

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 901 (Calderon)
Version: April 27, 2021
Hearing Date: June 29, 2021
Fiscal: No
Urgency: No
AWM

SUBJECT

Rental passenger vehicle transactions

DIGEST

This bill eliminates, for three years, California's cap on what rental car companies may charge for an optional damage waiver; eliminates California's prohibition on a rental car company charging for drivers in addition to the renter; and eliminates the requirement that, for vehicles rented by a member of the rental car company's membership program, the vehicle come with a tag on the rearview mirror stating that the renter may change their election to purchase or decline the optional damage waiver.

EXECUTIVE SUMMARY

Current law provides certain consumer protections for Californians and visitors renting cars from short-term rental car companies. California caps how much a rental car company may charge for optional damage waivers on small and midsize cars, at \$11 and \$17 per day, respectively; prohibits a rental car company from charging a fee for additional drivers beyond the person renting the vehicle; and, for rentals by members of the rental car company's membership program, requires a rental car company to place a notice on the rearview mirror of a vehicle explaining the optional damage waiver and giving the renter the option to opt in or opt out of purchasing the waiver. This bill eliminates the cap on optional damage waivers, with a three-year sunset on the elimination; would eliminate the prohibition on additional driver fees, except for the spouse or domestic partner of the renter or a coworker, as specified; and eliminate the rearview mirror notice requirement.

This bill is co-sponsored by Hertz, Avis, and Enterprise Holdings, and supported by Budget, the California Travel Association, and Payless Car Rental. The bill is opposed by the Consumer Federation of California (CFC) and Consumers for Auto Reliability and Safety (CARS).

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Generally governs the transactions between a rental car company, referred to in the statutes as a rental company, and its customers. (Civ. Code, div. 3, pt. 4, tit. 5, ch. 1.5, §§ 1939.01 et seq.)
- 2) For purposes of rental car transactions, defines the following relevant terms:
 - a) "Additional mandatory charges" is any separately stated charges that the rental company requires the renter to pay to hire or lease the vehicle for the period of time to which the rental rate applies, which are imposed by a governmental entity and specifically relate to the operation of a rental car business. (Civ. Code, § 1939.01(c).)
 - b) "Authorized driver" is the renter, the renter's spouse (if the spouse is a licensed driver and satisfies the rental company's minimum age requirement), and the renter's employer or coworker (if they are engaged in business activity with the renter, is a licensed driver, and satisfies the rental company's minimum age requirement). (Civ. Code, § 1939.01(e).)
 - c) "Damage waiver" is a rental company's agreement not to hold a rental liable for any or all portion of damage or loss to the rented vehicle, loss of use of the rented vehicle, or storage, impound, or administrative charges. (Civ. Code, § 1939.01(g).)
 - d) "Membership program" is a service offered by a rental company that permits customers to bypass the rental counter and go directly to the vehicle previously reserved or select an alternate vehicle, and meets all of the following requirements:
 - i. 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.
 - ii. 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.
 - iii. The renter may terminate enrollment at any time.
 - iv. The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be charged to the renter at any time for the next and future rentals.
 - v. An employee is available at the lot where the renter takes possession of the vehicle, to receive any change in the rental agreement from the renter. (Civ. Code, § 193.01(k).)
- 3) Authorizes a rental company to offer or provide a waiver for the cost of all damages to a rental vehicle for additional consideration, with certain exceptions for damages

resulting from specified criminal and/or unauthorized uses or rentals procured through the provision of fraudulent information. (Civ. Code, § 1939.09(a)-(b).)

- 4) Sets damage waiver rate limits for each full or partial 24-hour rental day for certain sized vehicles, as follows:
 - a) For vehicles designated as “economy” or “compact,” or another term similar to the two smallest body-size categories of vehicles established by the Association of Car Rental Industry System Standards for North America (ACRISSNA), the maximum waiver rate is \$11/day.
 - b) For vehicles designated as “intermediate,” “standard,” or “full-size,” or other terms similar to the next three body-size categories established by ACRISNA, the maximum waiver rate is \$17/day, except where the vehicle is older than the previous year’s model year, in which case the maximum waiver rate is \$11/day. (Civ. Code, § 1939.09(d).)

