

AMENDED IN ASSEMBLY MAY 11, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1731

Introduced by Assembly Member Tran

February 4, 2010

An act to amend Section 1936 of the Civil Code, relating to vehicle rental agreements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1731, as amended, Tran. Vehicle rental agreements: waivers.

Existing law governs the contract terms of an agreement for the rental of a passenger vehicle. Existing law authorizes a rental company and a renter to agree that the renter will be responsible for, among other things, loss due to theft of the rented vehicle up to its fair market value; if the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in the possession of the vehicle. The rental company and the renter may also agree that the renter will be responsible for physical damage to the rented vehicle up to a total of \$500 resulting from vandalism unrelated to theft of the vehicle. These provisions also authorize the rental company to sell a damage waiver subject to specified rate limitations that are determined by reference to the manufacturer's suggested retail price (MSRP) of the vehicle.

This bill would exclude from these provisions a renter who leases or hires a passenger vehicle with a manufacturer's suggested retail price of \$60,000 or more. The bill would also increase the limit on a renter's responsibility for physical damage to the rented vehicle from \$500 to \$1,000, and would revise the rate limitations on damage waivers sold by a rental company by deleting the reference to the vehicle's MSRP

and instead imposing limits on the rate on the basis of the vehicle's class.

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. Section 1936 of the Civil Code is amended to*
2 *read:*

3 1936. (a) For the purpose of this section, the following
4 definitions shall apply:

5 (1) "Rental company" means a person or entity in the business
6 of renting passenger vehicles to the public.

7 (2) "Renter" means any person in a manner obligated under a
8 contract for the lease or hire of a passenger vehicle from a rental
9 company for a period of less than 30 days.

10 (3) "Authorized driver" means (A) the renter, (B) the renter's
11 spouse if that person is a licensed driver and satisfies the rental
12 company's minimum age requirement, (C) the renter's employer
13 or coworker if he or she is engaged in business activity with the
14 renter, is a licensed driver, and satisfies the rental company's
15 minimum age requirement, and (D) a person expressly listed by
16 the rental company on the renter's contract as an authorized driver.

17 (4) (A) "Customer facility charge" means a fee required by an
18 airport to be collected by a rental company from a renter for either
19 of the following purposes:

20 (i) To finance, design, and construct consolidated airport car
21 rental facilities.

22 (ii) To finance, design, construct, and provide common-use
23 transportation systems that move passengers between airport
24 terminals and those consolidated car rental facilities.

25 (B) The aggregate amount to be collected shall not exceed the
26 reasonable costs, as determined by an independent audit paid for
27 by the airport, to finance, design, and construct those facilities.
28 Copies of the audit shall be provided to the Assembly and Senate
29 Committees on Judiciary, the Assembly Committee on
30 Transportation, and the Senate Committee on Transportation and
31 Housing. In the case of a transportation system, the audit also shall
32 consider the reasonable costs of providing the transit system or
33 busing network. At the Burbank Airport, and at all other airports,

1 the fees designated as a customer facility charge shall not be used
2 to pay for terminal expansion, gate expansion, runway expansion,
3 changes in hours of operation, or changes in the number of flights
4 arriving or departing from the airport.

5 (C) Except as provided in subparagraph (D), the authorization
6 given pursuant to this section for an airport to impose a customer
7 facility charge shall become inoperative when the bonds used for
8 financing are paid.

9 (D) If a bond or other form of indebtedness is not used for
10 financing, or the bond or other form of indebtedness used for
11 financing has been paid, the Oakland International Airport may
12 require the collection of a customer facility charge for a period of
13 up to 10 years from the imposition of the charge for the purposes
14 allowed by, and subject to the conditions imposed by, this section.

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

19 (6) “Electronic surveillance technology” means a technological
20 method or system used to observe, monitor, or collect information,
21 including telematics, Global Positioning System (GPS), wireless
22 technology, or location-based technologies. “Electronic
23 surveillance technology” does not include event data recorders
24 (EDR), sensing and diagnostic modules (SDM), or other systems
25 that are used either:

26 (A) For the purpose of identifying, diagnosing, or monitoring
27 functions related to the potential need to repair, service, or perform
28 maintenance on the rental vehicle.

29 (B) As part of the vehicle’s airbag sensing and diagnostic system
30 in order to capture safety systems-related data for retrieval after a
31 crash has occurred or in the event that the collision sensors are
32 activated to prepare the decisionmaking computer to make the
33 determination to deploy or not to deploy the airbag.

34 (7) “Estimated time for replacement” means the number of hours
35 of labor, or fraction thereof, needed to replace damaged vehicle
36 parts as set forth in collision damage estimating guides generally
37 used in the vehicle repair business and commonly known as “crash
38 books.”

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

4 (9) “Membership program” means a service offered by a rental
5 company that permits customers to bypass the rental counter and
6 go directly to the car previously reserved. A membership program
7 shall meet all of the following requirements:

8 (A) The renter initiates enrollment by completing an application
9 on which the renter can specify a preference for type of vehicle
10 and acceptance or declination of optional services.

11 (B) The rental company fully discloses, prior to the enrollee’s
12 first rental as a participant in the program, all terms and conditions
13 of the rental agreement as well as all required disclosures.

14 (C) The renter may terminate enrollment at any time.

15 (D) The rental company fully explains to the renter that
16 designated preferences, as well as acceptance or declination of
17 optional services, may be changed by the renter at any time for
18 the next and future rentals.

19 (E) An employee designated to receive the form specified in
20 subparagraph (C) of paragraph (1) of subdivision ~~(t)~~ (s) is present
21 at the lot where the renter takes possession of the car, to receive
22 any change in the rental agreement from the renter.

23 (10) “Passenger vehicle” means a passenger vehicle as defined
24 in Section 465 of the Vehicle Code.

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

28 (1) Physical or mechanical damage to the rented vehicle up to
29 its fair market value, as determined in the customary market for
30 the sale of that vehicle, resulting from collision regardless of the
31 cause of the damage.

32 (2) Loss due to theft of the rented vehicle up to its fair market
33 value, as determined in the customary market for the sale of that
34 vehicle, provided that the rental company establishes by clear and
35 convincing evidence that the renter or the authorized driver failed
36 to exercise ordinary care while in possession of the vehicle. In
37 addition, the renter shall be presumed to have no liability for any
38 loss due to theft if (A) an authorized driver has possession of the
39 ignition key furnished by the rental company or an authorized
40 driver establishes that the ignition key furnished by the rental

1 company was not in the vehicle at the time of the theft, and (B) an
2 authorized driver files an official report of the theft with the police
3 or other law enforcement agency within 24 hours of learning of
4 the theft and reasonably cooperates with the rental company and
5 the police or other law enforcement agency in providing
6 information concerning the theft. The presumption set forth in this
7 paragraph is a presumption affecting the burden of proof which
8 the rental company may rebut by establishing that an authorized
9 driver committed, or aided and abetted the commission of, the
10 theft.

