106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 106–774
Part 1

RENTAL FAIRNESS ACT OF 2000

JULY 20, 2000.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1954]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1954) to regulate motor vehicle insurance activities to protect against retroactive regulatory and legal action and to create fairness in ultimate insurer laws and vicarious liability standards, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

79–006

AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.— This Act may be cited as the "Rental Fairness Act of 2000".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

The Congress finds that—

(1) The vast majority of State statutes and common law follow the generally accepted principle of law that a party should be held liable only for harm that the party could guard against.

(2) A small number of State common laws and statutes still do not recognize this accepted principle of law, and continue to subject companies that rent or lease motor vehicles to vicarious liability for the negligence of their rental customers in operating the motor vehicle simply because of the company's ownership, even where the rental company has not been negligent in any way and the motor vehicle operated properly.

(3) An even smaller minority of State laws impose unlimited liability on the companies for the tortious acts of their customers, without regard to fault.

(4) These small number of vicarious liability laws pose a significant competitive barrier to entry for smaller companies attempting to compete in these markets, in contravention of the fundamental legal principle of fairness prohibiting liability without fault.

(5) Furthermore, because rented or leased motor vehicles are frequently driven across State lines, these small number of vicarious liability laws impose a disproportionate and undue burden on interstate commerce by increasing rental rates for all customers across the nation.

(6) Due to high liability costs and unwarranted litigation costs, consumers face higher vehicle rental costs in all States because of the increased insurance expenses required to provide coverage in the interstate insurance and rental markets.

(7) Rental fairness will lessen burdens on interstate commerce and decrease litigiousness.

(8) Legislation to address these concerns is an appropriate exercise of the powers of Congress under clauses 3, 9, and 18 of section 8 of article I of the Constitution of the United States, and the 14th amendment to the Constitution of the United States.

SEC. 3. DEFINITIONS.

For the purpose of this Act—

(1) HARM.—The term "harm" means—

(A) any injury to or damage suffered by a person;

(B) any illness, disease, or death of that person resulting from that injury or damage; and

(C) any loss to that person or any other person resulting from that injury or damage.

(2) MOTOR VEHICLE.—The term "motor vehicle" shall have the meaning given to this term under section 13102(14) of title 49, United States Code.

(3) OWNER.—The term "owner" means a person who is—

(A) a record or beneficial owner or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessee or bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

(4) PERSON.— The term "person" means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(5) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam,

American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, commonwealth, territory, or possession.

SEC. 4. GENERAL FAIRNESS AND RESPONSIBILITY RULE.

(a) IN GENERAL.—No owner engaged in the trade or business of renting or leasing motor vehicles may be held liable for harm caused by a person to himself or herself, to another person, or to property, which results or arises from that person's use, operation, or possession of a rented or leased motor vehicle, by reason of being the owner of such motor vehicle, except to the extent of any required financial responsibility statute.

(b) CONSTRUCTION.—Subsection (a) shall not apply if such owner does not maintain the required limits of financial responsibility for such vehicle, as required by State law.

SEC. 5. PRESERVATION OF STATE LAW.

(a) STATE FINANCIAL RESPONSIBILITY REQUIREMENTS.—Nothing in this Act shall relieve any owner engaged in the trade or business of renting or leasing motor vehicles from the obligation to comply with a State's minimum financial responsibility, motor vehicle, or insurance statutes or regulations imposed by that State for the privilege of registering and operating a motor vehicle within that State.

(b) PRIORITY OF PAYMENTS.—Nothing in this Act shall preempt any State law regarding priority of payment requirements or whether coverages provided under such statutes or regulations are primary or secondary.

SEC. 6. PRESERVATION OF LIABILITY BASED ON NEGLIGENCE.

Nothing in this Act shall preempt the ability of the States to impose liability based on acts of negligence or criminal wrongdoing.

SEC. 7. APPLICABILITY AND EFFECTIVE DATE.