- 5) Requires a rental company, in connection with the offer or provision of a damage waiver, to clearly and conspicuously disclose specified information in the following locations:
 - a) In the rental contract or holder in which the contract is placed.
 - b) In signs posted at locations where the renter signs the rental contract.
 - c) For renters who are enrolled in the rental company’s membership program in a sign posted in a location clearly visible to those renters as they enter the location where their reserved rental vehicles are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved vehicle. (Civ. Code, § 1939.09(c).)

- 6) Provides that a rental company may satisfy its damage waiver disclosure requirements to renters enrolled in the rental company’s membership program if all of the following conditions are met:
 - a) Prior to the enrollee’s first rental as a participant in the program, the renter receives in writing all of the above damage waiver disclosures and a website address, and contact number or address, where the enrollee can learn of changes to the rental agreement or relevant state laws.
 - b) At the commencement of each rental period, the renter is provided, on the rental record or folder in which it is inserted, with a printed notice stating whether the enrollee previously selected or declined a damage waiver and that the enrollee has the right to change preferences.
 - c) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger containing a printed notice regarding the availability of a damage waiver and that it may be duplicative of the coverage the enrollee maintains under their own insurance policies. The hanger must include a box to initial to change their decision on the damage waiver, and to indicate whether the change in preference applies to the instant rental only or all future transactions.

- d) An employee is present at the required location to receive the change in preference reflected on the hanger. (Civ. Code, § 1939.31.)
- 7) Prohibits a rental company from charging a fee for authorized drivers in addition to the rental charge for an additional renter. (Civ. Code, § 1939.19(d).)

This bill:

- 1) Eliminates the statutory damage waiver limits for economy, compact, intermediate, standard, and full-sized vehicles. This provision includes a sunset of January 1, 2025, at which point the statutory waiver limits would be reinstated unless the Legislature takes further action.
- 2) Authorizes a rental company to charge a fee for additional authorized drivers of a rental vehicle, except for the renter's spouse or the renter's employee or coworker when on a business trip.
- 3) Authorizes a rental company to charge up to twice the authorized additional driver fee 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.
- 4) Eliminates the requirement that, for enrollees in the rental company's membership program, the rental company provide a hanger on the rearview mirror with the notice that the rental company's optional damage waiver might be duplicative of the enrollee's motor vehicle coverage and providing the enrollee with the option to change their preference regarding the damage waiver.

COMMENTS

1. Author's comment

According to the author:

AB 901 would modernize state laws governing the rental car industry. The COVID-19 has taken a devastating toll on the rental car industry, with a nearly two-thirds decline of revenue for airport rentals since the start of the pandemic. Unfortunately, current law imposes requirements on rental car companies that have not been revisited in decades. This bill is a balanced approach that gives the rental car industry some flexibility to recover from the pandemic without sacrificing important consumer protections.

2. This bill eliminates the current statutory cap on what rental car companies can charge for optional damage waivers

Current law sets a limit on how much a rental company may charge for its optional damage waiver: \$11 per day for small and compact cars, as well as intermediate, standard, and full-sized cars more than two model years old; and \$17 per day for newer intermediate, standard, and full-sized cars.¹ The cap on optional damage waivers was last increased in 2014.² These caps were put in place due to concerns that rental companies were pushing optional damage waivers – which are often unnecessary because the renter’s car insurance or credit card will cover any such damage – on uninformed consumers who were unaware of the waivers’ redundancy.³ Optional damage waivers “can routinely double the cost of [a] rental.”⁴

California is one of only three states with a statutory cap on optional damage waivers. New York has caps that are even more stringent than California, setting them at \$9 per day and \$12 per day for vehicles with suggested retail prices of under and over \$30,000, respectively.⁵ Nevada’s caps are higher: \$22 per day for vehicles with a suggested retail price of up to \$60,000, and \$150 per day for vehicles with a higher retail price.⁶