11 (3) Physical damage to the rented vehicle up to its fair market
12 value, as determined in the customary market for the sale of that
13 vehicle, resulting from vandalism occurring after, or in connection
14 with, the theft of the rented vehicle. However, the renter shall have
15 no liability for any damage due to vandalism if the renter would
16 have no liability for theft pursuant to paragraph (2).

17 (4) Physical damage to the rented vehicle up to a total of five
18 hundred dollars (\$500) resulting from vandalism unrelated to the
19 theft of the rented vehicle.

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

22 (6) An administrative charge, which shall include the cost of
23 appraisal and all other costs and expenses incident to the damage,
24 loss, repair, or replacement of the rented vehicle.

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

28 (1) The estimated cost of parts which the rental company would
29 have to pay to replace damaged vehicle parts. All discounts and
30 price reductions or adjustments that are or will be received by the
31 rental company shall be subtracted from the estimate to the extent
32 not already incorporated in the estimate, or otherwise promptly
33 credited or refunded to the renter.

34 (2) The estimated cost of labor to replace damaged vehicle parts,
35 which shall not exceed the product of (A) the rate for labor usually
36 paid by the rental company to replace vehicle parts of the type that
37 were damaged and (B) the estimated time for replacement. All
38 discounts and price reductions or adjustments that are or will be
39 received by the rental company shall be subtracted from the

1 estimate to the extent not already incorporated in the estimate, or
2 otherwise promptly credited or refunded to the renter.

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

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

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

10 (B) All discounts and price reductions or adjustments that are
11 or will be received by the rental company shall be subtracted from
12 the estimate to the extent not already incorporated in the estimate,
13 or otherwise promptly credited or refunded to the renter.

14 (4) For the purpose of converting the estimated time for repair
15 into the same units of time in which the rental rate is expressed, a
16 day shall be deemed to consist of eight hours.

17 (5) Actual charges for towing, storage, and impound fees paid
18 by the rental company.

19 (6) The administrative charge described in paragraph (6) of
20 subdivision (b) shall not exceed (A) fifty dollars (\$50) if the total
21 estimated cost for parts and labor is more than one hundred dollars
22 (\$100) up to and including five hundred dollars (\$500), (B) one
23 hundred dollars (\$100) if the total estimated cost for parts and
24 labor exceeds five hundred dollars (\$500) up to and including one
25 thousand five hundred dollars (\$1,500), and (C) one hundred fifty
26 dollars (\$150) if the total estimated cost for parts and labor exceeds
27 one thousand five hundred dollars (\$1,500). An administrative
28 charge shall not be imposed if the total estimated cost of parts and
29 labor is one hundred dollars (\$100) or less.

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

34 (2) A rental company shall not recover from the renter or other
35 authorized driver an amount exceeding the renter's liability under
36 subdivision (c).

37 (3) A claim against a renter resulting from damage or loss,
38 excluding loss of use, to a rental vehicle shall be reasonably and
39 rationally related to the actual loss incurred. A rental company
40 shall mitigate damages where possible and shall not assert or collect

1 a claim for physical damage which exceeds the actual costs of the
2 repairs performed or the estimated cost of repairs, if the rental
3 company chooses not to repair the vehicle, including all discounts
4 and price reductions. However, if the vehicle is a total loss vehicle,
5 the claim shall not exceed the total loss vehicle value established
6 in accordance with procedures that are customarily used by
7 insurance companies when paying claims on total loss vehicles,
8 less the proceeds from salvaging the vehicle, if those proceeds are
9 retained by the rental company.

10 (4) If insurance coverage exists under the renter's applicable
11 personal or business insurance policy and the coverage is confirmed
12 during regular business hours, the renter may require that the rental
13 company submit any claims to the renter's applicable personal or
14 business insurance carrier. The rental company shall not make any
15 written or oral representations that it will not present claims or
16 negotiate with the renter's insurance carrier. For purposes of this
17 paragraph, confirmation of coverage includes telephone
18 confirmation from insurance company representatives during
19 regular business hours. Upon request of the renter and after
20 confirmation of coverage, the amount of claim shall be resolved
21 between the insurance carrier and the rental company. The renter
22 shall remain responsible for payment to the rental car company
23 for any loss sustained that the renter's applicable personal or
24 business insurance policy does not cover.

25 (5) A rental company shall not recover from the renter or other
26 authorized driver for an item described in subdivision (b) to the
27 extent the rental company obtains recovery from another person.

28 (6) This section applies only to the maximum liability of a renter
29 or other authorized driver to the rental company resulting from
30 damage to the rented vehicle and not to the liability of another
31 person.

32 (e) (1) Except as provided in subdivision (f), a damage waiver
33 shall provide or, if not expressly stated in writing, shall be deemed
34 to provide that the renter has no liability for a damage, loss, loss
35 of use, or a cost or expense incident thereto.

36 (2) Except as provided in subdivision (f), every limitation,
37 exception, or exclusion to a damage waiver is void and
38 unenforceable.

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

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

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

(3) An authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign that shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, such as liability for all collision damage regardless of cause, (B) the extent of the renter's liability, such as liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company

1 expressly lists that are permitted under subdivision (f), and (F) the
2 range of charges for the damage waiver.

3 (2) In addition to the requirements of paragraph (1), a rental
4 company that offers or provides a damage waiver shall orally
5 disclose to all renters, except those who are participants in the
6 rental company's membership program, that the damage waiver
7 may be duplicative of coverage that the customer maintains under
8 his or her own policy of motor vehicle insurance. The renter's
9 receipt of the oral disclosure shall be demonstrated through the
10 renter's acknowledging receipt of the oral disclosure near that part
11 of the contract where the renter indicates, by the renter's own
12 initials, his or her acceptance or declination of the damage waiver.
13 Adjacent to that same part, the contract also shall state that the
14 damage waiver is optional. Further, the contract for these renters
15 shall include a clear and conspicuous written disclosure that the
16 damage waiver may be duplicative of coverage that the customer
17 maintains under his or her own policy of motor vehicle insurance.

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

22
23 "NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY
24 AND OPTIONAL DAMAGE WAIVER
25

26 You are responsible for all collision damage to the rented vehicle
27 even if someone else caused it or the cause is unknown. You are
28 responsible for the cost of repair up to the value of the vehicle,
29 and towing, storage, and impound fees.

30 Your own insurance, or the issuer of the credit card you use to
31 pay for the car rental transaction, may cover all or part of your
32 financial responsibility for the rented vehicle. You should check
33 with your insurance company, or credit card issuer, to find out
34 about your coverage and the amount of the deductible, if any, for
35 which you may be liable.

