required fuel surcharges, each of which shall be separately stated on
55 the rental agreement. In addition, a rental vehicle company may also

1 state separately and charge, where applicable, airport fees as such term
2 is defined herein.

3 (b) In addition to the rental rate, taxes, applicable airport fees,
4 and mileage charge, if any, a rental vehicle company may charge for an
5 item or service provided in connection with a particular rental trans-
6 action if the renter could have avoided incurring the charge by not
7 choosing to obtain or utilize the optional item or service, such as, but
8 not limited to, optional accessories or services requested by the
9 renter, service charges incident to the renter's optional return of the
10 vehicle to a location other than the location where the vehicle was
11 rented, and charges for refueling the vehicle with as much fuel as was
12 in the fuel tank at the beginning of the rental.

13 (c) A rental vehicle company shall make available detachable or remov-
14 able seats which meet the requirements of subdivision one of section
15 twelve hundred twenty-nine-c of the vehicle and traffic law.

16 (d) Fees for additional authorized drivers shall not exceed [three]
17 TEN dollars per additional driver per rental day.

18 (e) A rental vehicle company shall furnish with each rental vehicle
19 pursuant to an agreement either an owner's manual or a diagram which
20 shall indicate the location and plain language description of the func-
21 tions necessary for the safe and efficient operation of the vehicle
22 which shall at a minimum include:

23 (i) Headlights;
24 (ii) Brakes and emergency brake;
25 (iii) Turn signal indicators;
26 (iv) Hazard lights;
27 (v) Windshield wipers and washers;
28 (vi) Horn;
29 (vii) Cruise control;
30 (viii) Heat control system including defrost systems;
31 (ix) Car locking systems; and
32 (x) Spare tire and car jack, tire wrench, and jacking locations, IF
33 APPLICABLE. In the event the rental vehicle company elects to include
34 the owner's manual pursuant to this section, if the owner's manual is
35 not returned with the vehicle, the renter shall be liable to the rental
36 vehicle company for the actual replacement cost of the owner's manual
37 plus an administrative fee.

38 11. Any clause or provision of a rental agreement inconsistent with
39 the provisions of this section shall be deemed void as against public
40 policy.

41 12. Any rental vehicle company found by a court of competent jurisdic-
42 tion to have violated a provision of this section shall be subject to a
43 penalty of not less than five hundred dollars nor more than one thousand
44 dollars for each violation.

45 13. (a) Whenever there shall be a violation of this section, an appli-
46 cation may be made by the attorney general in the name of the people of
47 the state of New York to a court of competent jurisdiction by a special
48 proceeding for the imposition of a fine or the issuance of an injunction
49 against any violation of this section, upon notice to the rental vehicle
50 company of not less than five days, to enjoin and restrain the contin-
51 uance of such violations.

52 (b) If the court finds that the defendant has, in fact, violated this
53 section, an injunction may be issued by such court, enjoining and
54 restraining any further violation, without requiring proof that any
55 person has, in fact, been injured or damaged thereby.

1 (c) In any proceeding pursuant to this subdivision, the court may
2 direct restitution and make allowances to the attorney general as
3 provided in section sixty-three of the executive law.

4 (d) In support of any application pursuant to this subdivision, the
5 attorney general is authorized to take proof, determine relevant facts
6 and issue subpoenae in accordance with the civil practice law and rules.

7 13-a. A rental vehicle company shall not use information from any
8 global positioning system technology to determine or impose any costs,
9 fees, charges, or penalties on an authorized driver for such driver's
10 use of a rental vehicle. The use of global positioning technology shall
11 not limit the right of a rental vehicle company to impose costs, fees,
12 charges, or penalties to recover a vehicle that is lost, misplaced, or
13 stolen. The provisions of this subdivision shall not be construed to
14 modify or supersede any other provision of law.

15 14. An authorized driver shall provide notice to the rental vehicle
16 company or law enforcement agency within twelve hours of learning of the
17 theft of the rental vehicle.

18 15. In accordance with any applicable federal law or rule, every
19 rental vehicle company shall display the following in a conspicuous
20 location, with lettering that is legible and that shall be at least
21 three-quarters of an inch boldface type:

22 "NOTICE: New York State Law prohibits the following practices by
23 rental vehicle companies based upon race, color, ethnic origin, reli-
24 gion, disability, sex, marital status, or age: (1) refusal to rent; (2)
25 the imposition of any additional charge (except in certain instances
26 where the renter is under the age of 25). In addition, it is unlawful
27 for any rental vehicle company to refuse to rent a vehicle to any person
28 solely on the requirement of ownership of a credit card."

29 16. ANY NOTICE OR DISCLOSURE REQUIRED TO BE PROVIDED, DELIVERED, POST-
30 ED, OR OTHERWISE MADE AVAILABLE BY A RENTAL VEHICLE COMPANY PURSUANT TO
31 THIS ARTICLE SHALL ALSO BE DEEMED TIMELY AND EFFECTIVELY MADE WHERE SUCH
32 NOTICE OR DISCLOSURE IS (I) PROVIDED OR DELIVERED ELECTRONICALLY AT OR
33 BEFORE THE TIME REQUIRED, OR (II) INCLUDED IN A MEMBER OR MASTER AGREE-
34 MENT AT OR BEFORE THE TIME REQUIRED. FOR THE PURPOSES OF THIS ARTICLE, A
35 MASTER OR MEMBER AGREEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY
36 SERVICE OFFERED BY A COMPANY THAT PERMITS CUSTOMERS TO BYPASS A RETAIL
37 SERVICE LOCATION AND OBTAIN A PRODUCT OR SERVICE DIRECTLY. ELECTRONIC
38 ACCEPTANCE SHALL HEREBY BE DEEMED A VALID FORM OF ACCEPTANCE OF ANY SUCH
39 NOTICE OR DISCLOSURE, AND ACCEPTANCE SHALL REMAIN EFFECTIVE UNTIL SUCH
40 TIME AS ACCEPTANCE IS AFFIRMATIVELY WITHDRAWN. NOTICES AND DISCLOSURES
41 MADE PURSUANT TO THIS SUBDIVISION SHALL BE EXEMPT FROM ANY PLACEMENT OR
42 STYLISTIC DISPLAY REQUIREMENTS, INCLUDING BUT NOT LIMITED TO LOCATION,
43 FONT SIZE, TYPESET, OR OTHER SPECIFICALLY-STATED DESCRIPTION; PROVIDED
44 SUCH DISCLOSURES ARE GENERALLY CONSISTENT IN APPEARANCE WITH THE ENTIRE-
45 TY OF THE COMMUNICATION IN WHICH THEY ARE CONTAINED.

46 S 2. This act shall take effect immediately; provided, however, that
47 the amendments to section 396-z of the general business law, made by
48 section one of this act, shall not affect the expiration and reversion
49 of certain provisions of such section pursuant to section 4 of chapter
50 656 of the laws of 2002, as amended, and shall be deemed repealed there-
51 with.