Notwithstanding any other provision of law, this Act shall apply with respect to any action commenced on or after the date of enactment of this Act without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

PURPOSE AND SUMMARY

The purpose of H.R. 1954, the Rental Fairness Act of 2000 is to protect consumers and businesses from the imposition of vicarious liability to motor vehicle rentals in different States. The Rental Fairness Act establishes the simple legal rule for rental vehicles that the party at fault should bear the responsibility for any liability incurred. Where a party is not negligent, or not at fault for an action, then that party should not be held liable for another's harm. Specifically, the bill provides that vehicle rental companies will not be held liable for the negligent or intentional acts of others solely because of ownership of the vehicle. State laws other than those imposing vicarious liability are not affected. Companies that own or operate motor vehicles within a State are still fully subject to that State's financial responsibility laws and are explicitly subject to any claims for negligence or criminal wrongdoing. The legislation thus does not in any way limit actions against a rental or leasing company for their wrongdoing or malfeasance. It further allows all current recovery rights against such companies (including those based solely on ownership), but only up to the coverage amounts required under a State's financial responsibility insurance laws, with compensation procured through the State's insurance regime with all accompanying consumer protections and regulations.

BACKGROUND AND NEED FOR LEGISLATION

Vicarious liability is liability for the tort or wrong of another person. It is an exception to the general legal rule that each person is accountable for his own legal fault, but in the absence of such fault is not responsible for the actions of others. In a small minor-

ity of States, companies that rent or lease motor vehicles are held "vicariously" liable for the negligence of their renters or lessees. This means that in a few States, a court can impose unlimited liability on a car rental company for the actions of the renter, even if the car operated perfectly and the company was not at fault for an accident in any way. For example, Ms. Sharon Faulkner, a former small business owner of Capitaland Rental Car, testified at the October 20, 1999 hearing of the Subcommittee on Finance and Hazardous Materials that she decided to sell her company and lay off all her employees after a vicarious liability lawsuit. A Capitaland customer rented a car and loaned it to the customer's son (an unauthorized driver). The son, without his mother's knowledge, drove the car into New York City. He struck a pedestrian, who then sued the rental company for "enormous sums" of pain and suffering damages. Even though Ms. Faulkner's small business was in no way responsible for or at fault in the accident, she was concerned that her company faced potential bankruptcy because the accident occurred in one of the few States which imposes unlimited vicarious liability—liability without fault—on rental companies.

These small number of vicarious liability laws pose a significant competitive barrier to entry for smaller companies attempting to compete in these markets who cannot afford insurance coverage for potentially unlimited liability. This results in less competition and less access for consumers. Further, because rented or leased motor vehicles are frequently driven across State lines, these small number of vicarious liability laws impose a disproportionate and undue burden on interstate commerce by increasing rental rates for all customers across the Nation. Due to high liability costs and unwarranted litigation costs, consumers face higher vehicle rental costs in all States because of the increased insurance expenses required to provide coverage in the interstate insurance and rental markets. Enactment of the Rental Fairness Act of 2000 will lessen burdens on interstate commerce and decrease litigiousness.

This theory of vicarious liability for motor vehicle rentals has its foundation in the last century before the advent of the automobile, when a town's livery stable was deemed to know the disposition of a horse it was lending. The livery shop's owner was held liable for the disposition of the horse which was presumed to cause any accidents. However, the vast majority of States have agreed that motor vehicles do not generally have dispositions which are likely to cause accidents. If a car is defective in any way, the rental company can be held liable for negligence. However, if the car functioned properly, but the accident was caused by the renter or someone taking the car from the renter through no fault whatsoever of the rental company, then almost all States have agreed that vicarious liability should either not be applied, or should be capped at the coverage level of the State's minimum financial responsibility insurance laws.