36 Further, if you use a credit card that provides coverage for your
37 potential liability, you should check with the issuer to determine
38 if you must first exhaust the coverage limits of your own insurance
39 before the credit card coverage applies.

1 The rental company will not hold you responsible if you buy a
2 damage waiver. But a damage waiver will not protect you if (list
3 exceptions).”

4 (A) When the above notice is printed in the rental contract or
5 holder in which the contract is placed, the following shall be printed
6 immediately following the notice:

7 “The cost of an optional damage waiver is \$_____ for every (day
8 or week).”

9 (B) When the above notice appears on a sign, the following
10 shall appear immediately adjacent to the notice:

11 “The cost of an optional damage waiver is \$_____ to \$_____ for
12 every (day or week), depending upon the vehicle rented.”

13 (h) Notwithstanding any other provision of law, a rental
14 company may sell a damage waiver subject to the following rate
15 limitations for each full or partial 24-hour rental day for the damage
16 waiver.

17 (1) For rental vehicles ~~that the rental company designates as an~~
18 ~~“economy car,” “subcompact car,” “compact car,” or another term~~
19 ~~having similar meaning when offered for rental, or another vehicle~~
20 ~~having a manufacturer’s suggested retail price of nineteen thousand~~
21 ~~dollars (\$19,000) or less in the rental company’s two lowest rental~~
22 ~~classes,~~ the rate shall not exceed nine dollars (\$9).

23 (2) For rental vehicles ~~that have a manufacturer’s suggested~~
24 ~~retail price from nineteen thousand one dollars (\$19,001) to~~
25 ~~thirty-four thousand nine hundred ninety-nine dollars (\$34,999);~~
26 ~~inclusive, and not described in paragraph (1), up to and including~~
27 ~~premium class vehicles~~ that are also either vehicles of next year’s
28 model, or not older than the previous year’s model, the rate shall
29 not exceed fifteen dollars (\$15). For those rental vehicles older
30 than the previous year’s model-year, the rate shall not exceed nine
31 dollars (\$9).

32 (i) ~~The manufacturer’s suggested retail prices described in~~
33 ~~subdivision (h) shall be adjusted annually to reflect changes from~~
34 ~~the previous year in the Consumer Price Index. For the purposes~~
35 ~~of this section, “Consumer Price Index” means the United States~~
36 ~~Consumer Price Index for All Urban Consumers, for all items.~~

37 (j)

38 (i) A rental company that disseminates in this state an
39 advertisement containing a rental rate shall include in that

1 advertisement a clearly readable statement of the charge for a
2 damage waiver and a statement that a damage waiver is optional.

3 ~~(k)~~

4 (j) (1) A rental company shall not require the purchase of a
5 damage waiver, optional insurance, or another optional good or
6 service.

7 (2) A rental company shall not engage in any unfair, deceptive,
8 or coercive conduct to induce a renter to purchase the damage
9 waiver, optional insurance, or another optional good or service,
10 including conduct such as, but not limited to, refusing to honor
11 the renter's reservation, limiting the availability of vehicles,
12 requiring a deposit, or debiting or blocking the renter's credit card
13 account for a sum equivalent to a deposit if the renter declines to
14 purchase the damage waiver, optional insurance, or another
15 optional good or service.

16 ~~(h)~~

17 (k) (1) In the absence of express permission granted by the
18 renter subsequent to damage to, or loss of, the vehicle, a rental
19 company shall not seek to recover any portion of a claim arising
20 out of damage to, or loss of, the rented vehicle by processing a
21 credit card charge or causing a debit or block to be placed on the
22 renter's credit card account.

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

26 ~~(m)~~

27 (l) (1) A customer facility charge may be collected by a rental
28 company under the following circumstances:

29 (A) Collection of the fee by the rental company is required by
30 an airport operated by a city, a county, a city and county, a joint
31 powers authority, a special district, or the San Diego County
32 Regional Airport Authority formed pursuant to Division 17
33 (commencing with Section 170000) of the Public Utilities Code.

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

35 (C) The fee is a user fee, not a tax imposed upon real property
36 or an incidence of property ownership under Article XIII D of the
37 California Constitution.

38 (D) Except as otherwise provided in subparagraph (E), the fee
39 shall be ten dollars (\$10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars (\$10), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided that the airport requires off-airport customers to use the common-use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or transportation services and shall not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports the fees of which are governed by Section 50474.1 of the Government Code or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or another law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

~~(n)~~

(m) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle, including, but not limited to, required fuel or airport surcharges other than customer facility charges, nor a fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

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

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

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

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

1 amount of the customer facility charge to which the customer will
2 be obligated.

3 (B) If a person or entity other than a rental car company,
4 including a passenger carrier or a seller of travel services, advertises
5 or quotes a rate for a car rental at an airport where a customer
6 facility charge is imposed, that person or entity shall, provided
7 that he, she, or it is provided with information about the existence
8 and amount of the fee, to the extent not specifically prohibited by
9 federal law, clearly disclose the existence and amount of the fee
10 in any telephonic, in-person, or computer-transmitted quotation at
11 the time of making an initial quotation of a rental rate and at the
12 time of making a reservation of a rental car. If a rental car company
13 provides the person or entity with rate and customer facility charge
14 information, the rental car company is not responsible for the
15 failure of that person or entity to comply with this subparagraph
16 when quoting or confirming a rate to a third person or entity.

17 (6) If a rental company delivers a vehicle to a renter at a location
18 other than the location where the rental company normally carries
19 on its business, the rental company shall not charge the renter an
20 amount for the rental for the period before the delivery of the
21 vehicle. If a rental company picks up a rented vehicle from a renter
22 at a location other than the location where the rental company
23 normally carries on its business, the rental company shall not
24 charge the renter an amount for the rental for the period after the
25 renter notifies the rental company to pick up the vehicle.

26 ~~(e)~~

27 (n) A rental company shall not use, access, or obtain any
28 information relating to the renter's use of the rental vehicle that
29 was obtained using electronic surveillance technology, except in
30 the following circumstances:

31 (1) (A) When the equipment is used by the rental company
32 only for the purpose of locating a stolen, abandoned, or missing
33 rental vehicle after one of the following:

34 (i) The renter or law enforcement has informed the rental
35 company that the vehicle is missing or has been stolen or
36 abandoned.

37 (ii) The rental vehicle has not been returned following one week
38 after the contracted return date, or by one week following the end
39 of an extension of that return date.

1 (iii) The rental company discovers the rental vehicle has been
2 stolen or abandoned, and, if stolen, it shall report the vehicle stolen
3 to law enforcement by filing a stolen vehicle report, unless law
4 enforcement has already informed the rental company that the
5 vehicle is missing or has been stolen or abandoned.

