

AMENDED IN SENATE JUNE 17, 2010

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 to sell a damage waiver subject to rate limitations that are determined by reference to the manufacturer's suggested retail price (MSRP) of the vehicle.

This bill 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:

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

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

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

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

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

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

21 (B) The aggregate amount to be collected shall not exceed the
22 reasonable costs, as determined by an independent audit paid for
23 by the airport, to finance, design, and construct those facilities.
24 Copies of the audit shall be provided to the Assembly and Senate
25 Committees on Judiciary, the Assembly Committee on
26 Transportation, and the Senate Committee on Transportation and
27 Housing. In the case of a transportation system, the audit also shall
28 consider the reasonable costs of providing the transit system or
29 busing network. At the Burbank Airport, and at all other airports,
30 the fees designated as a customer facility charge shall not be used
31 to pay for terminal expansion, gate expansion, runway expansion,
32 changes in hours of operation, or changes in the number of flights
33 arriving or departing from the airport.

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

38 (D) If a bond or other form of indebtedness is not used for
39 financing, or the bond or other form of indebtedness used for
40 financing has been paid, the Oakland International Airport may

1 require the collection of a customer facility charge for a period of
2 up to 10 years from the imposition of the charge for the purposes
3 allowed by, and subject to the conditions imposed by, this section.

4 (5) "Damage waiver" means a rental company's agreement not
5 to hold a renter liable for all or any portion of any damage or loss
6 related to the rented vehicle, any loss of use of the rented vehicle,
7 or any storage, impound, towing, or administrative charges.

8 (6) "Electronic surveillance technology" means a technological
9 method or system used to observe, monitor, or collect information,
10 including telematics, Global Positioning System (GPS), wireless
11 technology, or location-based technologies. "Electronic
12 surveillance technology" does not include event data recorders
13 (EDR), sensing and diagnostic modules (SDM), or other systems
14 that are used either:

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

18 (B) As part of the vehicle's airbag sensing and diagnostic system
19 in order to capture safety systems-related data for retrieval after a
20 crash has occurred or in the event that the collision sensors are
21 activated to prepare the decisionmaking computer to make the
22 determination to deploy or not to deploy the airbag.

23 (7) "Estimated time for replacement" means the number of hours
24 of labor, or fraction thereof, needed to replace damaged vehicle
25 parts as set forth in collision damage estimating guides generally
26 used in the vehicle repair business and commonly known as "crash
27 books."

28 (8) "Estimated time for repair" means a good faith estimate of
29 the reasonable number of hours of labor, or fraction thereof, needed
30 to repair damaged vehicle parts.

31 (9) "Membership program" means a service offered by a rental
32 company that permits customers to bypass the rental counter and
33 go directly to the car previously reserved. A membership program
34 shall meet all of the following requirements:

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

38 (B) The rental company fully discloses, prior to the enrollee's
39 first rental as a participant in the program, all terms and conditions
40 of the rental agreement as well as all required disclosures.

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

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

6 (E) An employee designated to receive the form specified in
7 subparagraph (C) of paragraph (1) of subdivision (s) is present at
8 the lot where the renter takes possession of the car, to receive any
9 change in the rental agreement from the renter.

10 (10) "Passenger vehicle" means a passenger vehicle as defined
11 in Section 465 of the Vehicle Code.

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

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

19 (2) Loss due to theft of the rented vehicle up to its fair market
20 value, as determined in the customary market for the sale of that
21 vehicle, provided that the rental company establishes by clear and
22 convincing evidence that the renter or the authorized driver failed
23 to exercise ordinary care while in possession of the vehicle. In
24 addition, the renter shall be presumed to have no liability for any
25 loss due to theft if (A) an authorized driver has possession of the
26 ignition key furnished by the rental company or an authorized
27 driver establishes that the ignition key furnished by the rental
28 company was not in the vehicle at the time of the theft, and (B) an
29 authorized driver files an official report of the theft with the police
30 or other law enforcement agency within 24 hours of learning of
31 the theft and reasonably cooperates with the rental company and
32 the police or other law enforcement agency in providing
33 information concerning the theft. The presumption set forth in this
34 paragraph is a presumption affecting the burden of proof which
35 the rental company may rebut by establishing that an authorized
36 driver committed, or aided and abetted the commission of, the
37 theft.

38 (3) Physical damage to the rented vehicle up to its fair market
39 value, as determined in the customary market for the sale of that
40 vehicle, resulting from vandalism occurring after, or in connection

1 with, the theft of the rented vehicle. However, the renter shall have
2 no liability for any damage due to vandalism if the renter would
3 have no liability for theft pursuant to paragraph (2).

