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AMENDED IN SENATE JUNE 29, 2010

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AMENDED IN ASSEMBLY MAY 10, 2010

AMENDED IN ASSEMBLY APRIL 22, 2010

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2059

**Introduced by Assembly Member Charles Calderon
(Coauthor: Assembly Member Solorio)**

February 18, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2059, as amended, Charles Calderon. Vehicle rental agreements.

Existing law governs contracts between vehicle rental companies and their customers. Existing law regulates an automobile renter's liability for loss due to theft, a rental company's loss of use, or damage or loss to a rental vehicle, a renter's credit card liability, the submission of insurance claims, damage waivers and damage waiver fees, and the notice to a renter regarding financial responsibility and optional damage waivers.

This bill would, until ~~December 31, 2013~~ *January 1, 2016*, require a rental company to accept service of process on behalf of a renter who resides out of this country for any claim related to harm, loss, or damage

related to the use of the rental vehicle, if the rental company provides supplemental liability insurance coverage as part of, or associated with, the rental agreement. The bill would require that any plaintiff who elects to deliver process to the rental company pursuant to these provisions agree to limit his or her recovery against the renter or rental company to the limits of the protection provided by the insurance coverage. *The bill would also revise the rate limitations on damage waivers sold by a rental company.*

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and 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.

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

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

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

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

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

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

39 (2) The estimated cost of labor to replace damaged vehicle parts,
40 which shall not exceed the product of (A) the rate for labor usually

1 paid by the rental company to replace vehicle parts of the type that
2 were damaged and (B) the estimated time for replacement. All
3 discounts and price reductions or adjustments that are or will be
4 received by the rental company shall be subtracted from the
5 estimate to the extent not already incorporated in the estimate, or
6 otherwise promptly credited or refunded to the renter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the deductible, if any, for which the renter is obligated, (E) the
2 renter may purchase an optional damage waiver to cover all
3 liability, subject to whatever exceptions the rental company
4 expressly lists that are permitted under subdivision (f), and (F) the
5 range of charges for the damage waiver.

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

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

25
26 "NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY
27 AND OPTIONAL DAMAGE WAIVER
28

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

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

39 Further, if you use a credit card that provides coverage for your
40 potential liability, you should check with the issuer to determine

1 if you must first exhaust the coverage limits of your own insurance
2 before the credit card coverage applies.

3 The rental company will not hold you responsible if you buy a
4 damage waiver. But a damage waiver will not protect you if (list
5 exceptions)."

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

9 "The cost of an optional damage waiver is \$____ for every (day
10 or week)."

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

13 "The cost of an optional damage waiver is \$____ to \$____ for
14 every (day or week), depending upon the vehicle rented."

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

19 (1) For rental vehicles that the rental company designates as an
20 "economy car," "subcompact car," "compact car," or another term
21 having similar meaning when offered for rental, or another vehicle
22 having a manufacturer's suggested retail price of ~~nineteen thousand~~
23 ~~dollars (\$19,000) or less, the rate shall not exceed nine dollars~~
24 ~~(\$9); seventeen thousand dollars (\$17,000) or less, the rate shall~~
25 ~~not exceed eight dollars (\$8).~~

26 (2) For rental vehicles that have a manufacturer's suggested
27 ~~retail price from nineteen thousand one dollars (\$19,001) to~~
28 ~~thirty-four thousand nine hundred ninety-nine dollars (\$34,999),~~
29 ~~retail price from seventeen thousand one dollars (\$17,001) to~~
30 ~~thirty-five thousand dollars (\$35,000), inclusive, and that are also~~
31 either vehicles of next year's model, or not older than the previous
32 year's model, the rate shall not exceed ~~fifteen dollars (\$15)~~ *fourteen*
33 *dollars (\$14)*. For those rental vehicles older than the previous
34 year's model-year, the rate shall not exceed ~~nine dollars (\$9)~~ *eight*
35 *dollars (\$8)*.