6 (B) If electronic surveillance technology is activated pursuant
7 to subparagraph (A), a rental company shall maintain a record, in
8 either electronic or written form, of information relevant to the
9 activation of that technology. That information shall include the
10 rental agreement, including the return date, and the date and time
11 the electronic surveillance technology was activated. The record
12 shall also include, if relevant, a record of written or other
13 communication with the renter, including communications
14 regarding extensions of the rental, police reports, or other written
15 communication with law enforcement officials. The record shall
16 be maintained for a period of at least 12 months from the time the
17 record is created and shall be made available upon the renter's
18 request. The rental company shall maintain and furnish explanatory
19 codes necessary to read the record. A rental company shall not be
20 required to maintain a record if electronic surveillance technology
21 is activated to recover a rental vehicle that is stolen or missing at
22 a time other than during a rental period.

23 (2) In response to a specific request from law enforcement
24 pursuant to a subpoena or search warrant.

25 (3) This subdivision does not prohibit a rental company from
26 equipping rental vehicles with GPS-based technology that provides
27 navigation assistance to the occupants of the rental vehicle, if the
28 rental company does not use, access, or obtain information relating
29 to the renter's use of the rental vehicle that was obtained using
30 that technology, except for the purposes of discovering or repairing
31 a defect in the technology and the information may then be used
32 only for that purpose.

33 (4) This subdivision does not prohibit a rental company from
34 equipping rental vehicles with electronic surveillance technology
35 that allows for the remote locking or unlocking of the vehicle at
36 the request of the renter, if the rental company does not use, access,
37 or obtain information relating to the renter's use of the rental
38 vehicle that was obtained using that technology, except as
39 necessary to lock or unlock the vehicle.

(5) This subdivision does not prohibit a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire, or fuel services, at the request of the renter, if the rental company does not use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) This subdivision does not prohibit a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

~~(p)~~

(o) A rental company shall not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

~~(q)~~

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

~~(r)~~

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

~~(s)~~

(r) A waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

~~(t)~~

(s) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

1 (i) All of the disclosures required by paragraph (1) of subdivision
2 (g), including the terms and conditions of the rental agreement
3 then in effect.

4 (ii) An Internet Web site address, as well as a contact number
5 or address, where the enrollee can learn of changes to the rental
6 agreement or to the laws of this state governing rental agreements
7 since the effective date of the rental company's most recent
8 restatement of the rental agreement and distribution of that
9 restatement to its members.

10 (B) At the commencement of each rental period, the renter is
11 provided, on the rental record or the folder in which it is inserted,
12 with a printed notice stating that he or she had either previously
13 selected or declined an optional damage waiver and that the renter
14 has the right to change preferences.

15 (C) At the commencement of each rental period, the rental
16 company provides, on the rearview mirror, a hanger on which a
17 statement is printed, in a box, in at least 12-point boldface type,
18 notifying the renter that the collision damage waiver offered by
19 the rental company may be duplicative of coverage that the
20 customer maintains under his or her own policy of motor vehicle
21 insurance. If it is not feasible to hang the statement from the
22 rearview mirror, it shall be hung from the steering wheel.

23 The hanger shall provide the renter a box to initial if he or she
24 (not his or her employer) has previously accepted or declined the
25 collision damage waiver and that he or she now wishes to change
26 his or her decision to accept or decline the collision damage waiver,
27 as follows:

28 “☐ If I previously accepted the collision damage waiver, I
29 now decline it.

30 ☐ If I previously declined the collision damage waiver, I now
31 accept it.”

32 The hanger shall also provide a box for the enrollee to indicate
33 whether this change applies to this rental transaction only or to all
34 future rental transactions. The hanger shall also notify the renter
35 that he or she may make that change, prior to leaving the lot, by
36 returning the form to an employee designated to receive the form
37 who is present at the lot where the renter takes possession of the
38 car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from the disclosures required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u)

(t) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

~~SECTION 1. Section 1936 of the Civil Code is amended to read:~~

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

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

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

~~(3) “Authorized driver” means (A) the renter, (B) the renter’s spouse if that person is a licensed driver and satisfies the rental company’s minimum age requirement, (C) the renter’s employer or coworker if he or she is engaged in business activity with the renter, is a licensed driver, and satisfies the rental company’s minimum age requirement, and (D) a person expressly listed by the rental company on the renter’s contract as an authorized driver.~~

~~(4) (A) “Customer facility charge” means a fee required by an airport to be collected by a rental company from a renter for either of the following purposes:~~

~~(i) To finance, design, and construct consolidated airport car rental facilities.~~

~~(ii) To finance, design, construct, and provide common-use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.~~

~~(B) The aggregate amount to be collected shall not exceed the reasonable costs, as determined by an independent audit paid for~~

1 by the airport, to finance, design, and construct those facilities.
2 Copies of the audit shall be provided to the Assembly and Senate
3 Committees on Judiciary, the Assembly Committee on
4 Transportation, and the Senate Committee on Transportation and
5 Housing. In the case of a transportation system, the audit also shall
6 consider the reasonable costs of providing the transit system or
7 busing network. At the Burbank Airport, and at all other airports,
8 the fees designated as a customer facility charge shall not be used
9 to pay for terminal expansion, gate expansion, runway expansion,
10 changes in hours of operation, or changes in the number of flights
11 arriving or departing from the airport.

12 (C) Except as provided in subparagraph (D), the authorization
13 given pursuant to this section for an airport to impose a customer
14 facility charge shall become inoperative when the bonds used for
15 financing are paid.

16 (D) If a bond or other form of indebtedness is not used for
17 financing, or the bond or other form of indebtedness used for
18 financing has been paid, the Oakland International Airport may
19 require the collection of a customer facility charge for a period of
20 up to 10 years from the imposition of the charge for the purposes
21 allowed by, and subject to the conditions imposed by, this section.

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

26 (6) “Electronic surveillance technology” means a technological
27 method or system used to observe, monitor, or collect information,
28 including telematics, Global Positioning System (GPS), wireless
29 technology, or location-based technologies. “Electronic
30 surveillance technology” does not include event data recorders
31 (EDR), sensing and diagnostic modules (SDM), or other systems
32 that are used either:

33 (A) For the purpose of identifying, diagnosing, or monitoring
34 functions related to the potential need to repair, service, or perform
35 maintenance on the rental vehicle.

36 (B) As part of the vehicle’s airbag sensing and diagnostic system
37 in order to capture safety systems-related data for retrieval after a
38 crash has occurred or in the event that the collision sensors are
39 activated to prepare the decisionmaking computer to make the
40 determination to deploy or not to deploy the airbag.