Rather than increase the statutory cap on rental companies’ optional damage waivers, this bill removes the limit entirely. The bill includes a three-year sunset provision that would cause the statutory caps to retake effect on January 1, 2025. According to the rental car companies supporting the bill, the cap on optional damage waiver fees is no longer necessary because consumers mostly book cars in advance, online, where it is easier to decline an option that they might have found difficult to decline in a face-to-face transaction. The author states that eliminating the cap will help companies recover from the economic pressures of the COVID-19 pandemic.

The CFC, which opposes the bill, has proposed amending the bill to increase the optional damage waiver cap and add a mechanism by which the cap would automatically increase with inflation at regular intervals. Specifically, the CFC proposes increasing the small and older-model-midsize vehicle cap to \$16.50 per day and the regular-midsize vehicle cap to \$25.50 per day, and permitting a rental company to adjust the per-day cap every three years to reflect the percentage change in the California Consumer Price Index.

¹ Civ. Code, § 1939.09(d).

² AB 1981 (Brown, Ch. 417, Stats. 2014).

³ See, e.g., Elliott, *For the last time: Car rental coverage is not mandatory*, USA Today (Sept 11, 2016), <https://www.usatoday.com/story/travel/advice/2016/09/11/car-rental-insurance/90117044/> [last visited Jun. 25, 2021] (“Optional collision-damage waiver represent a ‘significant’ source of income for rental car companies, although no one except the car companies knows how significant”).

⁴ *Ibid.*

⁵ NY CLS Gen. Bus. § 396-z(2).

⁶ Nev. Rev. Stat., § 482.31565(2).

3. This bill allows rental car companies to charge an extra driver fee for drivers other than the renter, except for the renter's spouse or coworker on a business trip

California is the only state that prohibits rental car companies from charging a fee for drivers in addition to the renter.⁷ This bill would eliminate that general prohibition and instead allow a rental car company to charge a fee for an additional driver, unless the driver is the renter's spouse or a coworker and they are engaged in business activity with the driver. For purposes of the spousal and coworker exemptions, a spouse includes a legal domestic partner,⁸ and both the spouse and the coworker would have to satisfy the rental car company's minimum age requirement.⁹ For the remainder of drivers, a rental car company could charge an unspecified fee, and charge a penalty of up to twice the extra driver fee if the company discovers an unauthorized driver drove the car. The supporters of the bill state that removing the prohibition on the additional driver fee will allow them to charge a fee consistent with other states.

Bill opponent CFC has proposed amending the additional driver fee provisions in two ways. First, they propose expanding the class of persons who may drive without an extra fee to include the renter's child, grandparent, or person for whom the renter is a legal guardian, if that person is a licensed driver and satisfies the rental company's minimum age requirement. Second, CFC proposes limiting the penalty for failing to pay for an additional driver to the amount of the authorized driver fee, not twice the fee as currently permitted in the bill.

4. This bill eliminates the requirement that, for members of a car rental company's membership program, the rental company put a notice on the rearview mirror providing information about electing or declining the optional damage waiver

Current law imposes particular notice requirements relating to the optional damage waiver for members of a rental car company's membership program, i.e., renters who are able to skip the rental desk and choose a vehicle from the lot and drive away.¹⁰ Specifically, the rental car company must (1) disclose the terms of the optional damage waiver to the member in writing in advance of the rental, (2) provide a website address and contact number where the member can learn of any changes to the rental car company's rental agreements, (3) provide, at the commencement of each rental, a printed notice stating whether the renter has previously selected or declined the optional damage waiver and that the member may alter their selection, and (4) provide a notice on the rearview mirror of the vehicle, at the commencement of each rental, stating whether the member has stated or declined the optional damage waiver,

⁷ E.g., Weinberg, *Share the Wheel Without Paying for Additional Drivers*, FoxNews.com (last updated Nov. 5, 2015), <https://www.foxnews.com/travel/share-the-wheel-without-paying-for-additional-drivers> [last visited Jun. 25, 2021].

