

AMENDED IN SENATE JUNE 21, 2001

AMENDED IN ASSEMBLY MAY 3, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 491**

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**Introduced by Assembly Member Frommer**

February 21, 2001

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An act relating to rental vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Frommer. Rental vehicles: passenger vehicles.

Existing law, scheduled to be repealed *become operative* on January 1, 2002, ~~at which time another provision governing these subjects is scheduled to become operative~~, establishes definitions and restrictions governing the terms of rental agreements for passenger vehicles.

*This bill would add provisions thereto regulating the imposition of customer facility charges, as defined, and the disclosure of those charges in advertisements, quotations, or reservations, as specified.*

This bill would make a legislative declaration and a statement of intent to update current laws regarding car rental transactions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares that
- 2 California's basic law governing car rental transactions was first

1 enacted in 1988. There have been many changes since then that  
2 characterize the way in which rental car companies conduct  
3 business and in the way that consumers shop for and reserve rental  
4 cars.

5 (b) It is the intent of the Legislature, in enacting this act, to  
6 update current law by specifically addressing issues including the  
7 manner in which rates are advertised, quoted, confirmed, and  
8 charged, the collision damage waiver, *and* customer facility  
9 charges at airports, ~~and vehicle license fees.~~

10 *SEC. 2. Section 1936 of the Civil Code, as added by Section*  
11 *2 of Chapter 992 of the Statutes of 1996, is amended to read:*

12 1936. (a) For the purpose of this section, the following  
13 definitions shall apply:

14 (1) “Rental company” means any person or entity in the  
15 business of renting passenger vehicles to the public.

16 (2) “Renter” means any person in any manner obligated under  
17 a contract for the lease or hire of a passenger vehicle from a rental  
18 company for a period of less than 30 days.

19 (3) “Authorized driver” means (A) the renter, (B) the renter’s  
20 spouse if that person is a licensed driver and satisfies the rental  
21 company’s minimum age requirement, (C) the renter’s employer  
22 or coworker if they are engaged in business activity with the renter,  
23 are licensed drivers, and satisfy the rental company’s minimum  
24 age requirement, and (D) any person expressly listed by the rental  
25 company on the renter’s contract as an authorized driver.

26 (4) “Customer facility charge” means a fee required by an  
27 airport to be collected by a rental company from a renter. The fee  
28 shall be used to finance, design, construct, or operate either or  
29 both consolidated airport car rental facilities or common use  
30 transportation systems that move passengers between airport  
31 terminals and those consolidated car rental facilities, and it shall  
32 not exceed the reasonable costs to finance, design, construct, and  
33 operate those systems and facilities.

34 (5) “Damage waiver” means a rental company’s agreement  
35 not to hold a renter liable for all or any portion of any damage or  
36 loss related to the rented vehicle, any loss of use of the rented  
37 vehicle, or any storage, impound, towing, or administrative  
38 charges.

39 ~~(5)~~



1 (6) “Estimated time for replacement” means the number of  
2 hours of labor, or fraction thereof, needed to replace damaged  
3 vehicle parts as set forth in collision damage estimating guides  
4 generally used in the vehicle repair business and commonly known  
5 as “crash books.”

6 ~~(6)~~

7 (7) “Estimated time for repair” means a good faith estimate of  
8 the reasonable number of hours of labor, or fraction thereof,  
9 needed to repair damaged vehicle parts.

10 ~~(7)~~

11 (8) “Passenger vehicle” means a passenger vehicle as defined  
12 in Section 465 of the Vehicle Code.

13 (b) Except as limited by subdivision (c), a rental company and  
14 a renter may agree that the renter will be responsible for no more  
15 than all of the following:

16 (1) Physical or mechanical damage to the rented vehicle up to  
17 its fair market value, as determined in the customary market for the  
18 sale of that vehicle, resulting from collision regardless of the cause  
19 of the damage.

20 (2) Loss due to theft of the rented vehicle up to its fair market  
21 value, as determined in the customary market for the sale of that  
22 vehicle, provided that the rental company establishes by clear and  
23 convincing evidence that the renter or the authorized driver failed  
24 to exercise ordinary care while in possession of the vehicle.