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

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

9 ~~(9) “Membership program” means a service offered by a rental~~
10 ~~company that permits customers to bypass the rental counter and~~
11 ~~go directly to the car previously reserved. A membership program~~
12 ~~shall meet all of the following requirements:~~

13 ~~(A) The renter initiates enrollment by completing an application~~
14 ~~on which the renter can specify a preference for type of vehicle~~
15 ~~and acceptance or declination of optional services.~~

16 ~~(B) The rental company fully discloses, prior to the enrollee’s~~
17 ~~first rental as a participant in the program, all terms and conditions~~
18 ~~of the rental agreement as well as all required disclosures.~~

19 ~~(C) The renter may terminate enrollment at any time.~~

20 ~~(D) The rental company fully explains to the renter that~~
21 ~~designated preferences, as well as acceptance or declination of~~
22 ~~optional services, may be changed by the renter at any time for~~
23 ~~the next and future rentals.~~

24 ~~(E) An employee designated to receive the form specified in~~
25 ~~subparagraph (C) of paragraph (1) of subdivision (t) is present at~~
26 ~~the lot where the renter takes possession of the car, to receive any~~
27 ~~change in the rental agreement from the renter.~~

28 ~~(10) “Passenger vehicle” means a passenger vehicle as defined~~
29 ~~in Section 465 of the Vehicle Code.~~

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

33 ~~(1) Physical or mechanical damage to the rented vehicle up to~~
34 ~~its fair market value, as determined in the customary market for~~
35 ~~the sale of that vehicle, resulting from collision regardless of the~~
36 ~~cause of the damage.~~

37 ~~(2) Loss due to theft of the rented vehicle up to its fair market~~
38 ~~value, as determined in the customary market for the sale of that~~
39 ~~vehicle, provided that the rental company establishes by clear and~~
40 ~~convincing evidence that the renter or the authorized driver failed~~

1 to exercise ordinary care while in possession of the vehicle. In
2 addition, the renter shall be presumed to have no liability for any
3 loss due to theft if (A) an authorized driver has possession of the
4 ignition key furnished by the rental company or an authorized
5 driver establishes that the ignition key furnished by the rental
6 company was not in the vehicle at the time of the theft, and (B) an
7 authorized driver files an official report of the theft with the police
8 or other law enforcement agency within 24 hours of learning of
9 the theft and reasonably cooperates with the rental company and
10 the police or other law enforcement agency in providing
11 information concerning the theft. The presumption set forth in this
12 paragraph is a presumption affecting the burden of proof which
13 the rental company may rebut by establishing that an authorized
14 driver committed, or aided and abetted the commission of, the
15 theft. The limitations on a renter's liability for loss due to theft
16 contained in this paragraph shall not apply to the renter of a vehicle
17 with a manufacturer's suggested retail price of sixty thousand
18 dollars (\$60,000) or more.

19 (3) Physical damage to the rented vehicle up to its fair market
20 value, as determined in the customary market for the sale of that
21 vehicle, resulting from vandalism occurring after, or in connection
22 with, the theft of the rented vehicle. However, the renter shall have
23 no liability for any damage due to vandalism if the renter would
24 have no liability for theft pursuant to paragraph (2). The limitations
25 on a renter's liability for physical damage due to vandalism
26 contained in this paragraph shall not apply to the renter of a vehicle
27 with a manufacturer's suggested retail price of sixty thousand
28 dollars (\$60,000) or more.

29 (4) Physical damage to the rented vehicle up to a total of one
30 thousand dollars (\$1,000) resulting from vandalism unrelated to
31 the theft of the rented vehicle, unless the rented vehicle has a
32 manufacturer's suggested retail price of sixty thousand dollars
33 (\$60,000) or more, in which case the renter may agree to be
34 responsible for the physical damage up to the fair market value of
35 the vehicle, as determined in the customary market for the sale of
36 that vehicle.

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

~~(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.~~

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

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

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

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

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

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

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

~~(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.~~

~~(5) Actual charges for towing, storage, and impound fees paid by the rental company.~~

~~(6) The administrative charge described in paragraph (6) of subdivision (b) shall not exceed (A) fifty dollars (\$50) if the total estimated cost for parts and labor is more than one hundred dollars (\$100) up to and including five hundred dollars (\$500), (B) one~~

1 hundred dollars (\$100) if the total estimated cost for parts and
2 labor exceeds five hundred dollars (\$500) up to and including one
3 thousand five hundred dollars (\$1,500), and (C) one hundred fifty
4 dollars (\$150) if the total estimated cost for parts and labor exceeds
5 one thousand five hundred dollars (\$1,500). An administrative
6 charge shall not be imposed if the total estimated cost of parts and
7 labor is one hundred dollars (\$100) or less.

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

12 (2) A rental company shall not recover from the renter or other
13 authorized driver an amount exceeding the renter's liability under
14 subdivision (c).

15 (3) A claim against a renter resulting from damage or loss,
16 excluding loss of use, to a rental vehicle shall be reasonably and
17 rationally related to the actual loss incurred. A rental company
18 shall mitigate damages where possible and shall not assert or collect
19 a claim for physical damage which exceeds the actual costs of the
20 repairs performed or the estimated cost of repairs, if the rental
21 company chooses not to repair the vehicle, including all discounts
22 and price reductions. However, if the vehicle is a total loss vehicle,
23 the claim shall not exceed the total loss vehicle value established
24 in accordance with procedures that are customarily used by
25 insurance companies when paying claims on total loss vehicles,
26 less the proceeds from salvaging the vehicle, if those proceeds are
27 retained by the rental company.

28 (4) If insurance coverage exists under the renter's applicable
29 personal or business insurance policy and the coverage is confirmed
30 during regular business hours, the renter may require that the rental
31 company submit any claims to the renter's applicable personal or
32 business insurance carrier. The rental company shall not make any
33 written or oral representations that it will not present claims or
34 negotiate with the renter's insurance carrier. For purposes of this
35 paragraph, confirmation of coverage includes telephone
36 confirmation from insurance company representatives during
37 regular business hours. Upon request of the renter and after
38 confirmation of coverage, the amount of claim shall be resolved
39 between the insurance carrier and the rental company. The renter
40 shall remain responsible for payment to the rental car company

1 for any loss sustained that the renter's applicable personal or
2 business insurance policy does not cover.

3 (5) A rental company shall not recover from the renter or other
4 authorized driver for an item described in subdivision (b) to the
5 extent the rental company obtains recovery from another person.

6 (6) This section applies only to the maximum liability of a renter
7 or other authorized driver to the rental company resulting from
8 damage to the rented vehicle and not to the liability of another
9 person.

10 (e) (1) Except as provided in subdivision (f), a damage waiver
11 shall provide or, if not expressly stated in writing, shall be deemed
12 to provide that the renter has no liability for a damage, loss, loss
13 of use, or a cost or expense incident thereto.

