

SB

272

ALASKA STATE LEGISLATURE

Senate District H
600 E. Railroad Avenue
Wasilla AK 99654
907-376-4866
907-373-4724 :Fax



State Capitol
Juneau AK 99801-1182
907-465-3878
Fax: 907-465-3265
800-862-3878

Charlie Huggins
Senator

Sponsor Statement

Senate Bill 272 – Rental Car Fees

"An Act relating to charges for rented motor vehicles, including cost recovery fees, and making a violation of the rented motor vehicle charge provisions an unfair trade practice."

SB 272 is a technical bill that would allow rental car companies to do in Alaska what they already do in thirty other states. Alaska law is currently silent on the issue of separately-listed charges on rental car statements for the recovery of fees. This bill would require those fees to be listed separately and clearly identified on the rental car agreement.

The industry standard is to turn over the rental car fleet every twelve months and to associate the costs of licensing the vehicles, concessions, and airport or facility-related costs with the vehicles themselves. In addition to government taxes and surcharges, rental car companies assess additional "cost recovery fees" to offset those costs. Consumers should be made aware, and be able to see the fees they are charged, on both the rental bill and in an online quote. This bill would provide full disclosure and transparency of "cost recovery fees" included in rental car agreements. In addition, this legislation would make violating the provision an unfair trade practice.

Contact:
Edra Morledge
465-6419
SB 272, 26-LS13931A
February 16, 2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 272
() Publish Date: _____

Identifier (file name): SB272-LAW-CIV-02-19-10 Dept. Affected: Law
Title: An act relating to charges for rented motor vehicles, cost recovery fees, and RDU Civil
making violation the rented motor vehicle charge provisions an unfair trade practice Component Commercial and Fair Business
Sponsor Senator Huggins
Requester Transportation Component Number 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES							
-----------------------------	--	--	--	--	--	--	--

CHANGE IN REVENUES ()							
-------------------------------	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other Interagency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 272 will require rental car companies to separately identify a "cost recovery fee" in the rental contract. "Cost recovery fee" is defined to mean a vehicle licensing cost recovery fee, an airport-related cost, a government tax, or a government surcharge. The bill will also prohibit rental car companies from charging a vehicle licensing fee unless the fee represents a good faith estimate by the rental car business of the average daily cost to the rental car business of recovering its actual total annual licensing costs in the state during a calendar year. Finally, the bill makes a violation of this law an unfair trade practice under AS 45.50.471. The Department of Law enforces the Unfair and Deceptive Trade Practices Act, AS 45.50.471. We do not expect that this bill, if enacted, would generate substantial new enforcement activity, and the Department would absorb any such enforcement within existing resources, therefore the fiscal impact is considered zero.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Approved by: Daniel S. Sullivan, Attorney General
Department of Law

Phone 465-5427
Date/Time 2/19/10 5:30 PM
Date 2/19/2010

**FRANK H. MURKOWSKI,
GOVERNOR**

**DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL**

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

BUSINESS ADVISORY

To: Alaska Rental Car Companies
From: Alaska Attorney General's Office
Commercial and Fair Business Section
Re: Vehicle Licensing Fees
Dated: August 30, 2006

Dear Owners and Managers:

This Business Advisory is to inform you that the Alaska Attorney General has determined the advertised price of a vehicle rental must include all fees and costs, except governmentally mandated taxes and airport facilities charges. Vehicle Licensing Fees ("VLF's") are not governmentally mandated charges, and thus must also be included in the advertised price. The advertised price must actually include the entire price to be paid by the renter, and not merely refer to additional "add-on" charges (i.e. "plus VLF").

Alaska's Unfair Trade Practices and Consumer Protection Act (the "Act"), AS 45.50.471 *et seq.* provides that all unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful. The Act also lists 50 specific practices that are declared to be unlawful, including:

Advertising goods or services with intent not to sell them as advertised. AS 45.50.471(b)(8);

Engaging in any conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives, or damages a buyer or a competitor in connection with the sale or advertising of goods or services. AS 45.50.471(b)(11); and

Using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or

omitting a material fact with the intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived, or damaged. AS 45.50.471(b)(12).

