

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 901 (Calderon) – As Amended April 14, 2021

**SUBJECT:** Vehicles: rental services

**SUMMARY:** Would eliminate three provisions from the law regulating rental car companies. Specifically, **this bill would:**

- 1) Eliminate the statutory caps placed on damage waiver fees, along with the categories of different vehicles determining the amount of those fee caps.
- 2) Eliminate the prohibition on charging a fee for an additional driver in a rental car transaction.
- 3) Eliminate the requirement that certain disclosures are made to renters enrolled in a rental car company's membership program on hangers placed on the rearview mirror of the rental car, as specified.

**EXISTING LAW:**

- 1) Generally governs the transactions between a rental car company, also referred to as a rental company, and its customers, including, among other provisions, required disclosures by a rental company, mandatory and prohibited contract provisions for a vehicle rental agreement, and authorization for a rental company to collect specific types of fees and charges from its customers. (Civ. Code Sec. 1939.01 et seq.)
- 2) Authorizes a rental company to sell a damage waiver for each rental day and imposes rate limitations on damage waivers based on the category of vehicle as follows:
  - Not to exceed \$11/day for an economy car or compact car, or another term having similar meaning to the two smallest body-size categories of vehicles established by the Association of Car Rental Industry Systems Standards for North America (ACRISNA).
  - Not to exceed \$17/day for intermediate, standard, or full-size cars, or another term having similar meaning to these three body size categories of vehicles established by the ACRISNA.
  - For rental vehicles that are older than the previous year's model-year, the rate shall not exceed \$11/day. (Civ. Code Sec. 1939.09(d).)
- 3) Prohibits a rental company from charging fees or charges in addition to the rental rate, as specified. Specifically prohibits a rental company from charging a fee for authorized drivers in addition to the rental charge for an individual renter. (Civ. Code Sec. 1939.19 (a) and (d).)
- 4) Specifies certain disclosure requirements, including that a rental car company's disclosure requirements shall be satisfied for renters who are enrolled in the rental car company's membership program if certain conditions are met. (Civ. Code Sec. 1939.31.)

- 5) Pursuant to 4), above, provides that required damage waiver disclosures are satisfied if, at the commencement of each rental period, the rental company provides on the review mirror, a hanger on which a statement is printed indicating that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under their own vehicle insurance. The hanger shall provide the customer with the option to indicate a change in coverage if they, but not their employer, has previously accepted or declined the collision damage waiver, and to change that election, as specified. (Civ. Code Sec. 1939.31(a)(3).)

**FISCAL EFFECT:** None. This bill has been keyed nonfiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of this bill:** This bill seeks to modernize the laws regulating rental car companies by eliminating duplicative disclosures, eliminating certain fee caps, and allowing a rental car company to charge for additional authorized drivers. This bill is sponsored by the American Car Rental Association, Avis, Enterprise, and Hertz.

- 2) **Author's statement:** According to the author:

The COVID-19 pandemic has taken a devastating toll on the travel industry. Most notably, tourism spending in California dropped steeply, at only 41% of the 2019 amount—this is not expected to return to pre-pandemic levels until 2025. With nearly two-thirds of revenue coming from rentals at airports and a decrease in travel, the rental car industry is struggling to maintain operations.

Last year, Hertz declared bankruptcy and despite the ongoing effects of the pandemic, state law has numerous price caps and restrictions that are burdensome to the struggling industry.

Existing state laws need modernization to support the rental car industry, while maintaining vital consumer protections. AB 901 aims to take a balanced approach to remove specific requirements that do not improve the customer experience and stifle the rental car industry in our state.

- 3) **Disclosures hanging from rearview mirrors appear to have not been useful to rental car customers:** Existing law governs contracts between rental car companies and their customers in connection with the rental of passenger vehicles, and mandates certain disclosures. For renters enrolled in a membership program, existing law does not require the disclosures to be made each time the renter takes possession of a rental car, but only before the enrollee's first rental as a participant in the program, as specified. (Civ. Code Sec 1939.31(a)(1).)

Existing law, in addition to the initial disclosures mentioned above, requires at the commencement of each rental period, the rental car company to provide a hanger on the rearview mirror containing a statement notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under their own policy of motor vehicle insurance, and allowing the customer to change their election to purchase a damage waiver, as specified.

According to the sponsors, these hangers are very rarely used by customers and typically end up on the floor of the vehicle to later be discarded as trash. Further, rental car companies are already required by law to print out the customer's damage waiver elections (along with other specified information), place that information in a folder, and provide it to the customer at the beginning of any rental period. This required information must contain a statement indicating that the customer has a right to change these preferences. (Civ. Code Sec. 1339.31(a)(2).)

