

**THE RENTAL FAIRNESS ACT OF 1999: HEARING
BEFORE THE SUBCOMMITTEE ON FINANCE
AND HAZARDOUS MATERIALS OF THE
COMMITTEE ON COMMERCE, HOUSE OF
REPRESENTATIVES, ONE HUNDRED SIXTH
CONGRESS, FIRST SESSION, ON H.R. 1954,
OCTOBER 20, 1999. SERIAL NO.106-78**

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THE RENTAL FAIRNESS ACT OF 1999

WEDNESDAY, OCTOBER 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Cox, Largent, Shimkus, Wilson, Shadegg, Towns, Deutsch, Stupak, and Luther.

Also present: Representative Bryant.

Staff present: Robert Gordon, majority counsel; Robert Simison, legislative clerk; and Bruce Gwinn, minority professional staff member.

Mr. OXLEY. The subcommittee will come to order. I would like to thank our panel of witnesses for joining us today to discuss reforming vicarious liability laws. We are fortunate to have before us Ms. Sharon Faulkner, who owned and operated an independent car rental company in upstate New York for 17 years. Ms. Faulkner will also tell us firsthand how vicarious liability impacted her small business.

Mr. Raymond Wagner gives us a triple perspective. He is not only the vice president of Enterprise, but a municipal circuit court judge and adjunct law professor as well.

Mr. Stewart, the former president of the Association of Trial Lawyers of America, got stuck in bad weather in Florida, so he is being replaced by ATLA's current president Mr. Richard Middleton.

Thank you all for joining us today.

The legislation before us today H.R. 1954, introduced by Mr. Bryant, would accomplish two simple things. First, it creates a legal presumption that car rental employees are not required to obtain State insurance licenses when providing short-term coverage in connection with a vehicle. Class action lawsuits have been threatened in several States which do not have express laws governing this issue. The provision of H.R. 1954 only applies where a State has not acted on the issue and only lasts for 3 years as a sort of grace period to encourage each side to work toward resolving the issue.

I would note that this subtitle was adopted by unanimous consent in the ongoing conference on financial services reform.

Second, the bill states that no person engaged in the business of renting or leasing a motor vehicle shall be liable to a claimant for the tortious act of another solely by reason of being an owner of

such motor vehicle. In other words, if Mrs. Faulkner rents somebody a car, and they go off and crash into somebody, this bill says that the person who is at fault and caused the car crash should be liable for the damages, not Mrs. Faulkner. It seems to make sense to me, and I went to law school.

This sounds like a simple concept. In fact, 44 States have rejected vicarious liability as unfair and unjust. Unfortunately, if Mr. Wagner rents a car to a Red Sox fan in Massachusetts, for example Mr. Markey, which has rejected vicarious liability, and the driver gets so upset about the Sox's latest playoff loss that he hits a driver from New York, inadvertently of course, then the courts may end up applying unlimited liability under New York law for all damages against Mr. Wagner even though he was in no way at fault for the accident, did not rent a car in New York.

I don't think we want to force car rental companies to ask prospective renters whether or not they are Red Sox fans and if they plan on attending any baseball games in New York. All this subtitle does is to say that the party at fault should be responsible for the damages. If you don't do anything wrong, you shouldn't be forced to pay for the wrongdoing of others. This bill does not in any way preempt State insurance laws or the ability of the States to impose minimum responsibility requirements on rental companies.

It also does not in any way limit the liability if the agency is in any way or in any respect negligent. For example, if Enterprise failed to maintain a car or rented a car to an obviously drunk individual, then they would still be liable for the resulting harm, but this bill does establish a simple rule of fairness. Liability should be based on fault. If we continue to let the trial lawyers go after innocent small business owners like Mrs. Faulkner, we will end up with less competition, higher prices, and only a few megacompanies left who can afford the insurance premiums and legal cost of the constant lawsuits.

Last term I was proud when this committee enacted the biomaterials bill on a bipartisan basis, protecting medical implant suppliers from excessive and frivolous litigation. We said that a company shouldn't be dragged into lawsuits merely for supplying component parts. Previous term we sent to the President a bipartisan product liability bill which contained a much broader vicarious liability repeal. This bill is another small step forward toward fairness and sanity in our legal system.