25 (3) Physical damage to the rented vehicle up to its fair market  
26 value, as determined in the customary market for the sale of that  
27 vehicle, resulting from vandalism occurring after, or in connection  
28 with, the theft of the rented vehicle; however, the renter shall have  
29 no liability for any damage due to vandalism if the renter would  
30 have no liability for theft pursuant to paragraph (2).

31 (4) Physical damage to the rented vehicle and loss of use of the  
32 rented vehicle as provided in paragraph (5) up to a total of five  
33 hundred dollars (\$500) resulting from vandalism unrelated to the  
34 theft of the rented vehicle.

35 (5) Loss of use of the rented vehicle if the renter is liable for  
36 damage or loss.

37 (6) Actual charges for towing, storage, and impound fees paid  
38 by the rental company if the renter is liable for damage or loss.



1 (7) An administrative charge which shall include the cost of  
2 appraisal and all other costs and expenses incident to the damage,  
3 loss, loss of use, repair, or replacement of the rented vehicle.

4 (c) The total amount of the renter's liability to the rental  
5 company resulting from damage to the rented vehicle shall not  
6 exceed the sum of the following:

7 (1) The estimated cost of parts which the rental company would  
8 have to pay to replace damaged vehicle parts. All discounts and  
9 price reductions or adjustments that are or will be received by the  
10 rental company shall be subtracted from the estimate to the extent  
11 not already incorporated in the estimate or otherwise promptly  
12 credited or refunded to the renter.

13 (2) The estimated cost of labor to replace damaged vehicle  
14 parts which shall not exceed the product of (A) the rate for labor  
15 usually paid by the rental company to replace vehicle parts of the  
16 type that were damaged and (B) the estimated time for  
17 replacement. All discounts and price reductions or adjustments  
18 that are or will be received by the rental company shall be  
19 subtracted from the estimate to the extent not already incorporated  
20 in the estimate or otherwise promptly credited or refunded to the  
21 renter.

22 (3) (A) The estimated cost of labor to repair damaged vehicle  
23 parts which shall not exceed the lesser of the following:

24 (i) The product of the rate for labor usually paid by the rental  
25 company to repair vehicle parts of the type that were damaged and  
26 the estimated time for repair.

27 (ii) The sum of the estimated labor and parts costs determined  
28 under paragraphs (1) and (2) to replace the same vehicle parts.

29 (B) All discounts and price reductions or adjustments that are  
30 or will be received by the rental company shall be subtracted from  
31 the estimate to the extent not already incorporated in the estimate  
32 or otherwise promptly credited or refunded to the renter.

33 (4) Except as provided in paragraph (5), the loss of use of the  
34 rented vehicle which shall not exceed the product of (A) the rental  
35 rate stated in the renter's contract, excluding all optional charges,  
36 and (B) the total of the estimated time for replacement and the  
37 estimated time for repair. For the purpose of converting the  
38 estimated time for repair into the same unit of time in which the  
39 rental rate is expressed, a day shall be deemed to consist of eight  
40 hours.



1 (5) Under any of the circumstances described in subdivision  
2 (f), the rental company's loss of use of the rented vehicle shall not  
3 exceed the product of (A) the rental rate stated in the renter's  
4 contract, excluding all optional charges, and (B) the period from  
5 the date of the accident to the date the vehicle is ready to be  
6 returned to rental service. This paragraph applies only if the rental  
7 company uses its best efforts to effect repairs and return the vehicle  
8 to rental service as soon as practicable.

9 (6) Actual charges for towing, storage, and impound fees paid  
10 by the rental company.

11 (7) The administrative charge described in paragraph (7) of  
12 subdivision (b) shall not exceed (A) fifty dollars (\$50) if the total  
13 estimated cost for parts and labor is more than one hundred dollars  
14 (\$100) up to and including five hundred dollars (\$500), (B) one  
15 hundred dollars (\$100) if the total estimated cost for parts and  
16 labor exceeds five hundred dollars (\$500) up to and including one  
17 thousand five hundred dollars (\$1,500), and (C) one hundred fifty  
18 dollars (\$150) if the total estimated cost for parts and labor exceeds  
19 one thousand five hundred dollars (\$1,500). No administrative  
20 charge shall be imposed if the total estimated cost of parts and  
21 labor is one hundred dollars (\$100) or less.