While this Committee typically errs on the side of providing consumers disclosures early and often, it has also frequently acknowledged the real concern of disclosure (and sometimes consent) fatigue. Presumably, rental car customers sign up for membership programs because they are frequent car renters and do not want to go through the process of the entire rental car transaction every time they need to rent a vehicle. By signing up for a membership, these customers have opted to simplify and streamline their customer experience by agreeing to the terms of the rental agreement only once. Being confronted with a hanger from the rearview mirror every time a subscriber enters a rental car informing them of their right to change their damage waiver election, is duplicative (that information was already disclosed prior to enrolling as a member and also provided in a folder at the beginning of each rental transaction), likely counter to the customer experience the enrollee would choose, and wasteful since that hanger will likely end up in the trash.

In support, the sponsors write, “[r]equiring a hang tag goes contrary to this State’s increasing environmentally conscious public policies. These paper tags are often tossed into the backs of vehicles without so much as a second glance from the customer and only contribute to waste when sufficient notice has already been provided.”

This bill, by eliminating the rearview mirror hanger requirement will not change the underlying right of the customer to change their damage waiver election, and will hopefully ensure that rental car transactions correspond more closely with the customer’s desired experience as a member of a rental car membership program.

- 4) **Allows rental car companies to charge a fee for authorized drivers:** In rental car transactions, an authorized driver is defined to mean: the renter; the renter’s spouse; the renter’s co-worker, as specified; or any person expressly listed on the rental contract as an authorized driver. (Civ. Code Sec. 1339.01(e).) California prohibits a rental car company for charging extra for an additional authorized driver. (Civ. Code Sec. 1939.19(d).) This bill would remove that prohibition.

The law governing rental car transactions anticipates that authorized drivers, in addition to the renter themselves, will drive a rental car. This is indicated by the various provisions assigning and limiting the liability of an authorized driver.<sup>1</sup> The author additionally points out that other states are not bound by the same prohibition as California, and charge an additional fee per day for authorized drivers.

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<sup>1</sup> See e.g., Civ. Code Sec. 1939.03(b) that, among other things, relieves the renter of liability if an authorized driver has possession of the ignition key, as specified; Civ. Code Sec. 1939.05(f) prohibiting a rental car company from recovering from an authorized driver an amount exceeding the renter’s liability, and Civ. Code Sec. 1909(b) providing that a damage waiver does not apply where an authorized driver has provided fraudulent information, as specified.

Despite these justifications, this Committee remains concerned that allowing rental car companies to charge an additional fee for authorized drivers would create a material change in the rate renters are paying per day, and should thus be disclosed in that daily rate advertised to customers. Further, given that spouses are typically covered under the same vehicle insurance policy, as are co-workers if they are renting a car in the scope of their employment, charging additional fees for spouses or co-workers will create an additional (and potentially excessive) cost for customers that is not reflected in the actual risk born by rental car companies. On the other hand, authorized drivers that are not covered under the same insurance plan as the renter will have likely different liability coverage than the renter, making it reasonable to charge an extra fee for those drivers.

To address these concerns and discrepancies, the author offers the following amendments which would 1) limit fees for authorized drivers to extend only to non-spouses and non-coworkers, and 2) cap the penalty for failing to pay an authorized driver fee to double the daily fee charged for authorized drivers.

Author's amendments:

On page 6, after line 36, insert: “(d) A rental company shall only charge a fee for an authorized driver who is not a spouse or co-worker of the renter.

(e) In the event that a rental company learns that an additional driver who was not previously authorized in the rental agreement has driven the rental car, the rental company shall only charge up to double the authorized driver fee.”

- 5) **Removes caps on fees renters can be charged for damage waivers:** A damage waiver is an optional product offered by most rental car companies to their customers. The damage waiver is a contractual agreement between a rental car company and a renter in which the company, in exchange for a fee, agrees to waive the renter's liability for damage to or loss of the car during the rental period. Damage waivers do not relieve a renter of all liability, however. For example, a renter may still be liable if the damage or loss results from the authorized driver's intentional, willful, wanton, or reckless conduct.

In 1988, in order to address concerns that rental car customers were being subjected to coercive damage waiver sales techniques at the rental counter, California enacted a \$9 cap on the amount that rental car companies could charge for the product. (*See* AB 3006, Connelly, Ch. 1523, Stats. 1988.) This cap applied to all rental vehicles. AB 3006 was sponsored by Attorney General John Van de Kamp and initially proposed to prohibit damage waivers entirely. At the time, the sponsor argued that damage waivers were a “complex and unfair scheme” that was “adhesive in nature, contrary to public policy, and violative of the common law allocation of lessors' and lessees' respective responsibilities.” As a result of a “carefully negotiated compromise” between the author, the Attorney General, consumer groups, and industry, the bill was amended to provide for a comprehensive scheme regulating damage waivers.

Since then, there have been several attempts, supported by the rental car industry, to either increase or eliminate entirely the cap on the amount that a rental car company may charge for a damage waiver.