I am pleased to cosponsor the reform legislation by our good friend from Tennessee Mr. Bryant. I look forward to hearing further thoughts on this legislation from our panel of witnesses.

Let me now yield to the gentleman from Minnesota for an opening statement should he so desire.

Mr. LUTHER. Thank you, Mr. Chairman. I look forward to the testimony. Obviously there are reasons why these vicarious liability—why vicarious liability laws are in place in this country, and I am looking forward to hearing testimony on the issue of why we should have a Federal standard here. In other words, as I understand it, the State laws, there are a variety of State laws on this issue. We generally allow State laws to control in this area. So I will look forward to hearing the testimony on the issue of why we should be passing Federal legislation on this particular issue.

I know that, for example, in Minnesota, the State that I come from, we do have a law that affects this particular subject in that State, and generally speaking, I think this comes within the jurisdiction of State law, what we generally view here as coming within the jurisdiction of State law.

Also, I will be interested in hearing testimony on why we should single out this particular industry compared to all of the other areas of law where there is vicarious liability and where the burden and responsibility for that is borne by the business community and by others. And so I appreciate, very much appreciate, the hearing and looking forward to hearing the testimony on some of those key issues. Thank you.

Mr. OXLEY. I thank the gentleman. Now I recognize the gentleman from Tennessee, the aforementioned gentleman from Tennessee, who is a sponsor of the bill and not technically a member of the subcommittee, but a member of the full committee. We are proud to have him with us this morning, and I now recognize him for an opening statement.

Mr. BRYANT. Thank you, Mr. Chairman. I do appreciate your holding this hearing today. I want to thank you for allowing me to participate. From the beginning of my service in the House in 1995, I have been a strong proponent of fair and reasonable tort reform. Having participated in this type of debate for nearly 6 years, I am well aware of the arguments from those who might disagree with me on the need for broad legal reform. The bill I have introduced and which we are discussing today, however, is a common-sense piece of legislation which I think both sides of the legal reform debate should be able to support and hope will support.

Currently companies that rent or lease motor vehicles such as car and truck rental firms are subject in five States and the District of Columbia to unlimited liability for tortious acts of their renters and lessees even if the rental car company is not negligent and there is no defect in the motor vehicle. In these select States a rental company will be held vicariously liable for the injuries and damages caused by the negligence of its customers simply because the rental company owns the motor vehicle and has given permission of its use by the customer.

With your indulgence, Mr. Chairman, I would like to relate to members of the subcommittee some of the more outrageous examples of how unfair vicarious liability can be. Budget Rental Car rented a vehicle to a woman in New York. The woman allowed her son, an unauthorized driver under the rental agreement, to drive the vehicle even though he had a suspended New York driver's license. The son lost control of the car. His mother, who was a passenger at the time of the accident, suffered injuries. The mother sued her son for negligence, and the jury found Budget vicariously liable for the son's negligence under New York State law. The jury returned a verdict of \$450,000 against Budget.

In another example four British sailors rented a car from Alamo in Florida. The driver fell asleep at the wheel. The car ended up in a canal, and only one passenger survived. Alamo was found vicariously liable for the deaths and injuries solely to the fact that it owned the vehicle. No negligence for the accident was attributed

to Alamo. Alamo was ordered by a jury to pay plaintiffs \$7.7 million.

Mr. Chairman, there are many other examples similar to this where the rental company is held liable even though it had not been negligent in any way and the vehicle was operated perfectly or the vehicle operated perfectly. My legislation would preempt the laws of these States which impose unlimited vicarious liability on companies that rent or lease motor vehicles.

Again, this bill is a common-sense, targeted solution. This bill would not exempt rental companies from liability if the company is negligent. It would not exempt the company from minimum financial responsibility laws for vehicle owners in each State. For example, if a car rental company does not maintain a car properly, and the brakes on the car fail, then the rental car company would be liable for its negligence. This bill would also not foreclose other avenues of tort liability for third parties injured by the customers of rental companies.