14 (2) Except as provided in subdivision (f), every limitation,
15 exception, or exclusion to a damage waiver is void and
16 unenforceable.

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

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

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

32 (3) An authorized driver who has (A) provided fraudulent
33 information to the rental company, or (B) provided false
34 information and the rental company would not have rented the
35 vehicle if it had instead received true information.

36 (g) (1) A rental company that offers or provides a damage
37 waiver for any consideration in addition to the rental rate shall
38 clearly and conspicuously disclose the following information in
39 the rental contract or holder in which the contract is placed and,
40 also, in signs posted at the place, such as the counter, where the

1 renter signs the rental contract, and, for renters who are enrolled
2 in the rental company's membership program, in a sign that shall
3 be posted in a location clearly visible to those renters as they enter
4 the location where their reserved rental cars are parked or near the
5 exit of the bus or other conveyance that transports the enrollee to
6 a reserved car: (A) the nature of the renter's liability, such as
7 liability for all collision damage regardless of cause, (B) the extent
8 of the renter's liability, such as liability for damage or loss up to
9 a specified amount, (C) the renter's personal insurance policy or
10 the credit card used to pay for the car rental transaction may
11 provide coverage for all or a portion of the renter's potential
12 liability, (D) the renter should consult with his or her insurer to
13 determine the scope of insurance coverage, including the amount
14 of the deductible, if any, for which the renter is obligated, (E) the
15 renter may purchase an optional damage waiver to cover all
16 liability, subject to whatever exceptions the rental company
17 expressly lists that are permitted under subdivision (f), and (F) the
18 range of charges for the damage waiver.

19 (2) In addition to the requirements of paragraph (1), a rental
20 company that offers or provides a damage waiver shall orally
21 disclose to all renters, except those who are participants in the
22 rental company's membership program, that the damage waiver
23 may be duplicative of coverage that the customer maintains under
24 his or her own policy of motor vehicle insurance. The renter's
25 receipt of the oral disclosure shall be demonstrated through the
26 renter's acknowledging receipt of the oral disclosure near that part
27 of the contract where the renter indicates, by the renter's own
28 initials, his or her acceptance or declination of the damage waiver.
29 Adjacent to that same part, the contract also shall state that the
30 damage waiver is optional. Further, the contract for these renters
31 shall include a clear and conspicuous written disclosure that the
32 damage waiver may be duplicative of coverage that the customer
33 maintains under his or her own policy of motor vehicle insurance.

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

1 ~~“NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY~~
2 ~~AND OPTIONAL DAMAGE WAIVER~~

3
4 ~~You are responsible for all collision damage to the rented vehicle~~
5 ~~even if someone else caused it or the cause is unknown. You are~~
6 ~~responsible for the cost of repair up to the value of the vehicle,~~
7 ~~and towing, storage, and impound fees.~~

8 ~~Your own insurance, or the issuer of the credit card you use to~~
9 ~~pay for the car rental transaction, may cover all or part of your~~
10 ~~financial responsibility for the rented vehicle. You should check~~
11 ~~with your insurance company, or credit card issuer, to find out~~
12 ~~about your coverage and the amount of the deductible, if any, for~~
13 ~~which you may be liable.~~

14 ~~Further, if you use a credit card that provides coverage for your~~
15 ~~potential liability, you should check with the issuer to determine~~
16 ~~if you must first exhaust the coverage limits of your own insurance~~
17 ~~before the credit card coverage applies.~~

18 ~~The rental company will not hold you responsible if you buy a~~
19 ~~damage waiver. But a damage waiver will not protect you if (list~~
20 ~~exceptions).”~~

21 ~~(A) When the above notice is printed in the rental contract or~~
22 ~~holder in which the contract is placed, the following shall be printed~~
23 ~~immediately following the notice:~~

24 ~~“The cost of an optional damage waiver is \$_____ for every (day~~
25 ~~or week).”~~

26 ~~(B) When the above notice appears on a sign, the following~~
27 ~~shall appear immediately adjacent to the notice:~~

28 ~~“The cost of an optional damage waiver is \$_____ to \$_____ for~~
29 ~~every (day or week), depending upon the vehicle rented.”~~

30 ~~(h) Notwithstanding any other provision of law, a rental~~
31 ~~company may sell a damage waiver subject to the following rate~~
32 ~~limitations for each full or partial 24-hour rental day:~~

33 ~~(1) For rental vehicles in the rental company’s two lowest rental~~
34 ~~classes, the rate shall not exceed twelve dollars (\$12).~~

35 ~~(2) For rental vehicles not described in paragraph (1) that have~~
36 ~~a manufacturer’s suggested retail price of fifty-nine thousand nine~~
37 ~~hundred ninety-nine dollars (\$59,999) or less, the rate shall not~~
38 ~~exceed twenty dollars (\$20).~~

39 ~~(3) The rate limitations contained in paragraphs (1) and (2) of~~
40 ~~this subdivision shall not apply to rental vehicles with a~~

1 manufacturer's suggested retail price of sixty thousand dollars
2 (\$60,000) or more.

3 (i) The manufacturer's suggested retail prices described in
4 subdivisions (b) and (h) of this section shall be adjusted annually
5 to reflect changes from the previous year in the Consumer Price
6 Index. For the purposes of this section, "Consumer Price Index"
7 means the United States Consumer Price Index for All Urban
8 Consumers, for all items.

9 (j) A rental company that disseminates in this state an
10 advertisement containing a rental rate shall include in that
11 advertisement a clearly readable statement of the charge for a
12 damage waiver and a statement that a damage waiver is optional.

13 (k) (1) A rental company shall not require the purchase of a
14 damage waiver, optional insurance, or another optional good or
15 service.

16 (2) A rental company shall not engage in any unfair, deceptive,
17 or coercive conduct to induce a renter to purchase the damage
18 waiver, optional insurance, or another optional good or service,
19 including conduct such as, but not limited to, refusing to honor
20 the renter's reservation, limiting the availability of vehicles,
21 requiring a deposit, or debiting or blocking the renter's credit card
22 account for a sum equivalent to a deposit if the renter declines to
23 purchase the damage waiver, optional insurance, or another
24 optional good or service.

25 (l) (1) In the absence of express permission granted by the
26 renter subsequent to damage to, or loss of, the vehicle, a rental
27 company shall not seek to recover any portion of a claim arising
28 out of damage to, or loss of, the rented vehicle by processing a
29 credit card charge or causing a debit or block to be placed on the
30 renter's credit card account.

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

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

36 (A) Collection of the fee by the rental company is required by
37 an airport operated by a city, a county, a city and county, a joint
38 powers authority, a special district, or the San Diego County
39 Regional Airport Authority formed pursuant to Division 17
40 (commencing with Section 170000) of the Public Utilities Code.