To provide appropriate levels of protection for people injured by motor vehicles, every State has established minimum financial responsibility laws. These laws establish a minimum level of insurance coverage that must be maintained on every vehicle. In most states the financial responsibility laws operate to cover the liability of any driver who operates a car. Some states have broader no-fault

insurance laws which do not require liability on the part of the driver to trigger coverage. Only five States and the District of Columbia have not yet replaced their unlimited vicarious liability laws. (See, Conn. Gen. Stat. Ann. 14–154a; D.C. Code Ann. 40–408; Iowa Code 321.493; Me. Rev. Stat. Ann. 29–A 1652–53; N.Y. Veh. & Traf. 388; R.I. Gen. Laws 31–33–6, 31–33–7). A few States have restricted the application of their vicarious liability laws only to those cases when the rental or leasing company does not maintain the required insurance coverage under the State's minimum financial responsibility laws, (See, Nev. Rev. Stat. 482.305; Ariz. Rev. Stat. 28–324; Neb. Stat. 25–21,239 (applying only to trucks)), or have capped the liability of their companies at the same level as the financial responsibility laws (See, Cal. Veh. Code 17150–51; Idaho Code 49–2417; Mich. Comp. Laws Ann. 257.401). These latter two groups of States would not be affected by the Rental Fairness Act, as it similarly conditions the protection against vicarious liability on maintenance of the required insurance coverages and allows recovery up to the level of such minimum financial responsibility levels. Two States have recently enacted laws which begin to limit the application of vicarious liability, but with liability exposures set at a higher level than the preexisting financial responsibility requirements (See, Minn. Stat.170.54; Fla. Stat. 324.021).

The mandatory financial responsibility laws represent decisions by the States as to the appropriate levels of liability for which its resident motor vehicle owners should be required to insure. Unfortunately, no State is able to protect its residents from being subjected to unlimited liability, as rental cars are frequently driven through multiple states, or renters may get into accidents with plaintiffs who reside in one of the remaining vicarious liability states. For example, the Commonwealth of Virginia has no way of protecting its companies against the vicarious liability laws of the District of Columbia if someone drives a rental car into the District or hits a District resident.

Vicarious liability cases are estimated to cost more than $100 million annually in settlements and jury verdicts alone, not including expenses for additional insurance costs and attorneys fees (American Car Rental Association, study of vicarious liability costs, 1999). These costs are passed through to consumers in all States, through increased rental rates. As one of the leading historical jurists in the development of tort law, Justice Benjamin Cardozo, stated, "[t]he whole doctrine [of vicarious liability] is foolish, antiquated, unjust, and ought to be abolished. But I suppose we will leave that change to the clumsy process of legislation."

HEARINGS

The Subcommittee on Finance and Hazardous Materials held a hearing on H.R. 1954, the Rental Fairness Act of 1999 on October 20, 1999. The Subcommittee received testimony from: Ms. Sharon Faulkner, Premier Car Rental Corporation; Mr. Raymond T. Wagner, Jr., Enterprise Rent-A-Car Corporation; and Mr. Richard H. Middleton, Jr., Association of Trial Lawyers of America.

COMMITTEE CONSIDERATION

On November 2, 1999, the Subcommittee on Finance and Hazardous Materials met in open markup session and approved H.R.

1954 for Full Committee consideration, without amendment, by a record vote of 12 yeas to 11 nays. The Full Commerce Committee met in open markup session on March 15, 2000, and ordered H.R. 1954 reported to the House with a favorable recommendation, amended, by a record vote of 26 yeas and 23 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following amendments were agreed to by voice vote:

An Amendment in the Nature of a Substitute by Mr. Bryant, No. 1, striking title I of the underlying bill, changing the definition of the term "harm," expanding the findings and purposes contained in title II, improving the "General Fairness and Responsibility Rule," explicitly preserving the ability to file actions under State law against automobile owners for negligence or criminal wrongdoing, and preserving State law regarding the priority of payment for insurers.

An Amendment to the Amendment in the Nature of a Substitute by Mr. Deal, No. 1b, clarifying that an owner engaged in the trade or business of renting or leasing motor vehicles may not held liable for harm caused by a person's use, operation, or possession of a rented or leased motor vehicle, except to the extent of any required financial responsibility statute.

The Committee took record votes on the following amendment and motion. The names of Members voting for and against follow:

An Amendment to the Amendment in the Nature of a Substitute by Mr. Engel, No. 1a, providing an exception to the General Fairness and Responsibility Rule for pedestrians or other persons who were not the driver or passenger of the rented motor vehicle involved in the incident, was not agreed to by a record vote of 16 yeas and 22 nays (Record Vote No. 24).