Charging a VLF could violate each of these subsections of the Act.

The Act has been interpreted liberally to protect consumers. *State v. Oniell Investigations, Inc.*, 609 P.2d 520 (Alaska 1980). The language in the Act is patterned after the Federal Trade Commission ("FTC") Act, 15 U.S.C. §45(a)(1), and the Alaska Supreme Court has referred to the FTC Act for guidance. *Matanuska Maid, Inc. v. State*, 620 P.2d 182 (Alaska 1980). When analyzing whether any practice is "deceptive" under the Act, Alaska courts look to whether the practice has the capacity or tendency to deceive. All that is required is a showing that the practice is capable of being interpreted in a misleading way. *Oniell, supra*, 609 P.2d at 534-35.

A practice does not need to be deceptive to be unfair. "Unfairness" is determined by looking to a variety of factors, including:

1. Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise whether, in other words, it is within at least the penumbra of some common-law statutory, or other established concept of unfairness;
2. Whether it is immoral, oppressive, or unscrupulous;
3. Whether it causes substantial injury to consumers (or competitors or other businessmen).

Id.

Mandatory government fees, like taxes, are required to be charged on a per transaction basis by most state and municipal laws. In Alaska, for example, there is an excise tax imposed on every vehicle rental transaction for rentals less than 90 days. AS 43.52.080. The tax is 10% of the total fees and costs of the rental (3% for a recreational vehicle). This is a governmentally mandated tax that is collected on a "per rental" basis. Most car rental companies exclude this tax from the advertised price, which is appropriate.

There is no requirement, however, that car rental companies charge a per transaction amount to pay for a VLF. This is a non-mandated charge that is part of the cost of doing business. Thus, there is no correlation between a governmentally mandated tax, and a non-mandatory charge like a VLF. Car rental companies are not required to impose and collect a VLF separate and apart from the basic rental charge.

When comparing rental rates, consumers should know the entire charge for the rental excluding only governmentally mandated charges (taxes, airport facilities charges). This prevents the potential to mislead the consumer about the actual rental charge. There is a certain amount of consumer awareness and expectation that taxes and other governmentally mandated charges will be added to the advertised rental charge. When making a rental decision, the consumer should not have to guess about what other charges may be added to the advertised rate. A VLF can easily be confused with a governmentally mandated charge, or at a minimum, will have the "tendency to mislead" consumers in violation of the Act.

Please take immediate steps to comply with the Business Advisory by including any non-mandated charges, including VLF's, in the advertised price of all vehicle rentals. Failure to comply with this requirement can subject you to minimum penalties of \$1,000 and maximum penalties of \$25,000 for each transaction in which a VLF is not included in the advertised price of the rental.

You may contact Ed Sniffen in our office at (907)269-5200 if you have any questions.

Sincerely,
DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:
Clyde E. Sniffen, Jr.
Assistant Attorney General

CES/sjm

Vehicle Licensing Fees Per State 2010

STATE	CITATION	SUMMARY	VLF Charge
Arizona	A.R.S. §28-5810	5% on rentals not exceeding 180 days, used only for reimbursement of the amount of VLF imposed on rental car company.	5% - Mandatory
Connecticut	§12-692(b)-(c)	3% on vehicles rented in-state for rentals not exceeding 31 days. Surcharge imposed on total amount charged to renter. Used only for reimbursement of the amount of VLF imposed on the company.	3% - Mandatory
Hawaii	C.G.S. §437D-8.4(a)(2)	1/365 of the VLF for the vehicle being rented for each full or partial 24-hour day the vehicle is rented, not to exceed the actual annual VLF on that vehicle.	Varies based upon particular vehicle. – Non-mandatory
Minnesota	M.S.A. §297A.135	3% of the sales price. It must be reported and paid to the commissioner of revenue. A lessor collecting the fee is entitled to a rebate of the fee collected equal to the amount of the fees collected	3% - Mandatory
Nebraska	Neb. Rev. Stat. §77-4501(1)-(2)	4.5% of rental amount, not including sales tax. Money collected in excess must be paid to the treasurer of the county where the transactions occurred.	4.5% - Mandatory
Rhode Island	Gen.Laws §31-34.1-2	6% for gross receipts per vehicle on all rentals for each of the first 10 consecutive days. 50% of that is retained by the rental car company and 50% is remitted to the state.	6% - Mandatory
South Carolina	S.C.C. §56-31-50	5% on rentals not exceeding 31 days. They may only be used for reimbursement of the amount of personal property taxes imposed and paid upon these vehicles by the vehicle owner or rental car company.	5% - Mandatory