22 (d) (1) The total amount of an authorized driver's liability to  
23 the rental company, if any, for damage occurring during the  
24 authorized driver's operation of the rented vehicle shall not exceed  
25 the amount of the renter's liability under subdivision (c).

26 (2) A rental company shall not recover from the renter and  
27 another authorized driver an amount exceeding the renter's  
28 liability under subdivision (c).

29 (3) A rental company shall not recover from the renter or other  
30 authorized driver for any item described in subdivision (b) to the  
31 extent the rental company obtains recovery from any other person.

32 (4) This section applies only to the maximum liability of a  
33 renter or other authorized driver to the rental company resulting  
34 from damage to the rented vehicle and not to the liability of any  
35 other person.

36 (e) (1) Except as provided in subdivisions (f) and (g), every  
37 damage waiver shall provide or, if not expressly stated in writing,  
38 shall be deemed to provide that the renter has no liability for any  
39 damage, loss, loss of use, or any cost or expense incident thereto.



1 (2) Except as provided in subdivisions (f) and (g), every  
2 limitation, exception, or exclusion to any damage waiver is void  
3 and unenforceable.

4 (f) A rental company may provide in the rental contract that a  
5 damage waiver does not apply under any of the following  
6 circumstances:

7 (1) Damage or loss results from an authorized driver's (A)  
8 intentional, willful, wanton, or reckless conduct, (B) operation of  
9 the vehicle under the influence of drugs or alcohol in violation of  
10 Section 23152 of the Vehicle Code, (C) towing or pushing  
11 anything, or (D) operation of the vehicle on an unpaved road if the  
12 damage or loss is a direct result of the road or driving conditions.

13 (2) Damage or loss occurs while the vehicle is (A) used for  
14 commercial hire, (B) used in connection with conduct that could  
15 be properly charged as a felony, (C) involved in a speed test or  
16 contest or in driver training activity, (D) operated by a person other  
17 than an authorized driver, or (E) operated outside of the United  
18 States.

19 (3) Any authorized driver (A) provided fraudulent information  
20 to the rental company, or (B) provided false information and the  
21 rental company would not have rented the vehicle if it had instead  
22 received true information.

23 (g) No damage waiver shall apply to any loss due to theft of the  
24 vehicle.

25 (h) (1) A rental company which offers or provides a damage  
26 waiver for any consideration in addition to the rental rate shall  
27 clearly and conspicuously disclose the following information in  
28 the rental contract or holder in which the contract is placed and,  
29 also, in signs posted at the place, such as the counter, where the  
30 renter signs the rental contract: (A) the nature of the renter's  
31 liability, e.g., liability for all collision damage regardless of cause,  
32 (B) the extent of the renter's liability, e.g., liability for damage or  
33 loss up to a specified amount, (C) the renter's personal insurance  
34 policy may provide coverage for all or a portion of the renter's  
35 potential liability, (D) the renter should consult with his or her  
36 insurer to determine the scope of insurance coverage, (E) the renter  
37 may purchase an optional damage waiver to cover all liability,  
38 except liability for loss due to theft pursuant to subdivision (g),  
39 subject to whatever exceptions the rental company expressly lists



1 that are permitted under subdivision (f), and (F) the charge for the  
2 damage waiver.

3 (2) The following is an example, for purposes of illustration  
4 and not limitation, of a notice fulfilling the requirements of  
5 paragraph (1) for a rental company that imposes liability on the  
6 renter for collision damage to the full value of the vehicle:

7  
8 NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY  
9 AND OPTIONAL DAMAGE WAIVER

10  
11 You are responsible for all collision damage to the rented  
12 vehicle even if someone else caused it or the cause is unknown.  
13 You are responsible for the cost of repair up to the value of the  
14 vehicle, loss of use, and towing, storage, and impound fees.

15 Your own insurance may cover all or part of your financial  
16 responsibility for the rented vehicle. You should check with your  
17 insurance company to find out about your coverage.

18 The rental company will not hold you responsible if you buy  
19 damage waiver, except with regard to loss due to theft. But,  
20 damage waiver will not protect you if (list exceptions).

21 The cost of optional damage waiver is \$\_\_\_\_\_ for every (day or  
22 week).

23  
24 (i) Notwithstanding any other provision of law, a rental  
25 company may sell damage waiver but shall not charge more than  
26 nine dollars (\$9) per full or partial 24-hour rental day for damage  
27 waiver.