A motion by Mr. Bliley to order H.R. 1954 reported to the House, as amended, with a favorable recommendation was agreed to by a record vote of 26 yeas and 23 nays (Record Vote No. 25).

Committee on Commerce
One Hundred Sixth Congress

Record Vote No. 24

Bill: H.R. 1954, the Rental Fairness Act of 2000
Amendment or Motion: Amendment Offered by Mr. Engel, #1a
Disposition: NOT AGREED TO, by a record vote of 16 yeas and 22 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley		X		Mr. Dingell	X		
Mr. Tauzin		X		Mr. Waxman	X		
Mr. Oxley		X		Mr. Markey			
Mr. Bilirakis		X		Mr. Hall			
Mr. Barton				Mr. Boucher			
Mr. Upton		X		Mr. Towns	X		
Mr. Stearns		X		Mr. Pallone	X		
Mr. Gillmor		X		Mr. Brown	X		
Mr. Greenwood		X		Mr. Gordon			
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal		X		Mr. Rush			
Mr. Largent				Mrs. Eshoo	X		
Mr. Burr		X		Mr. Klink			
Mr. Bilbray		X		Mr. Stupak	X		
Mr. Whitfield		X		Mr. Engel	X		
Mr. Ganske		X		Mr. Sawyer	X		
Mr. Norwood				Mr. Wynn	X		
Mr. Coburn				Mr. Green	X		
Mr. Lazio		X		Mrs. McCarthy			
Mrs. Cubin				Mr. Strickland	X		
Mr. Rogan		X		Mrs. DeGette	X		
Mr. Shimkus		X		Mr. Barrett	X		
Mrs. Wilson		X		Mr. Luther	X		
Mr. Shadegg				Mrs. Capps	X		
Mr. Pickering		X					
Mr. Fossella							
Mr. Blunt							
Mr. Bryant		X					
Mr. Ehrlich		X					

Committee on Commerce
One Hundred Sixth Congress

Record Vote No. 25

Bill: H.R. 1954, the Rental Fairness Act of 2000
Amendment or Motion: Motion by Mr. Bliley, to order the bill reported to the House with a favorable recommendation.
Disposition: AGREED TO, by a record vote of 26 yeas and 23 nays

Representative	Yea	Nay	Pres	Representative	Yea	Nay	Pres
Mr. Bliley	X			Mr. Dingell		X	
Mr. Tauzin	X			Mr. Waxman		X	
Mr. Oxley	X			Mr. Markey		X	
Mr. Bilirakis	X			Mr. Hall		X	
Mr. Barton	X			Mr. Boucher			
Mr. Upton	X			Mr. Towns		X	
Mr. Stearns	X			Mr. Pallone		X	
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood	X			Mr. Gordon		X	
Mr. Cox	X			Mr. Deutsch		X	
Mr. Deal	X			Mr. Rush			
Mr. Largent	X			Mrs. Eshoo		X	
Mr. Burr	X			Mr. Klink			
Mr. Bilbray	X			Mr. Stupak		X	
Mr. Whitfield	X			Mr. Engel		X	
Mr. Ganske		X		Mr. Sawyer		X	
Mr. Norwood	X			Mr. Wynn		X	
Mr. Coburn	X			Mr. Green		X	
Mr. Lazio		X		Mrs. McCarthy		X	
Mrs. Cubin	X			Mr. Strickland		X	
Mr. Rogan	X			Mrs. DeGette		X	
Mr. Shimkus	X			Mr. Barrett		X	
Mrs. Wilson	X			Mr. Luther		X	
Mr. Shadegg	X			Mrs. Capps		X	
Mr. Pickering	X						
Mr. Fossella							
Mr. Blunt	X						
Mr. Bryant	X						
Mr. Ehrlich	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1954, The Rental Fairness Act of 2000, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 23, 2000.

