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Concerning Damages for Loss of Use of a Rental Motor Vehicle

Non-Partisan Economic Analysis

HB17-1098 seeks to limit the damages a motor vehicle rental company can recover for the loss of use of a rental motor vehicle to the actual loss of profit. In context of the bill, loss of use refers to any circumstance in which a motor vehicle rental company is unable to rent out a vehicle due to the time of repair for damages caused by a renter.

Motor vehicle renters who do not purchase a collision damage waiver (CDW) at the time of rental and do not have their own car insurance (i.e. renters who do not own a car) are subject to compensate for damages to a rental vehicle out of their own pocket. These renters are also liable to cover the loss of use damages if they are responsible for damages that impair the rental company from renting a vehicle for any period of time.

At the present, loss of use damages may be measured by either actual loss of profits or by calculating the reasonable rental value of the impaired vehicle. Actual loss of profit is narrowly defined as the profits a rental company is unable to gain due the impairment of a vehicle.

Alternatively, the reasonable rental value includes all potential profits the rental company could gain irrespective of whether the rental company would have actually rented out the vehicle. In other words, reasonable rental value assumes the vehicle would be rented out the entirety of loss of use period and would thereby always be greater than or equal to actual loss of profit.

The Colorado Supreme Court held the opinion that under current law, corporations may choose either method to measure their loss of use damages in Denver Building & Construction Trades Council v. Shore (1955) and in Koenig v. PurCo Fleet Services, Inc. (2012).¹ Although the Colorado Supreme Court holds that either method provides adequate measurement, reasonable rental value is likely chosen by motor vehicle rental companies in every case. HB17-1098 would no longer entitle rental companies to claim loss of use damages measured by reasonable rental value. Instead, rental companies would have to prove that the impaired vehicle would have otherwise been rented out to compensate the reasonable rental value for loss of use. In effect, HB17-1098 would protect renters from over-compensating the actual economic losses.

The economic implications of this bill can be spelled out by addressing four questions: 1. What is occurring economically when motor vehicle rental companies lose use of a rental vehicle? 2. What are the economic implications of the current legal framework? 3. What would be changed by the introduced bill? 4. Does the government need to protect the economy in such circumstances?

Firstly, when addressing the underlying economics in any loss of use case it is imperative to recognize any loss of producer surplus. Producer surplus is defined in economics as the difference between the minimum amount a firm is willing and able to receive for a good and the amount that the firm actually receives. In context, the additional utility or value that a rental company gains from trading the use of a vehicle for profits is the producer surplus. However, when a motor vehicle rental company loses the ability to rent a vehicle due to the impairment of that vehicle they also lose the ability to gain producer surplus, namely, profit.

¹ Judith Koenig v. PurCo Fleet Services, Inc., a Utah Corporation. Colorado Supreme Court. 10 Sept. 2012. *State of Colorado Judicial Department*. www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2010/10SC159.pdf. Web.

Loss of use damages are defined as economic damages and are equal to lost producer surplus. Rental companies are entitled to claim economic damages when the use of any vehicle in their fleet is impaired. Renters are, and should be obligated to recover these damages. To do so, the renter needs to compensate for the the rental company's impaired supply by repaying profits that were actually lost.

Replacement of actual loss of profit is a necessary and sufficient recovery for the producer surplus lost in loss of use cases. Since rental car companies currently have the option to seek damages measured by reasonable rental value they are able to take from the renter more than was actually lost. For this reason, rental companies likely opt to have the renter pay reasonable rental value in every case.

Yet, forcing a consumer to compensate beyond the damages he or she is responsible for effectively redistributes wealth from renters to rental companies. This behavior could be described as rent-seeking activity on the part of the rental companies. Notably, rental companies are able to exploit the current legal framework to force renters to over-compensate for damages without restriction. As a matter of fact, rental companies actually have incentive to encourage accidents as they can gain more than was lost.

The Colorado Supreme Court rulings in Denver Building v. Shore and Koenig v. Purco inadvertently created a market imperfection by allowing rental companies to choose to measure loss of use damages with reasonable rental value. The current legal framework allows motor vehicle rental companies to be beneficiaries of unjustified wealth transfers at the cost of rental car consumers.

Unless the government can prove that this sort of redistribution is for the greater good of the people of Colorado, then they should not allow policy to meddle with the economic efficiency in motor vehicle rental markets. The government has the obligation to curb rent-seeking and all other inappropriate redistribution activities for the sake of the people and the economy of Colorado. HB17-1098 would fulfill this responsibility.

In a broader sense, HB17-1098 seeks to protect renters, specifically those who are uninsured and choose not to purchase a CDW, from being victims of unjust wealth transfers. Thus, the bill will restore equity in the motor vehicle rental market. The Colorado General Assembly should recognize the bill as positive for the Colorado economy. The passage of HB17-1098 by the General Assembly is important to limiting rent-seeking activity and the misuse of the current legal framework regarding motor vehicle loss of use cases.

Although HB17-1098 focuses specifically on the motor vehicle rental market, legislation of this kind should be pushed in other sectors of the economy. The type of rent-seeking exhibited by motor vehicle rental companies can be paralleled in other rental markets (i.e. the hotel industry, home rental markets, etc.). The government should be an agent in redistributive activity unless it is for the greater good of the people, and it is the responsibility of the government to curb any unjust wealth transfers.