Vehicle Licensing Fees Per State 2010

Tennessee	T.C.A. §67-4-1901	3% of the gross proceeds from the rental agreement (gas, insurance, etc.) for rentals not exceeding 31 days. Fees to be remitted back to the state.	3% - Mandatory
Texas	V.T.C.A., Occupations Code § 2301.851	Proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the vehicle fleet.	\$1.75/day – Non-mandatory
Virginia	46.2-755(D) Code of Virginia	Allows for recoupment of VLF, airport concession fees, airport consolidated facility fees or other governmentally mandated fees. The fees must be disclosed in advertisement, in the contract and calculated based on direct costs.	See below – Non-mandatory
Wisconsin	Chapter 100.53	Allows for recoupment of title and registration fees so long as it is disclosed in advertising and on contracts.	\$.41/day – Non-mandatory
Wyoming	W.S. 1977 §31-3-104	4%, any amount collected in excess of VLF is remitted to dept for distribution.	4% - Mandatory
New Laws in 2006			
Ohio		Recoup VLF on a per rental day calculation.	\$.26/day – Non-mandatory
Maryland		Recoup VLF so as to not over-collect.	\$.28/day – Non-mandatory
Montana		Recoup VLF so long as it is disclosed on contract and we do not over-collect.	\$1.49/day – Non-mandatory
New Hampshire		Recoup VLF so long as it is disclosed. No calculative method.	\$1.60/day – Non-mandatory
Virginia		Recoup VLF so long as it is disclosed and any overcollection must be forwarded to next year and we must reduce our rate.	\$.30/day – Non-mandatory
New Laws in 2007			

Vehicle Licensing Fees Per State 2010

Maine	SB 1645	Recoup VLF; no calculative method	\$1.50/day – Non-mandatory
Missouri	SB 82	Recoup VLF; no calculative method	\$1.18/day – Non-mandatory
North Carolina	SB 1118	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$.39/day – Non-mandatory
New Laws in 2008			
Georgia	SB 181	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$.92/day – Non-mandatory
Kentucky	HB 393	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$.80/day – Non-mandatory
Massachusetts	SB 2416	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$1.50/day – Non-mandatory
Michigan	SB 1008	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$.57/day – Non-mandatory
New in 2009			
Arkansas	Attorney General Opinion	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate.	\$.79/day – Non-mandatory
California	SB 10 (Special Session - 2009)	Recoup INCREASED registration and titling fees only.	\$.05/day – Non-mandatory
Washington	SB 5509	Recoup VLF; no calculative method; any annual over-collection shall be forwarded to next year and reduce rate	\$.30/day – Non-mandatory
Oregon	SB 2818	Recoup VLF; no calculative method.	\$.37/day – Non-mandatory
Illinois	HB 2424	Recoup VLF; no calculative method; any annual over-collection shall be rolled over to next year and reduce rate.	\$.99/day – Non-mandatory
Nevada	N.R.S. §482.313	New in 2009: The 4% rental fee, which was a VLF	\$1.33/day (est. law takes effect October

Vehicle Licensing Fees Per State 2010

		<p>recoupment, was eliminated and replaced with a per day recoupment with no calculative method; any overcollection is rolled to next year and reduce rate.</p> <p>Old law: 6% but not to exceed 4% of the cost of the rental. Fees must be remitted to the state.</p>	1) – Non-mandatory
--	--	---	---------------------------