Hon. THOMAS BLILEY,
Chairman, Committee on Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1954, the Rental Fairness Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1954—Rental Fairness Act of 1999

CBO estimates that enacting H.R. 1954 would have no impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1954 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would not be significant and thus would not exceed the threshold established in that act ($55 million in 2000, adjusted an-

nually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

H.R. 1954 would establish that companies that rent or lease cars are not subject to unlimited liability under state law for damages caused by the operator of a rented or leased vehicle. Such companies would still be responsible for damages to the extent of the minimum insurance or financial responsibility required by state law.

The bill would preempt the liability laws of as many as seven states and the District of Columbia, and thus would be a mandate as defined in UMRA. The bill would no longer allow these states and the District to impose unlimited liability on rental and leasing car companies and would cap the damages for which such companies are responsible to the minimum financial or insurance requirements set by state law. Because the bill would not require state to take any specific action, however, it would impose no significant costs on state, local, or tribal governments.

The CBO staff contact is Lisa Cash Driskill. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title and table of contents

Section 1 designates the short title of the Act as the "Rental Fairness Act of 2000" and provides a table of contents for the Act.

Section 2. Findings and purposes

Section 2 sets forth the findings and purposes for the Act.

Section 3. Definitions

Section 3 defines the terms used in the bill.

Section 4. General Fairness and Responsibility Rule

Section 4 establishes the general rule eliminating vicarious liability for vehicle rental and leasing companies. This provision does not relieve rental or leasing companies from any liability for negligence, nor does it relieve them of any obligation to maintain and apply minimum insurance coverages as required under any State financial responsibility statute. State financial responsibility statutes require motor vehicle owners to maintain insurance coverage for anyone who drives the vehicle, providing a minimum level of available compensation for any accident caused by such driver (some States also require no-fault insurance coverage, which would similarly not be affected by this Act). This section eliminates the current practice in some States of requiring that injured parties go directly to court with the surrounding legal expenses, often with significant or unlimited liability imposed on an innocent vehicle renter or lessor merely because of ownership of the vehicle. Instead, it allows the States to focus on establishing the appropriate level of coverage and recompense through their insurance regimes, with all of the accompanying consumer protections provided by the States' insurance regulations. While routing compensation claims through the State insurance regimes, this section makes clear that any compensation or coverage available to injured parties in the State before this legislation will continue to apply, but only up to the amounts specified in any State law establishing minimum levels of financial responsibility for motor vehicle injuries and liabilities. Subsection (b) of section 4 provides that a State's vicarious liability laws will continue to fully apply without modification if a motor vehicle owner does not maintain the levels of insurance coverage or similar financial responsibility required under the applicable State law.

Section 5. Preservation of State law

Section 5 clarifies that State laws other than those imposing vicarious liability are not affected. Specifically, subsection (a) clarifies that a person who owns or operates a motor vehicle within a State is still fully subject to the State's financial responsibility laws. Subsection (b) clarifies that this bill does not in any way effect the determination of which insurance coverages are primary or secondary, or any other determination of priority of payments, in any injury or accident involving a motor vehicle.

Section 6. Preservation of liability based on negligence

Section 6 clarifies that the bill does not affect any claims against a motor vehicle renter or lessor where such renter or lessor has itself committed an act of negligence or criminal wrongdoing. This clarifies that the Act is not intended in any way to protect the renter or lessor when the renter or lessor has done something wrong, but only to relieve the renter or lessor from vicarious liability for the wrongdoing of other parties beyond the requirements of the States' financial responsibility requirements imposing minimum insurance coverages.

Section 7. Applicability and effective date

Section 7 establishes that the Act applies to any legal action or insurance claim made on or after the date of enactment of the Act, regardless of when any harm occurred.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

MINORITY VIEWS

We strongly oppose H.R. 1954, the Rental Fairness Act of 1999. At Committee markup, all Democrats present were joined by two Republican members of the Committee in voting "No" on reporting this legislation to the House.