⁸ Civ. Code, § 14.

⁹ See Civ. Code, § 1939.01.

¹⁰ See *id.*, § 193.01(k).

clarifying that the member may alter their selection, and providing a box for the member to check to alter their selection and give it to a rental car company employee before leaving the lot.¹¹ These member-specific provisions were enacted on the basis that rental car membership program members are frequent renters who are already familiar with terms such as the optional damage waiver, and therefore do not need in-person notifications about the optional damage waiver.

This bill would eliminate requirement (4), the notice on the rearview mirror. According to the sponsors and rental car companies supporting the bill, the tag is contrary to the state's environmentally conscious public policies and are generally ignored by renters, and are therefore not warranted.

5. Arguments in support

According to a coalition of bill sponsors Hertz, Avis, and Enterprise Holdings, and bill supporters Budget, the California Travel Association, and Payless Car Rental:

[This bill would] modernize various provisions of the rental car law, including provisions relating to hanger tags, charges for additional drivers, and damage waivers. Many of these provisions have not been updated in numerous years, and neither reflect rising costs nor the current public policy values and needs of this State.

A prime example of this is an outdated provision relating to the optional damage product that customers can purchase to cover any damage to a rented vehicle. While many of our companies previously shouldered the cost differentials when offering optional damage waivers to consumers, the travel industry has suffered significant financial losses during the COVID-19 global pandemic making this much less feasible moving forward. Just last year, our industry saw a major company declare bankruptcy. But the issue with damage waiver caps goes beyond the increased cost of parts and labor. The actual circumstances necessitating – or even, some might say, justifying – caps to protect consumers has dissipated due to the Internet.

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 might otherwise find it difficult

¹¹ *Id.*, § 1931.31.

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.

6. Arguments in opposition

According to bill opponents Consumer Federation of California and CARS:

California has strong laws in place that protect the financial interests of rental customers. Current law puts limitations on how much car rental companies can charge for their damage waivers and prevents companies for charging more for additional drivers. These protections are necessary so consumers know the total price of the car they are renting and do not get overcharged.

AB 901 removes some of these important protections for consumers. For example, AB 901 attempts to remove the cap on fees for damage waivers. While the proponents argue that more individuals now book and pay online, this completely ignores the fact that many individuals still rent in person, and this change could subject all renters to higher fees based on the rental company's unfettered discretion.

AB 901 also removes the prohibition on charging an additional fee for authorized drivers. While the bill does still prohibit a fee for an additional authorized driver that is a renter's spouse, employer, or coworker, it does not provide this same protection for other authorized drivers. The prohibition on these fees is designed to allow consumers to easily know the full rate they will be paying for their rental. Without this protection, consumers could be misled by advertisements that do not disclose the full rate they will be paying. Even worse, AB 901 allows car rental companies to charge up to twice the authorized driver fee if they discover that an unauthorized driver has driven the vehicle. This potentially penalizes renters who are dealing with unforeseen circumstances. Why should a renter be charged more if a friend had to drive them to the hospital in the rental car as a result of an emergency?

SUPPORT

Avis (co-sponsor)

Enterprise (co-sponsor)

Hertz (co-sponsor)

Budget

California Travel Association

Payless Car Rental

OPPOSITION

Consumer Federation of California
Consumers for Auto Reliability and Safety

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1185 (O'Donnell, 2017) would have permitted a rental company to comply with its obligations to post signage using an electronic sign. AB 1185 died in the Senate Judiciary Committee.

AB 2051 (O'Donnell, Ch. 183, Stats. 2016) recast and reorganized the statutes governing transactions between a rental car company and its customers, added requirements for rental company membership programs, and added disclosure requirements relating to mandatory charges added on top of rates.

AB 1981 (Brown, Ch. 417, Stats. 2014) increased the maximum daily damage waiver limit for rental cars to their current limits.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)