In 1998, AB 2314 (Papan, 1998) would have repealed the \$9 damage waiver cap for the rental of any vehicle above the compact car class. That bill died in the Senate Judiciary Committee. The next year, AB 966 (Papan, 1999) would have, among other things, eliminated the \$9 cap and required a rental car company to clearly disclose the existence and amount of a damage waiver in any advertisement. That bill also died in the Senate Judiciary Committee. In 2001, AB 491 (Frommer, Ch. 661, Stats. 2001) provided that rental cars with an MSRP of \$19,000 or less were subject to the \$9 cap. That bill also increased the \$9 cap to \$15 for new rental cars with an MSRP of between \$19,001 and \$34,999. AB 491 also eliminated the cap for rental cars over \$35,000. In 2009, the introduced version of AB 833 (Perez) would have increased the damage waiver cap to \$22 for all rental cars. That provision was subsequently removed from the bill when the bill was pending in the Assembly Judiciary Committee. AB 1731 (Tran, 2010) would have kept the \$9 and \$15 per day caps intact, but would have changed which rental cars were subject to each rate limitation by deleting the MSRP references and providing instead that the damage waivers for rental cars in the rental company's lowest two rental classes would be capped at \$9 per day. For intermediate, standard, full, and premium class vehicles, rental car companies would have been permitted to charge \$15 per day. Two years later, AB 2379 (Huber, 2012) would have increased the \$9 and \$15 caps to \$11 and \$18, respectively, and would have automatically allowed those caps to adjust in line with the Consumer Price Index. That bill died in the Assembly Judiciary Committee. AB 1981 (Ch. 417, Stats. 2014) took a somewhat less comprehensive approach toward altering the damage waiver fee caps and calculation methodologies set by AB 3006 and AB 491. AB 1981 removed a vehicle's MSRP as a criterion for setting the damage waiver rate and instead would set up two rate classes capped at \$11 and \$17 per rental day based on the rental vehicle's classification in the 2014 Association of Car Rental Industry Systems Standards for North America.

This bill would now strike the classifications created by AB 1981 and additionally eliminate any caps on damage waiver fees imposed by statute. While this Committee appreciates the industry's efforts to find a fair solution to assessing appropriate amounts a rental car company can charge for damage waiver fees, there is a concern that eliminating fee caps altogether would give rental car companies unfettered discretion to charge consumers based on undefined factors, which may not be appropriate.

In response to these concerns, sponsors argue that the damage waiver fee caps were put in place largely to protect customers from high-pressure sales tactics at rental car counters. Now that the majority of rental car transactions happen online, and any elected damage waiver fee must be disclosed with the daily rate, the need for the damage waiver fee caps is arguably not as great as it once was. To this point, the sponsors write:

The original damage waiver cap was enacted to guard against abusive pressure sales practices at the counter when consumers would make reservations – common in 1987, but not today. This is an instance where technology has enhanced consumer protections and the law no longer reflects the actual realities of consumer practices. Today's consumer books their car in advance, online, from home or on their electronic devices from a plane. In other words, they make their reservations outside the presence of any employee, where it is much easier for the consumer to decline an option where they otherwise might find it difficult to do so face to face. The only necessary consumer protection necessitated here are of notice and consent and both are left intact by AB 901.

The author further notes that a number of the sponsors have commissioned a nation-wide study surveying damage waiver rates in other states to better understand the extent to which competition keeps rates stable. The study will look at a number of states have removed their damage waiver fee caps, and what those rates looked like before and after the caps were removed. In addition, the study will gather information related to trends in the cost of repair over the past decade, as well as how many rental car transactions are entered into in person versus online or over the phone. The study should be completed by June 1 of this year, and will hopefully yield useful information that will help the author, sponsors, and Legislature understand if additional parameters for damage waiver fees are necessary and can be implemented without artificially depressing the amounts rental car companies may charge customers. Accordingly, the author agreed to create a two-year sunset for Section 1 of this bill and commits to continuing to work with the Committee once the rental car study is complete.

Author's amendments:

Create three-year sunset for Section 1 of the bill, which eliminates damage waiver fee caps and categories.

- 6) **Prior legislation:** AB 2051 (O'Donnell, Ch. 183., Stats 2016) among other things, revised the definition of membership program to include the ability to select an alternate vehicle, required a rental rate advertisement to include a statement that additional charges may apply if an optional good or service, such as a damage waiver, is purchased.

AB 1981 (Brown, Ch. 417, Stats. 2014) *See* Comment 5.

AB 2379 (Huber, 2012) *See* Comment 5.

AB 1731 (Tran, 2010) *See* Comment 5.

AB 966 (Papan, 1998) *See* Comment 5.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Avis Budget Group  
CalTravel  
Enterprise Holdings  
Hertz

**Opposition**

None on file

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