

**STATEMENT OF THE AMERICAN CAR RENTAL ASSOCIATION
BEFORE THE
COLORADO SENATE COMMITTEE ON
TRANSPORTATION AND ENERGY**

OPPOSITION TO CURRENT DRAFT OF SB24-184

March 27, 2024

Chair Winter, Vice Chair Priola, and Members of the Colorado Senate Transportation and Energy Committee -- The American Car Rental Association (ACRA) respectfully offers this testimony in **opposition** to SB24-184 with respect to the bill's funding mechanism. This bill would increase the state short-term car rental excise tax by \$3.00 per day. ACRA respectfully asks that the committee either amend the bill to drop that funding source or reject this measure.

ACRA is the national representative for over 98% of our nation's car rental industry. ACRA's membership is comprised of over 300 car rental companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Fox, Hertz, National, Sixt and Thrifty. ACRA members also include many system licensees and franchisees, mid-size, regional and independent car rental companies as well as smaller operators. ACRA members have over 2.1 million registered vehicles in service in the United States, with fleets ranging in size from one million cars to ten cars and employ over 160,000 workers at rental locations in every county and state across the nation. If a visitor or Colorado resident (and voter) rents a car in Colorado, chances are they are renting it from an ACRA member.

ACRA opposes the funding mechanism contained in the current version of SB24-184 for several reasons:

1. The car rental excise tax that would be imposed on both visitors to Colorado and Colorado citizens who rent cars in the state is unlawful under federal law in at least two different ways:
 - a. First, Congress in 2018 made the tax under consideration by the Committee today unlawful as a restriction on interstate commerce (Attachment #1); At ACRA's request, a law firm with a national reputation for its expertise in state and local taxation and the Interstate Commerce Clause drafted a legal opinion that the proposed tax violates the 2018 federal law (Attachment #2); and,
 - b. Second, the federal Anti-Head Tax Act, enacted by Congress in 1974, prohibits the imposition of a state tax on businesses doing business at federally-assisted airports; this tax would violate the AHTA.

Due to this fundamental conflict between the funding mechanism of SB24-184 and existing federal law prohibiting discriminatory car rental excise taxes, maintaining the car rental tax as the funding mechanism in the bill likely will lead to litigation in federal court. This litigation could delay the light rail projects envisioned by the bill's advocates for perhaps as long as several years.

2. Contrary to the "sales job" on the bill by its sponsors, the tax rental tax funding mechanism in the bill will impact Colorado citizens (and voters) to the same extent as tourists coming to the state. Approximately 50% of car rentals in Colorado are

“local” – insurance replacement rentals or residents renting a car because they don’t own a car or need a different one for a trip, vacation or family outing. Thus, this proposed car rental tax is not a tax solely on out of state tourists. It is a tax that will be imposed on Colorado residents as well.

3. The tax imposed by this bill is regressive – hitting the lowest income Coloradans harder than those with ample income to withstand the imposition of such a tax. Historically, approximately 18% of the taxes paid on local car rentals are paid by Colorado households earning less than \$50,000 annually.
4. The tax proposed by this bill will put upward pressure on both car rental rates in Colorado and personal car insurance rates for citizens in the state as rental car companies and insurers seek to pass through the increased costs of this tax to renters and insured Colorado drivers.
5. The car rental tax funding mechanism of SB24-184 violates the spirit, if not the letter, of Colorado Proposition 117 as the bill proposes a tax policy change that must be put to Colorado voters via a ballot initiative before adoption.

ACRA is aware of several amendments that have been filed with respect to SB24-184. None of the amendments of which ACRA has been made aware “cure” the fundamental conflict between the funding mechanism contained in the bill and federal law:

- A. Amendment #11 – Would actually exacerbate the conflict with federal law by exempting insurance replacement rentals from the proposed tax. This would result in the vast majority of revenue from the car rental tax being derived

from car rentals at the states airports – the exact outcome Congress prohibited in the 2018 federal statute.

- B. Amendment #10 – Would shift the burden of the bill's car rental tax entirely on to the backs of Colorado residents and would impose the tax regressively on the Colorado citizens least able to afford a significant tax increase on their daily transportation needs – likely in violation of Proposition 117.
- C. Amendment #9 – Seeking the legal opinion of the Colorado Attorney General after the enactment of the bill regarding the legality of the car rental tax embedded in SB24-184 likely would create more problems than it solves:
 - i. If that legal opinion finds that the tax conflicts with federal law as ACRA asserts, then the light rail projects funded by SB24-184 would be delayed until the legislature could come up with a new funding mechanism and pass a new law; and,
 - ii. Even if the Attorney General's opinion concluded that the car rental tax did not conflict with federal law, that would not stop interested parties from challenging the car rental tax in court for violating either federal law or Proposition 117.

For the reasons above, ACRA respectfully **opposes** the current funding mechanism embodied in SB24-184 and asks the Committee to either drop the car rental tax provisions of the bill or reject this measure.

If ACRA's statement has given rise to questions, please contact Gregory M. Scott, ACRA's Government Relations Advisor, at 202-297-5123 or gscott@merevir.com. Thank you for the opportunity to submit this testimony.

DRAFT