28 (j) A rental company which disseminates in this state an  
29 advertisement containing a rental rate shall include in that  
30 advertisement a clearly readable statement of the charge for  
31 damage waiver and a statement that damage waiver is optional.

32 (k) (1) A rental company shall not require the purchase of a  
33 damage waiver, optional insurance, or any other optional good or  
34 service.

35 (2) A rental company shall not engage in any unfair, deceptive,  
36 or coercive conduct to induce a renter to purchase damage waiver,  
37 optional insurance, or any other optional good or service,  
38 including conduct such as, but not limited to, refusing to honor the  
39 renter's reservation, limiting the availability of vehicles, requiring  
40 a deposit, or debiting or blocking the renter's credit card account



1 for a sum equivalent to a deposit if the renter declines to purchase  
2 damage waiver, optional insurance, or any other optional good or  
3 service.

4 (I) (1) A rental company shall not seek to recover any portion  
5 of any claim arising out of damage to, or loss of, the rented vehicle  
6 by processing a credit card charge or causing any debit or block to  
7 be placed on the renter's credit card account.

8 (2) A rental company shall not engage in any unfair, deceptive,  
9 or coercive tactics in attempting to recover or in recovering on any  
10 claim arising out of damage to, or loss of, the rented vehicle.

11 (m) (1) *A customer facility charge may be collected by a rental  
12 company under the following circumstances:*

13 (A) *Collection of the fee by the rental company is required by  
14 an airport operated by a city, a county, a city and county, a joint  
15 powers authority, or a special district.*

16 (B) *The fee is calculated on a per-contract basis.*

17 (C) *The fee is a user fee, not a tax, and the fee is not related to  
18 property under Article XIII D of the California Constitution.*

19 (D) *If the fee imposed by the airport is for both a consolidated  
20 rental car facility and a common-use transportation system, the fee  
21 collected from customers of on-airport rental car companies is  
22 proportionate to the costs of the consolidated rental car facilities  
23 and the common use transportation system. The fee imposed on  
24 customers of off-airport rental car companies who are transported  
25 on the common use transportation system is proportionate to the  
26 costs of the common use transportation system only. The fee is  
27 uniformly applied to each class of on-airport or off-airport  
28 customers, provided the airport requires off-airport customers to  
29 use the common use transportation system.*

30 (E) *Revenues collected from the fee do not exceed the  
31 reasonable costs of financing, designing, constructing, or  
32 operating the facility or services and may not be used for any other  
33 purpose.*

34 (F) *The fee is separately identified on the rental agreement.*

35 (2) *Notwithstanding any other provision of law, including, but  
36 not limited to Part 1 (commencing with Section 6001) to Part 1.7  
37 (commencing with Section 7280), inclusive, of Division 2 of the  
38 Revenue and Taxation Code, the fees collected pursuant to this  
39 section, or any other law whereby a local agency operating an  
40 airport requires a rental car company to collect a facility financing*



1 *fee from its customers, shall not be subject to sales, use, or*  
2 *transaction taxes.*

3 (n) (1) A rental company shall only advertise, quote, and  
4 charge a rental rate that includes the entire amount except taxes,  
5 *a customer facility charge, if any,* and a mileage charge, if any,  
6 which a renter must pay to hire or lease the vehicle for the period  
7 of time to which the rental rate applies. A rental company shall not  
8 charge in addition to the rental rate, taxes, *a customer facility*  
9 *charge, if any,* and *a mileage charge, if any,* any fee which must be  
10 paid by the renter as a condition of hiring or leasing the vehicle,  
11 such as, but not limited to, required fuel or airport surcharges *other*  
12 *than customer facility charges,* nor any fee for transporting the  
13 renter to the location where the rented vehicle will be delivered to  
14 the renter.

15 (2) In addition to the rental rate, taxes, *customer facility*  
16 *charges, if any,* and mileage ~~charge~~ *charges, if any,* a rental  
17 company may charge for an item or service provided in connection  
18 with a particular rental transaction if the renter could have avoided  
19 incurring the charge by choosing not to obtain or utilize the  
20 optional item or service. Items and services for which the rental  
21 company may impose an additional charge, include, but are not  
22 limited to, optional insurance and accessories requested by the  
23 renter, service charges incident to the renter's optional return of the  
24 vehicle to a location other than the location where the vehicle was  
25 hired or leased, and charges for refueling the vehicle at the  
26 conclusion of the rental transaction in the event the renter did not  
27 return the vehicle with as much fuel as was in the fuel tank at the  
28 beginning of the rental. A rental company also may impose an  
29 additional charge based on reasonable age criteria established by  
30 the rental company.