36 (i) ~~The Commencing on January 1, 2012, the~~ manufacturer's
37 suggested retail prices described in subdivision (h) shall be adjusted
38 annually to reflect changes from the previous year in the Consumer
39 Price Index. For the purposes of this section, "Consumer Price

1 Index” means the United States Consumer Price Index for All
2 Urban Consumers, for all items.

3 (j) A rental company that disseminates in this state an
4 advertisement containing a rental rate shall include in that
5 advertisement a clearly readable statement of the charge for a
6 damage waiver and a statement that a damage waiver is optional.

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

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

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

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

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

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

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

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

39 (D) Except as otherwise provided in subparagraph (E), the fee
40 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) (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

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

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

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

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

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

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

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

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

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

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

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law

1 enforcement has already informed the rental company that the
2 vehicle is missing or has been stolen or abandoned.

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

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

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

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

37 (5) This subdivision does not prohibit a rental company from
38 equipping rental vehicles with electronic surveillance technology
39 that allows the company to provide roadside assistance, such as
40 towing, flat tire, or fuel services, at the request of the renter, if the

1 rental company does not use, access, or obtain information relating
2 to the renter's use of the rental vehicle that was obtained using
3 that technology except as necessary to provide the requested
4 roadside assistance.

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

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

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

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

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

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

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

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

34 (ii) An Internet Web site address, as well as a contact number
35 or address, where the enrollee can learn of changes to the rental
36 agreement or to the laws of this state governing rental agreements
37 since the effective date of the rental company's most recent
38 restatement of the rental agreement and distribution of that
39 restatement to its members.

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

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

14 The hanger shall provide the renter a box to initial if he or she
15 (not his or her employer) has previously accepted or declined the
16 collision damage waiver and that he or she now wishes to change
17 his or her decision to accept or decline the collision damage waiver,
18 as follows:

19 “☐ If I previously accepted the collision damage waiver, I
20 now decline it.

21 ☐ If I previously declined the collision damage waiver, I now
22 accept it.”

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

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

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

39 (u) The amendments made to this section during the 2001–02
40 Regular Session of the Legislature do not affect litigation pending

1 on or before January 1, 2003, alleging a violation of Section 22325
2 of the Business and Professions Code as it read at the time the
3 action was commenced.

4 (v) (1) When a rental company enters into a contract in the
5 State of California for rental of a vehicle to any renter who is not
6 a resident of this country, and as part of, or associated with, that
7 rental agreement supplemental liability insurance, as described in
8 subdivision (b) of Section 1758.85 of the Insurance Code, is
9 provided by the rental company for loss or damage caused to a
10 third party, the rental company shall do all of the following:

11 (A) Accept service of process of any complaint against the renter
12 related to any harm, loss, or damage related to the use or operation
13 of the rental vehicle. Process may be served by first-class mail,
14 return receipt requested, or by personal service by a registered
15 agent of service of process on file with the Secretary of State and
16 Consumer Services.

17 (B) Provide a copy of any summons and complaint served
18 pursuant to subparagraph (A) to the renter by first-class mail, return
19 receipt requested, or registered mail.

20 (2) Any plaintiff, or his or her representative, who elects to serve
21 the renter by delivering a copy of the summons and complaint to
22 the rental company pursuant to subparagraph (A) of paragraph (1)
23 shall agree to limit his or her recovery against the renter or the
24 rental company to the limits of the protection extended by the
25 supplemental liability insurance.

26 (3) Notwithstanding any other provision of law, the requirement
27 that the rental company accept service of process pursuant to
28 subparagraph (A) of paragraph (1) shall not create any duty,
29 obligation, or agency relationship other than that provided in
30 subparagraph (B) of paragraph (1).

31 ~~(4) The provisions of this subdivision shall become inoperative~~
32 ~~on December 31, 2013, unless another statute is enacted before~~
33 ~~December 31, 2013, that deletes or extends that date.~~

34 *(w) This section shall remain in effect only until January 1,*
35 *2016, and as of that date is repealed, unless a later enacted statute,*
36 *that is enacted before January 1, 2016, deletes or extends that*
37 *date.*

38 SEC. 2. Section 1936 is added to the Civil Code, to read:

39 1936. (a) For the purpose of this section, the following
40 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
13 driver.