Despite its title, there is nothing fair about this legislation. Instead, H.R. 1954 is special interest legislation designed to provide unjustified liability protection for the highly profitable, $14.6 billion a year, car rental industry. If the driver of the rental vehicle cannot pay, H.R. 1954 would force innocent motorists and pedestrians to assume responsibility for their own injuries and damages, even if these innocent victims were guilty of nothing more than being in the wrong place at the wrong time.

It is certainly not the case that the car rental industry is incapable of properly insuring itself for claims brought against it. "Vicarious liability" costs the car rental industry less than one penny of every dollar of revenue. In short, this legislation is without merit, without good purpose, and deserves to be resoundingly defeated if brought to the floor of the House.

The proponents of H.R. 1954 intend that the legislation preempt "vicarious liability" laws in 11 states (Florida, New York, California, Iowa, Michigan, Minnesota, Nevada, Idaho, Maine, Connecticut, and Rhode Island) and the District of Columbia that are designed to protect innocent victims from the negligent acts of those who drive rented or leased vehicles. Without these state liability laws, a child innocently standing on a street corner may face a lifetime of unmet medical and other needs, if he or she is hit by an uninsured driver operating a rented or leased vehicle.

This legislation is nothing more than a liability "bath" for large, highly profitable companies that have freely chosen to engage in the business of renting or leasing motor vehicles. If H.R. 1954 were to become law, motor vehicle rental or leasing firms could be virtually certain that, despite the requirements of state law, they would not have to pay claims when their vehicles cause injury and damages. While many of our Republican colleagues on the Committee may think it is fair to shield such companies from what is nothing more than a normal cost of doing business, we believe the liability exemption contained in H.R. 1954 would produce a callously unfair and wholly unconscionable result.

Instead of a rental or leasing firm being held accountable for accidents caused by the vehicles it puts on the road, this legislation would hold liable the victims—innocent children and other bystanders—for injuries caused by negligent, uninsured drivers of rented or leased vehicles. Congressman Engel offered an amendment to prevent rental or leasing firms from escaping liability when their vehicles injure innocent bystanders. Congressman Eng-

el's amendment was defeated despite support from almost all of the Democratic Members of the Committee present.

This is the way H.R. 1954 would work. Someone comes into a car rental agency. That person could be a drug user of an alcoholic. That person could also have a prodigiously bad and irresponsible driving record, and in fact, may have caused vehicular accidents that resulted in serious injury or death. Even though federal law [18 USC 2721(6)(3)] allows car rental firms to do an on-line background check of rental car applicants, these background checks are not required and are often not done.

So, the car rental agency goes ahead and rents the car to the applicant. That person then takes the rented car and, under the influence of alcohol or narcotics, runs head on into a mother driving a carload of children to school. Some of the victims are killed; others are seriously injured, possibly requiring a lifetime of treatment and care.

Under H.R. 1954, the rental company could escape all liability for the injuries caused by the vehicle that it put on the road, even if the driver of the rental car may be totally fiscally irresponsible, uninsured, and have no means whatsoever to address the problems of the people that he has killed or hurt. That driver may also be in the position of being bankrupt.

The 11 states and the District of Columbia that have these "vicarious liability" laws have said they want to protect their citizens against this kind of situation. They have chosen to do that by holding the rental or leasing firm liable. Whether you agree or disagree with the method of accountability these states have selected, does it make any kind of sense at all for this Congress to arbitrarily, and without consultation, say that these states cannot protect their citizens against this kind of injury and loss?

We say this effort to remove state protections is not only wrong; it is unfair, and totally indefensible. Who is going to pay for the loss, the medical care and treatment, that this driver causes? H.R. 1954 does not provide any answer at all to this basic question. If the driver who causes the accident cannot pay, H.R. 1954 basically says it is the innocent victim's "tough luck". Effectively, the proponents of this bill are saying they do not care if anyone pays for the care a kid will need who becomes paralyzed as a result of such an accident. They make is very clear that it's simply not their concern. Instead, their only concern is in making sure that the rental car company does not have to pay.