1 ~~(B) The fee is calculated on a per-contract basis.~~

2 ~~(C) The fee is a user fee, not a tax imposed upon real property~~
3 ~~or an incidence of property ownership under Article XIII D of the~~
4 ~~California Constitution.~~

5 ~~(D) Except as otherwise provided in subparagraph (E), the fee~~
6 ~~shall be ten dollars (\$10) per contract.~~

7 ~~(E) If the fee imposed by the airport is for both a consolidated~~
8 ~~rental car facility and a common-use transportation system, the~~
9 ~~fee collected from customers of on-airport rental car companies~~
10 ~~shall be ten dollars (\$10), but the fee imposed on customers of~~
11 ~~off-airport rental car companies who are transported on the~~
12 ~~common-use transportation system is proportionate to the costs of~~
13 ~~the common-use transportation system only. The fee is uniformly~~
14 ~~applied to each class of on-airport or off-airport customers,~~
15 ~~provided that the airport requires off-airport customers to use the~~
16 ~~common-use transportation system.~~

17 ~~(F) Revenues collected from the fee do not exceed the reasonable~~
18 ~~costs of financing, designing, constructing, or operating the facility~~
19 ~~or transportation services and shall not be used for any other~~
20 ~~purpose.~~

21 ~~(G) The fee is separately identified on the rental agreement.~~

22 ~~(H) This paragraph does not apply to airports the fees of which~~
23 ~~are governed by Section 50474.1 of the Government Code or~~
24 ~~Section 57.5 of the San Diego Unified Port District Act.~~

25 ~~(2) Notwithstanding any other provision of law, including, but~~
26 ~~not limited to, Part 1 (commencing with Section 6001) to Part 1.7~~
27 ~~(commencing with Section 7280), inclusive, of Division 2 of the~~
28 ~~Revenue and Taxation Code, the fees collected pursuant to this~~
29 ~~section, or another law whereby a local agency operating an airport~~
30 ~~requires a rental car company to collect a facility financing fee~~
31 ~~from its customers, are not subject to sales, use, or transaction~~
32 ~~taxes.~~

33 ~~(n) (1) A rental company shall only advertise, quote, and charge~~
34 ~~a rental rate that includes the entire amount except taxes, a~~
35 ~~customer facility charge, if any, and a mileage charge, if any, that~~
36 ~~a renter must pay to hire or lease the vehicle for the period of time~~
37 ~~to which the rental rate applies. A rental company shall not charge~~
38 ~~in addition to the rental rate, taxes, a customer facility charge, if~~
39 ~~any, and a mileage charge, if any, any fee that is required to be~~
40 ~~paid by the renter as a condition of hiring or leasing the vehicle,~~

1 including, but not limited to, required fuel or airport surcharges
2 other than customer facility charges, nor a fee for transporting the
3 renter to the location where the rented vehicle will be delivered to
4 the renter.

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

20 (3) A rental company shall not charge a fee for authorized
21 drivers in addition to the rental charge for an individual renter.

22 (4) If a rental company states a rental rate in print advertisement
23 or in a telephonic, in-person, or computer-transmitted quotation,
24 the rental company shall disclose clearly in that advertisement or
25 quotation the terms of mileage conditions relating to the advertised
26 or quoted rental rate, including, but not limited to, to the extent
27 applicable, the amount of mileage and gas charges, the number of
28 miles for which no charges will be imposed, and a description of
29 geographic driving limitations within the United States and Canada.

30 (5) (A) When a rental rate is stated in an advertisement,
31 quotation, or reservation in connection with a car rental at an airport
32 where a customer facility charge is imposed, the rental company
33 shall disclose clearly the existence and amount of the customer
34 facility charge. For purposes of this subparagraph, advertisements
35 include radio, television, other electronic media, and print
36 advertisements. For purposes of this subparagraph, quotations and
37 reservations include those that are telephonic, in-person, and
38 computer-transmitted. If the rate advertisement is intended to
39 include transactions at more than one airport imposing a customer
40 facility charge, a range of fees may be stated in the advertisement.

1 However, all rate advertisements that include car rentals at airport
2 destinations shall clearly and conspicuously include a toll-free
3 telephone number whereby a customer can be told the specific
4 amount of the customer facility charge to which the customer will
5 be obligated.

6 (B) If a person or entity other than a rental car company,
7 including a passenger carrier or a seller of travel services, advertises
8 or quotes a rate for a car rental at an airport where a customer
9 facility charge is imposed, that person or entity shall, provided
10 that he, she, or it is provided with information about the existence
11 and amount of the fee, to the extent not specifically prohibited by
12 federal law, clearly disclose the existence and amount of the fee
13 in any telephonic, in-person, or computer-transmitted quotation at
14 the time of making an initial quotation of a rental rate and at the
15 time of making a reservation of a rental car. If a rental car company
16 provides the person or entity with rate and customer facility charge
17 information, the rental car company is not responsible for the
18 failure of that person or entity to comply with this subparagraph
19 when quoting or confirming a rate to a third person or entity.

20 (6) If a rental company delivers a vehicle to a renter at a location
21 other than the location where the rental company normally carries
22 on its business, the rental company shall not charge the renter an
23 amount for the rental for the period before the delivery of the
24 vehicle. If a rental company picks up a rented vehicle from a renter
25 at a location other than the location where the rental company
26 normally carries on its business, the rental company shall not
27 charge the renter an amount for the rental for the period after the
28 renter notifies the rental company to pick up the vehicle.

29 (o) A rental company shall not use, access, or obtain any
30 information relating to the renter's use of the rental vehicle that
31 was obtained using electronic surveillance technology, except in
32 the following circumstances:

33 (1) (A) When the equipment is used by the rental company
34 only for the purpose of locating a stolen, abandoned, or missing
35 rental vehicle after one of the following:

36 (i) The renter or law enforcement has informed the rental
37 company that the vehicle is missing or has been stolen or
38 abandoned.