31 (3) A rental company shall not charge any fee for authorized  
32 drivers in addition to the rental charge for an individual renter.

33 (4) If a rental company states a rental rate in print advertisement  
34 or in a telephonic, in-person, or computer-transmitted quotation,  
35 the rental company shall clearly disclose in that advertisement or  
36 quotation the terms of any mileage conditions relating to the  
37 advertised or quoted rental rate, including, but not limited to, to the  
38 extent applicable, the amount of mileage and gas charges, the  
39 number of miles for which no charges will be imposed, and a



1 description of geographic driving limitations within the United  
2 States and Canada.

3 (5) (A) *When a rental rate is stated in an advertisement,*  
4 *quotation, or reservation in connection with a car rental at an*  
5 *airport where a customer facility charge is imposed, the rental*  
6 *company shall clearly disclose the existence and amount of the*  
7 *customer facility charge. For the purposes of this subparagraph,*  
8 *advertisements include radio, television, other electronic media,*  
9 *and print advertisements; and quotations and reservations include*  
10 *those that are telephonic, in-person, and computer-transmitted. If*  
11 *the rate advertisement is intended to include transactions at more*  
12 *than one airport imposing a customer facility charge, a range of*  
13 *fees may be stated in the advertisement. However, all rate*  
14 *advertisements that include car rentals at airport destinations*  
15 *shall clearly and conspicuously include a toll-free telephone*  
16 *number whereby a customer can be told the specific amount of the*  
17 *customer facility charge to which the customer will be obligated.*

18 (B) *If any person or entity other than a rental car company,*  
19 *including a passenger carrier or a seller of travel services,*  
20 *advertises or quotes a rate for a car rental at an airport where a*  
21 *customer facility charge is imposed, that person or entity shall, to*  
22 *the extent not specifically prohibited by federal law, clearly*  
23 *disclose the existence and amount of the fee in any telephonic,*  
24 *in-person, or computer-transmitted quotation at the time of*  
25 *making an initial quotation of a rental rate and at the time of*  
26 *making a reservation of a rental car. If a rental car company*  
27 *provides the person or entity with rate and customer facility charge*  
28 *information, the rental care company shall not be responsible for*  
29 *the failure of that person or entity to comply with this*  
30 *subparagraph when quoting or confirming a rate to a third person*  
31 *or entity.*

32 (6) If a rental company delivers a vehicle to a renter at a  
33 location other than the location where the rental company  
34 normally carries on its business, the rental company shall not  
35 charge the renter any amount for the rental for the period before  
36 the delivery of the vehicle. If a rental company picks up a rented  
37 vehicle from a renter at a location other than the location where the  
38 rental company normally carries on its business, the rental  
39 company shall not charge the renter any amount for the rental for



1 the period after the renter notifies the rental company to pick up  
2 the vehicle.

3 ~~(n)~~

4 (o) A renter may bring an action against a rental company for  
5 the recovery of damages and appropriate equitable relief for a  
6 violation of this section. The prevailing party shall be entitled to  
7 recover reasonable attorney's fees and costs.

8 ~~(o)~~

9 (p) A rental company that brings an action against a renter for  
10 loss due to theft of the vehicle shall bring the action in the county  
11 in which the renter resides or if the renter is not a resident of this  
12 state in the jurisdiction in which the renter resides.

13 ~~(p)~~

14 (q) Any waiver of any of the provisions of this section shall be  
15 void and unenforceable as contrary to public policy, *except that a*  
16 *written acknowledgement by a renter who enters into an agreement*  
17 *with a rental company contemplating the rental of passenger*  
18 *vehicles on more than one occasion stating that the renter has*  
19 *received the disclosures required by this section as part of the*  
20 *material received from the rental company in connection with that*  
21 *agreement shall be an authorized waiver of this section.*

22 ~~(q)~~

23 (r) This section shall become operative on January 1, 2002.