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

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

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

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

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

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

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

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

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

36 (B) All discounts and price reductions or adjustments that are
37 or will be received by the rental company shall be subtracted from
38 the estimate to the extent not already incorporated in the estimate,
39 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 hundred dollars (\$100) if the total estimated cost for parts and labor exceeds five hundred dollars (\$500) up to and including one thousand five hundred dollars (\$1,500), and (C) one hundred fifty dollars (\$150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars (\$1,500). An administrative charge shall not be imposed if the total estimated cost of parts and labor is one hundred dollars (\$100) or less.

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

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

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

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or

1 business insurance carrier. The rental company shall not make any
2 written or oral representations that it will not present claims or
3 negotiate with the renter's insurance carrier. For purposes of this
4 paragraph, confirmation of coverage includes telephone
5 confirmation from insurance company representatives during
6 regular business hours. Upon request of the renter and after
7 confirmation of coverage, the amount of claim shall be resolved
8 between the insurance carrier and the rental company. The renter
9 shall remain responsible for payment to the rental car company
10 for any loss sustained that the renter's applicable personal or
11 business insurance policy does not cover.

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

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

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

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

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

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

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

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

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

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

1 damage waiver may be duplicative of coverage that the customer
2 maintains under his or her own policy of motor vehicle insurance.

3 (3) 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 vehicle
12 even if someone else caused it or the cause is unknown. You are
13 responsible for the cost of repair up to the value of the vehicle,
14 and towing, storage, and impound fees.

15 Your own insurance, or the issuer of the credit card you use to
16 pay for the car rental transaction, may cover all or part of your
17 financial responsibility for the rented vehicle. You should check
18 with your insurance company, or credit card issuer, to find out
19 about your coverage and the amount of the deductible, if any, for
20 which you may be liable.

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

25 The rental company will not hold you responsible if you buy a
26 damage waiver. But a damage waiver will not protect you if (list
27 exceptions).”

28 (A) When the above notice is printed in the rental contract or
29 holder in which the contract is placed, the following shall be printed
30 immediately following the notice:

31 “The cost of an optional damage waiver is \$____ for every (day
32 or week).”

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

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

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

1 (1) For rental vehicles in the rental company's two lowest rental
2 classes, the rate shall not exceed nine dollars (\$9).

3 (2) For rental vehicles ~~not described in paragraph (1), up to and~~
4 ~~including premium class vehicles in the intermediate, standard,~~
5 ~~full, and premium classes~~ that are either vehicles of next year's
6 model, or not older than the previous year's model, the rate shall
7 not exceed fifteen dollars (\$15). For those rental vehicles older
8 than the previous year's model-year, the rate shall not exceed nine
9 dollars (\$9).

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

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

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

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

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

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

37 (A) Collection of the fee by the rental company is required by
38 an airport operated by a city, a county, a city and county, a joint
39 powers authority, a special district, or the San Diego County

1 Regional Airport Authority formed pursuant to Division 17
2 (commencing with Section 170000) of the Public Utilities Code.

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

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

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

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

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

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

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

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

35 (m) (1) A rental company shall only advertise, quote, and charge
36 a rental rate that includes the entire amount except taxes, a
37 customer facility charge, if any, and a mileage charge, if any, that
38 a renter must pay to hire or lease the vehicle for the period of time
39 to which the rental rate applies. A rental company shall not charge
40 in addition to the rental rate, taxes, a customer facility charge, if

1 any, and a mileage charge, if any, any fee that is required to be
2 paid by the renter as a condition of hiring or leasing the vehicle,
3 including, but not limited to, required fuel or airport surcharges
4 other than customer facility charges, nor a fee for transporting the
5 renter to the location where the rented vehicle will be delivered to
6 the renter.

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

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

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

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

1 include transactions at more than one airport imposing a customer
2 facility charge, a range of fees may be stated in the advertisement.
3 However, all rate advertisements that include car rentals at airport
4 destinations shall clearly and conspicuously include a toll-free
5 telephone number whereby a customer can be told the specific
6 amount of the customer facility charge to which the customer will
7 be obligated.

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

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

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

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

38 (i) The renter or law enforcement has informed the rental
39 company that the vehicle is missing or has been stolen or
40 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 (o) 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 (p) 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 (q) 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 (r) A waiver of any of the provisions of this section shall be
31 void and unenforceable as contrary to public policy.

32 (s) (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 (t) 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