1 (ii) ~~The rental vehicle has not been returned following one week~~
2 ~~after the contracted return date, or by one week following the end~~
3 ~~of an extension of that return date.~~

4 (iii) ~~The rental company discovers the rental vehicle has been~~
5 ~~stolen or abandoned, and, if stolen, it shall report the vehicle stolen~~
6 ~~to law enforcement by filing a stolen vehicle report, unless law~~
7 ~~enforcement has already informed the rental company that the~~
8 ~~vehicle is missing or has been stolen or abandoned.~~

9 (B) ~~If electronic surveillance technology is activated pursuant~~
10 ~~to subparagraph (A), a rental company shall maintain a record, in~~
11 ~~either electronic or written form, of information relevant to the~~
12 ~~activation of that technology. That information shall include the~~
13 ~~rental agreement, including the return date, and the date and time~~
14 ~~the electronic surveillance technology was activated. The record~~
15 ~~shall also include, if relevant, a record of written or other~~
16 ~~communication with the renter, including communications~~
17 ~~regarding extensions of the rental, police reports, or other written~~
18 ~~communication with law enforcement officials. The record shall~~
19 ~~be maintained for a period of at least 12 months from the time the~~
20 ~~record is created and shall be made available upon the renter's~~
21 ~~request. The rental company shall maintain and furnish explanatory~~
22 ~~codes necessary to read the record. A rental company shall not be~~
23 ~~required to maintain a record if electronic surveillance technology~~
24 ~~is activated to recover a rental vehicle that is stolen or missing at~~
25 ~~a time other than during a rental period.~~

26 (2) ~~In response to a specific request from law enforcement~~
27 ~~pursuant to a subpoena or search warrant.~~

28 (3) ~~This subdivision does not prohibit a rental company from~~
29 ~~equipping rental vehicles with GPS-based technology that provides~~
30 ~~navigation assistance to the occupants of the rental vehicle, if the~~
31 ~~rental company does not use, access, or obtain information relating~~
32 ~~to the renter's use of the rental vehicle that was obtained using~~
33 ~~that technology, except for the purposes of discovering or repairing~~
34 ~~a defect in the technology and the information may then be used~~
35 ~~only for that purpose.~~

36 (4) ~~This subdivision does not prohibit a rental company from~~
37 ~~equipping rental vehicles with electronic surveillance technology~~
38 ~~that allows for the remote locking or unlocking of the vehicle at~~
39 ~~the request of the renter, if the rental company does not use, access,~~
40 ~~or obtain information relating to the renter's use of the rental~~

1 vehicle that was obtained using that technology, except as
2 necessary to lock or unlock the vehicle.

3 (5) This subdivision does not prohibit a rental company from
4 equipping rental vehicles with electronic surveillance technology
5 that allows the company to provide roadside assistance, such as
6 towing, flat tire, or fuel services, at the request of the renter, if the
7 rental company does not use, access, or obtain information relating
8 to the renter's use of the rental vehicle that was obtained using
9 that technology except as necessary to provide the requested
10 roadside assistance.

11 (6) This subdivision does not prohibit a rental company from
12 obtaining, accessing, or using information from electronic
13 surveillance technology for the sole purpose of determining the
14 date and time the vehicle is returned to the rental company, and
15 the total mileage driven and the vehicle fuel level of the returned
16 vehicle. This paragraph, however, shall apply only after the renter
17 has returned the vehicle to the rental company, and the information
18 shall only be used for the purpose described in this paragraph.

19 (p) A rental company shall not use electronic surveillance
20 technology to track a renter in order to impose fines or surcharges
21 relating to the renter's use of the rental vehicle.

22 (q) A renter may bring an action against a rental company for
23 the recovery of damages and appropriate equitable relief for a
24 violation of this section. The prevailing party shall be entitled to
25 recover reasonable attorney's fees and costs.

26 (r) A rental company that brings an action against a renter for
27 loss due to theft of the vehicle shall bring the action in the county
28 in which the renter resides or, if the renter is not a resident of this
29 state, in the jurisdiction in which the renter resides.

30 (s) A waiver of any of the provisions of this section shall be
31 void and unenforceable as contrary to public policy.

32 (t) (1) A rental company's disclosure requirements shall be
33 satisfied for renters who are enrolled in the rental company's
34 membership program if all of the following conditions are met:

35 (A) Prior to the enrollee's first rental as a participant in the
36 program, the renter receives, in writing, the following:

37 (i) All of the disclosures required by paragraph (1) of subdivision
38 (g), including the terms and conditions of the rental agreement
39 then in effect.

1 (ii) ~~An Internet Web site address, as well as a contact number~~
2 ~~or address, where the enrollee can learn of changes to the rental~~
3 ~~agreement or to the laws of this state governing rental agreements~~
4 ~~since the effective date of the rental company's most recent~~
5 ~~restatement of the rental agreement and distribution of that~~
6 ~~restatement to its members.~~

7 (B) ~~At the commencement of each rental period, the renter is~~
8 ~~provided, on the rental record or the folder in which it is inserted,~~
9 ~~with a printed notice stating that he or she had either previously~~
10 ~~selected or declined an optional damage waiver and that the renter~~
11 ~~has the right to change preferences.~~

12 (C) ~~At the commencement of each rental period, the rental~~
13 ~~company provides, on the rearview mirror, a hanger on which a~~
14 ~~statement is printed, in a box, in at least 12-point boldface type,~~
15 ~~notifying the renter that the collision damage waiver offered by~~
16 ~~the rental company may be duplicative of coverage that the~~
17 ~~customer maintains under his or her own policy of motor vehicle~~
18 ~~insurance. If it is not feasible to hang the statement from the~~
19 ~~rearview mirror, it shall be hung from the steering wheel.~~

20 ~~The hanger shall provide the renter a box to initial if he or she~~
21 ~~(not his or her employer) has previously accepted or declined the~~
22 ~~collision damage waiver and that he or she now wishes to change~~
23 ~~his or her decision to accept or decline the collision damage waiver,~~
24 ~~as follows:~~

25 ~~“☐ If I previously accepted the collision damage waiver, I~~
26 ~~now decline it.~~

27 ~~–☐ If I previously declined the collision damage waiver, I now~~
28 ~~accept it.”~~

29 ~~The hanger shall also provide a box for the enrollee to indicate~~
30 ~~whether this change applies to this rental transaction only or to all~~
31 ~~future rental transactions. The hanger shall also notify the renter~~
32 ~~that he or she may make that change, prior to leaving the lot, by~~
33 ~~returning the form to an employee designated to receive the form~~
34 ~~who is present at the lot where the renter takes possession of the~~
35 ~~car, to receive any change in the rental agreement from the renter.~~

36 (2) (A) ~~This subdivision is not effective unless the employee~~
37 ~~designated pursuant to subparagraph (E) of paragraph (8) of~~
38 ~~subdivision (a) is actually present at the required location.~~

39 (B) ~~This subdivision does not relieve the rental company from~~
40 ~~the disclosures required to be made within the text of a contract~~

1 or holder in which the contract is placed; in or on an advertisement
2 containing a rental rate; or in a telephonic, in-person, or
3 computer-transmitted quotation or reservation.
4 (u) The amendments made to this section during the 2001-02
5 Regular Session of the Legislature do not affect litigation pending
6 on or before January 1, 2003, alleging a violation of Section 22325
7 of the Business and Professions Code as it read at the time the
8 action was commenced.

O