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

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

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

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

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

39 (D) If a bond or other form of indebtedness is not used for
40 financing, or the bond or other form of indebtedness used for

1 *financing has been paid, the Oakland International Airport may*
2 *require the collection of a customer facility charge for a period*
3 *of up to 10 years from the imposition of the charge for the purposes*
4 *allowed by, and subject to the conditions imposed by, this section.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (B) *All discounts and price reductions or adjustments that are*
40 *or will be received by the rental company shall be subtracted from*

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

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

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

8 (6) The administrative charge described in paragraph (6) of
9 subdivision (b) shall not exceed (A) fifty dollars (\$50) if the total
10 estimated cost for parts and labor is more than one hundred dollars
11 (\$100) up to and including five hundred dollars (\$500), (B) one
12 hundred dollars (\$100) if the total estimated cost for parts and
13 labor exceeds five hundred dollars (\$500) up to and including one
14 thousand five hundred dollars (\$1,500), and (C) one hundred fifty
15 dollars (\$150) if the total estimated cost for parts and labor
16 exceeds one thousand five hundred dollars (\$1,500). An
17 administrative charge shall not be imposed if the total estimated
18 cost of parts and labor is one hundred dollars (\$100) or less.

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

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

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

39 (4) If insurance coverage exists under the renter's applicable
40 personal or business insurance policy and the coverage is

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

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

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

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

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

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

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

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

1 other than an authorized driver, or (E) operated outside the United
2 States.

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

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

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

1 damage waiver is optional. Further, the contract for these renters
2 shall include a clear and conspicuous written disclosure that the
3 damage waiver may be duplicative of coverage that the customer
4 maintains under his or her own policy of motor vehicle insurance.

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

9
10 “NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND
11 OPTIONAL DAMAGE WAIVER
12

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

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

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

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

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

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

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

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

39 (h) Notwithstanding any other provision of law, a rental
40 company may sell a damage waiver subject to the following rate

1 limitations for each full or partial 24-hour rental day for the
2 damage waiver:

3 (1) For rental vehicles that the rental company designates as
4 an “economy car,” “subcompact car,” “compact car,” or another
5 term having similar meaning when offered for rental, or another
6 vehicle having a manufacturer’s suggested retail price of nineteen
7 thousand dollars (\$19,000) or less, the rate shall not exceed nine
8 dollars (\$9).

9 (2) For rental vehicles that have a manufacturer’s suggested
10 retail price from nineteen thousand one dollars (\$19,001) to
11 thirty-four thousand nine hundred ninety-nine dollars (\$34,999),
12 inclusive, and that are also either vehicles of next year’s model,
13 or not older than the previous year’s model, the rate shall not
14 exceed fifteen dollars (\$15). For those rental vehicles older than
15 the previous year’s model-year, the rate shall not exceed nine
16 dollars (\$9).

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

22 (j) A rental company that disseminates in this state an
23 advertisement containing a rental rate shall include in that
24 advertisement a clearly readable statement of the charge for a
25 damage waiver and a statement that a damage waiver is optional.

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

29 (2) A rental company shall not engage in any unfair, deceptive,
30 or coercive conduct to induce a renter to purchase the damage
31 waiver, optional insurance, or another optional good or service,
32 including conduct such as, but not limited to, refusing to honor
33 the renter’s reservation, limiting the availability of vehicles,
34 requiring a deposit, or debiting or blocking the renter’s credit
35 card account for a sum equivalent to a deposit if the renter declines
36 to purchase the damage waiver, optional insurance, or another
37 optional good or service.

38 (l) (1) In the absence of express permission granted by the
39 renter subsequent to damage to, or loss of, the vehicle, a rental
40 company shall not seek to recover any portion of a claim arising

1 out of damage to, or loss of, the rented vehicle by processing a
2 credit card charge or causing a debit or block to be placed on the
3 renter's credit card account.

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

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

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

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

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

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

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

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

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

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

38 (2) Notwithstanding any other provision of law, including, but
39 not limited to, Part 1 (commencing with Section 6001) to Part 1.7
40 (commencing with Section 7280), inclusive, of Division 2 of the

1 Revenue and Taxation Code, the fees collected pursuant to this
2 section, or another law whereby a local agency operating an
3 airport requires a rental car company to collect a facility financing
4 fee from its customers, are not subject to sales, use, or transaction
5 taxes.

