

## The Graves Amendment: One Foot in the Grave?

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### Permissive User Liability

In California, the owner of a motor vehicle is vicariously liable for injuries caused by the negligent operation of the vehicle by any person using it with the owner's permission. (Veh. Code § 17150.) This meant historically those who rented vehicles were liable for accidents caused by their customers, even though the rental company was not negligent in any way. (*Mercury Ins. Co. v. Enterprise Rent-A-Car Co. of Los Angeles* (2000) 80 Cal.App.4th 41.)

### The Graves Amendment

In 2005, Congress responded by enacting what is commonly known as the Graves Amendment, codified at 49 U.S.C.A. section 30106. Section 30106 provides:

(a) In general.--An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out

the period of the rental or lease, if--

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

(b) Financial responsibility laws.--Nothing in this section supersedes the law of any State or political subdivision thereof--

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

The Graves Amendment's intent is to preempt conflicting state law provisions such as California's section 17150, and purportedly eliminates vicarious liability for non-negligent vehicle rental companies based solely on ownership.

### Challenges to the Graves Amendment

There has been surprisingly little litigation over the interpretation and applicability of the Graves Amendment in California. However, Courts in other states have considered constitutional challenges, with differing results.

The majority of courts that have considered the issue have concluded the Graves amendment preempts conflicting state law and is constitutional. (See, e.g., *Green v. Toyota Motor CreditCorp* (E.D.N.Y.2009) 605 F.Supp.2d 430; *Pacho v. Enterprise Rent-A-Car Co.* (S.D.N.Y.2008) 572 F.Supp.2d 341; *Merchants Ins. Group v. Mitsubishi Motor Credit Ass'n* (E.D.N.Y.2007) 525 F.Supp.2d 309; *Johnson v. Agnant* (D.D.C.2006) 480 F.Supp.2d 1; *Carton v. General Motors Acceptance Corp.* (N.D.Iowa 2009) 639 F.Supp.2d 982 (affirmed 611 F.3d 451); *Green v. Toyota Motor CreditCorp* (E.D.N.Y.2009) 605 F.Supp.2d 430; *Dupuis v. Vanguard Car Rental USA, Inc.* (M.D.Fla.2007) 510 F.Supp.2d 980; *Garcia v. Vanguard Car Rental USA, Inc.* (M.D.Fla.2007) 510 F.Supp.2d 81 (affirmed 540 F.3d 1242).)

However, some courts have reached the opposite conclusion. (See, e.g., *Vanguard Car Rental USA, Inc. v. Drouin* (S.D.Fla.2007) 521 F.Supp.2d 1343; *Vanguard*

*Car Rental USA, Inc. v. Huchon*  
(S.D.Fla.2007) 532 F.Supp.2d  
1371.)

### **Conclusion**

For now, the Graves Amendment is alive and well in California. Vehicle rental companies, and the attorneys and insurance professionals that represent them, can take some comfort that in California the Graves Amendment is not six feet under.

### **ABOUT THE AUTHOR**

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