And this points out another inequity caused by H.R. 1954. This legislation only gives liability protection to firms that engage in the trade or business of renting or leasing vehicles. If a private citizen loans his vehicle to another person who then injures or kills someone, that private citizen, as the owner of the vehicle, is held liable and will still be held liable if H.R. 1954 becomes law. If the proponents of this legislation are so interested in holding liable only the one who causes the accident, why do they not think a private citizen who loans his or her vehicle should be exempt as well?

At Committee markup,the bill's proponents spent a great deal of time discussing among themselves what they believed H.R. 1954 would or would not do. It was asserted that the language of subsection (b) of section 4 of H.R. 1954 ensures that a firm could only

be exempt from state vicarious liability laws, if it pays claims caused by the negligence of those to whom it rents or leases vehicles up to the amount of whatever minimum insurance coverage state law requires such firms to take out on its vehicles.

Unfortunately, there is no such requirement in subsection (b) of section 4 of the bill. Instead, subsection (b) conditions the exemption from state vicarious liability laws only on the requirement that a rental or leasing firm insures its vehicles according to whatever minimum level state law requires. Subsection (b) establishes no "duty" for the rental or leasing firm to use this coverage to pay claims. In Michigan and other states that have vicarious liability laws, there is no strict liability standard that ensures an innocent bystander can obtain payment from a rental or leasing firm's insurance coverage, if the state's vicarious liability law is preempted, as H.R. 1954 provides.

Subsection (b) could have the net effect, therefore, of guaranteeing that rental and leasing firms will never be held liable for the negligence of those that drive its vehicles as long as such firms insure its vehicles for the amount required by state law. In this case, insurance coverage should be quite cheap since H.R. 1954 provides the means to protect such insurance policies from having to pay claims.

In an effort to address this problem, Congressman Deal, a supporter of the bill, offered an amendment at the markup that said state vicarious liability laws are preempted, "except to the extent of any required financial responsibility statute." This amendment, however, can be read to permit a state vicarious liability law to be considered a "required financial responsibility statute" and thereby produce the nonsensical result that the first part of section 4(a) would preempt state vicarious liability laws while the last part of section (4)(a) would protect vicarious liability laws from preemption by the bill. This problem with the amendment offered by Congressman Deal was raised by Congressman Dingell, the Ranking Member of the Committee, in the following exchange he had with legislative counsel during the markup:

> Mr. DINGELL. Okay, so it is then—a state vicarious liability statute is then a required financial responsibility statute. Is it not?
>
> Mr. MEADE (Senior Counsel, Office of the Legislative Counsel). It could be interpreted that way.
>
> Mr. DINGELL. It could be. Now, I am trying to understand then, here we are saying that required—rather, that state vicarious liability statutes do not apply. But now we find that state vicarious responsibility statutes meet the definition of required financial responsibility statutes in the gentlemen's amendment. So we have a kind of a circular or elliptical reasoning problem here in which we are saying they don't apply, but in which we are now saying they do apply.
>
> Mr. MEADE. Well, this would only occur in the what—six states.
>
> Mr. DINGELL. No Eleven states.
>
> Mr. MEADE. Eleven states have vicarious liability.

> Mr. DINGELL. So let us not debate where they would occur. Let us just try to understand the perfection, the scintillating perfection of this amendment, and how it addresses the problem that lies before the committee. I sense that we are defining something which is going to be excluded in Section A, but at the end, we are putting an amendment now which says it will be included, because it meets the definition of any required financial responsibility statute. This is a most extraordinary amendment to a most remarkable piece of legislation.

This effort by Congressman Deal to clarify the preemption provision of the bill raises more questions and confuses the situation even further, but that did not stop the proponents of this legislation from adopting the amendment.

It is all too clear to us that the principal effect of H.R. 1954 is to protect big firms that rent or lease motor vehicles at the expense of innocent accident victims. We are appalled at the effort to leave innocent bystanders who suffer serious injury to fend for themselves, while large car rental and leasing firms are protected from what is nothing more than what 11 states and the District of Columbia have decided should be a normal cost of doing business. We urge members to vote against H.R. 1954 if it is brought to the House floor.

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HENRY A. WAXMAN.
SHERROD BROWN.
FRANK PALLONE, Jr.
TOM BARRETT.
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