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

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

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

36 (4) If a rental company states a rental rate in print advertisement
37 or in a telephonic, in-person, or computer-transmitted quotation,
38 the rental company shall disclose clearly in that advertisement or
39 quotation the terms of mileage conditions relating to the advertised
40 or quoted rental rate, including, but not limited to, to the extent

1 applicable, the amount of mileage and gas charges, the number
2 of miles for which no charges will be imposed, and a description
3 of geographic driving limitations within the United States and
4 Canada.

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

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

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

1 a renter at a location other than the location where the rental
2 company normally carries on its business, the rental company
3 shall not charge the renter an amount for the rental for the period
4 after the renter notifies the rental company to pick up the vehicle.

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

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

12 (i) The renter or law enforcement has informed the rental
13 company that the vehicle is missing or has been stolen or
14 abandoned.

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

18 (iii) The rental company discovers the rental vehicle has been
19 stolen or abandoned, and, if stolen, it shall report the vehicle stolen
20 to law enforcement by filing a stolen vehicle report, unless law
21 enforcement has already informed the rental company that the
22 vehicle is missing or has been stolen or abandoned.

23 (B) If electronic surveillance technology is activated pursuant
24 to subparagraph (A), a rental company shall maintain a record,
25 in either electronic or written form, of information relevant to the
26 activation of that technology. That information shall include the
27 rental agreement, including the return date, and the date and time
28 the electronic surveillance technology was activated. The record
29 shall also include, if relevant, a record of written or other
30 communication with the renter, including communications
31 regarding extensions of the rental, police reports, or other written
32 communication with law enforcement officials. The record shall
33 be maintained for a period of at least 12 months from the time the
34 record is created and shall be made available upon the renter's
35 request. The rental company shall maintain and furnish
36 explanatory codes necessary to read the record. A rental company
37 shall not be required to maintain a record if electronic surveillance
38 technology is activated to recover a rental vehicle that is stolen
39 or missing at a time other than during a rental period.

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

3 (3) *This subdivision does not prohibit a rental company from*
4 *equipping rental vehicles with GPS-based technology that provides*
5 *navigation assistance to the occupants of the rental vehicle, if the*
6 *rental company does not use, access, or obtain information relating*
7 *to the renter's use of the rental vehicle that was obtained using*
8 *that technology, except for the purposes of discovering or repairing*
9 *a defect in the technology and the information may then be used*
10 *only for that purpose.*

11 (4) *This subdivision does not prohibit a rental company from*
12 *equipping rental vehicles with electronic surveillance technology*
13 *that allows for the remote locking or unlocking of the vehicle at*
14 *the request of the renter, if the rental company does not use, access,*
15 *or obtain information relating to the renter's use of the rental*
16 *vehicle that was obtained using that technology, except as*
17 *necessary to lock or unlock the vehicle.*

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

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

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

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

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

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

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

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

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

15 (ii) An Internet Web site address, as well as a contact number
16 or address, where the enrollee can learn of changes to the rental
17 agreement or to the laws of this state governing rental agreements
18 since the effective date of the rental company's most recent
19 restatement of the rental agreement and distribution of that
20 restatement to its members.

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

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

34 The hanger shall provide the renter a box to initial if he or she
35 (not his or her employer) has previously accepted or declined the
36 collision damage waiver and that he or she now wishes to change
37 his or her decision to accept or decline the collision damage
38 waiver, as follows:

39 "☐ If I previously accepted the collision damage waiver, I
40 now decline it.

1 □ If I previously declined the collision damage waiver, I now
2 accept it.”

3 The hanger shall also provide a box for the enrollee to indicate
4 whether this change applies to this rental transaction only or to
5 all future rental transactions. The hanger shall also notify the
6 renter that he or she may make that change, prior to leaving the
7 lot, by returning the form to an employee designated to receive
8 the form who is present at the lot where the renter takes possession
9 of the rental vehicle, to receive any change in the rental agreement
10 from the renter.

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

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

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

24 (v) This section shall become operative on January 1, 2016.