Mr. Chairman, the vicarious liability system acts as a hidden tax on all rental customers nationwide. Rates go up, companies refuse to do business in vicarious jurisdictions, and the competition is stifled. It is time for the Congress to take action to institute reform in this area of the law. I look forward to working with you and other members of this subcommittee to move this legislation, and, again, I thank you for giving this issue the hearing it deserves and for allowing me to participate. Thank you.

Mr. OXLEY. The gentleman's time has expired.

The gentleman from Florida, Mr. Deutsch.

Mr. DEUTSCH. No, thank you.

Mr. OXLEY. How about the gentleman from the Upper Peninsula? Does he have an opening statement?

Mr. STUPAK. Yes, Mr. Chairman. This legislation would preempt current laws in five States. While I understand the reason why the rental car industry wants to change these laws, I believe we are in the wrong forum here. Tort law has long been the province of State legislatures. The State legislatures in Connecticut, District of Columbia, Iowa, Maine, New York, and Rhode Island have decided that rental car companies should be vicariously liable in the case of an accident. Now, my friend from the other side says this is a hidden tax, but we don't serve in those State legislatures. I don't know why they made those choices, but I do know the State capitals are the place where the decision should be made and not here in Washington, DC, and if those States and residents feel it is a tax, then that is their responsibility and not ours. I believe if the rental car companies feel the residents in these States pay more for auto rentals because of vicarious liability, then they should go there and try to convince those States to elect representatives that will change the laws.

Proponents of the bill argue that rental cars are products that exist in interstate commerce and therefore justify uniform liability standards, but the simple fact is nearly all items involved in lawsuits travel in interstate commerce. In my view, rental cars should not be held to a different standard than any other product.

I point out to my fellow Republican colleagues that support of Federalizing the tort laws in these States is wholly inconsistent

with the majority party's stated desire to return the power to the States. This bill will remove these decisions from the State legislatures and bring them to Capitol Hill. Forty-five States, all the territories have addressed this issue. I don't think we should come here for five States.

Mr. Chairman, I understand why the rental car companies are lobbying for this bill. I don't fault them in doing so. However, I disagree that we should be in the business—we should not be in the business of preempting State tort law. Thanks, Mr. Chairman.

Mr. OXLEY. I thank the gentleman.

The gentleman from Oklahoma Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman.

We have all heard of oxymorons like jumbo shrimp and hot water heater and why we park on a driveway and drive on a parkway. Today we are going to learn about a legal oxymoron, which is called vicarious liability. I am pleased to offer my strong support for H.R. 1954, the Rental Fairness Act of 1999. I am an original cosponsor of this important legislation. I commend you, Mr. Chairman, for your leadership in calling this hearing.

I am supportive of the underlying theme of H.R. 1954. A person should not be held liable for accidents which they were not at fault. This theme is a fundamental construct of our Nation's liability system. This construct must be upheld if dozens are to have faith in the fairness of our judicial system. Holding motor vehicle rental companies liable for the negligence of their customers when there is nothing they could do to prevent this negligence is unfair. So-called vicarious liability laws for motor vehicle rental companies, although present in a small minority of jurisdictions, impact on car rental customers across the Nation, including the citizens of my State of Oklahoma. These laws drive up rental rates, reduce competition and act as a barrier to interstate commerce.

Vicarious liability reform legislation was approved by this committee and the full House in 1995. These reforms are long overdue, and I look forward to working with the chairman of this subcommittee and the chairman of the full committee to move this legislation this year. Thanks for the opportunity to present this opening statement. I look forward to the hearing the testimony of our panel of witnesses today. Thank you, Mr. Chairman.

Mr. OXLEY. I thank the gentleman.

The gentlelady from New Mexico.

Mrs. WILSON. No, Mr. Chairman.

Mr. OXLEY. I guess we completed the opening statements.

[Additional statement submitted for the record follows:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Thank you Mr. Chairman.

I congratulate my friend from Tennessee, Mr. Bryant, for his work in moving this issue forward.

The Commerce Committee has a long history of working together to enact bipartisan product liability reform. Vicarious liability reform was included in the product liability bill this Committee sent to the President in the 104th Congress, as well as a Gorton-Rockefeller reform bill last term that the President supported, but which ultimately failed in the Senate on other grounds.

Vicarious liability is the theory that you can sue the person with the most money, even if they have no fault for the harm.