
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2169 **Hearing Date:** May 15, 2018
Author: Voepel
Version: March 22, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Leased and Rented Vehicles: Embezzlement and Theft*

HISTORY

Source: Author

Prior Legislation: AB 495 (Voepel), 2017, hearing cancelled in Assembly Public Safety
AB 2051 (O'Donnell), Ch. 183, Stats. of 2016
AB 2804 (Corbett), Ch. 317, Stats. of 2004

Support: California District Attorneys Association; California Police Chiefs Association

Opposition: California Public Defenders Association

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to reduce the period of time following the expiration of an auto-rental agreement or lease for the presumption of embezzlement to apply, from five-days to 48-hours.

Existing law creates a rebuttable presumption that a person has embezzled a leased or rented car if the person willfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired. (Veh. Code, § 10855.)

This bill provides that if a person who has leased or rented a vehicle willfully and intentionally fails to return it to its owner 48 hours after the agreement has expired, it is presumed that the person has embezzled the vehicle.

Existing law provides that any person who drives or takes a vehicle not his or her own, without the owner's consent, and with intent either to permanently or temporarily deprive the owner of his or her title to, or possession, of the vehicle, whether with or without intent to steal it, is guilty of a crime punishable by imprisonment in a county jail for not more than one year, in the county jail pursuant to realignment, or by a fine of up to \$5,000, or by both the fine and imprisonment. (Veh. Code, § 10851.)

Existing law states that a person who feloniously steals, takes, carries, leads, or drives away the personal property of another, or who fraudulently appropriates property which has been entrusted to him or her is guilty of theft. (Pen. Code, § 484, subd. (a).)

Existing law states that if the stolen property is an automobile, then the offense constitutes grand theft. (Pen. Code, § 487, subd. (d)(1).)

Existing law punishes grand theft of a vehicle by imprisonment in a county jail not exceeding one year, or in the county jail pursuant to realignment. (Pen. Code, § 489, subd. (c).)

Existing law defines “embezzlement” as “the fraudulent appropriation of property by a person to whom it has been entrusted.” (Pen. Code, § 503.)

Existing law provides that every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled. (Pen. Code, § 514.)

Existing law requires a peace officer who receives a report based on reliable information that a vehicle has been stolen or unlawfully taken, or that a leased or rented vehicle has not been returned within five days after the lease or rental agreement has expired, to immediately report the information to the DOJ Stolen Vehicle System. (Veh. Code, § 10500.)

Existing law prohibits a rental company from using, accessing, or obtaining any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, unless the technology is used to locate a stolen, abandoned, or missing rental vehicle after one of the following:

- The renter or law enforcement has informed the rental car company that the vehicle is missing or has been stolen or abandoned;
- The rental vehicle has not been returned following one week after the contracted return date, or one week following the end of an extension of that return date; or
- The rental car company discovers that the vehicle has been stolen or abandoned and, if stolen, reports the vehicle stolen to law enforcement by filing a stolen vehicle report. (Civil Code, § 1936, subd. (n)(1)(i)-(iii).)

This bill states that if the owner of a vehicle that has been leased or rented discovers that it was procured by fraud, the owner is not required to wait until the expiration of the lease or rental agreement to make a report to law enforcement.

This bill requires a vehicle lease or rental agreement to contain a disclosure stating that failure to return the vehicle within 48 hours of its expiration may result in the owner reporting the vehicle as stolen, and requires the leasee to provide a method to contact him or her if the vehicle is not returned.

This bill requires the owner of a vehicle that is presumed to have been embezzled to attempt to contact the other party to the lease or rental agreement using the contact method designated in the rental agreement for this purpose.

This bill requires the vehicle owner to inform the other party that if arrangements for the return of the car are not satisfactorily made, the owner may report the car stolen to law enforcement.

This bill states that if the owner of a vehicle that is presumed to have been embezzled is unable to contact the other party after a reasonable number of attempts, or if he or she is unable to arrange for the satisfactory return of the vehicle, the owner may report the vehicle as stolen.

This bill states that the failure of a vehicle owner to comply with these provisions shall not be deemed an infraction.

This bill makes conforming changes to the provisions related to law enforcement reporting to the Department of Justice (DOJ) Stolen Vehicle System.

COMMENTS

1. Need for This Bill

According to the author:

The problem or the deficiency in the existing law is that it doesn't allow the rental car companies to report fraud quicker and be able to get their vehicle back after it has been stolen. What rental car industry has realized is that in the last years, their cars are not only stolen, but it is stolen by false identity. This bill reduces the current 5 day waiting period that is in statue to 48 hours. This measure requires the lease or rental agreement to disclose that the failure to return the vehicle within 48 hours after the expiration of the rental agreement may result in vehicle being reported as stolen. Finally, the lease or rental agreement to require the lessee or renter to provide a method of contact if vehicle is not returned on time. This bill would create efficiency and would help both the Industry and Law enforcement to combat the incident.

2. Theft of Rental Cars and the Effect of This Bill

Under current California law, California prohibits rental car companies from tracking vehicles with global positioning systems (GPS) devices, except in narrowly defined circumstances. GPS information may not be accessed by rental companies without the customer's consent unless the vehicle is missing, abandoned, stolen, or the customer fails to return the vehicle within one week of the contracted return date. However, under current law the vehicle can be presumed to be embezzled after five days, two days less than when the GPS device can be activated.

AB 2051 (O'Donnell), Ch. 183, Stats. of 2016 would have allowed rental car companies to track missing cars with GPS technology after three-days, but that provision was deleted from the bill prior to signing.

This bill shortens the time for the presumption of embezzlement from 5-days to 48-hours. However, this bill does not modify the time that must pass prior to permitting tracking of a vehicle with a GPS system. The time that a rental company must wait prior to permitting GPS tracking remains one-week under this bill. Perhaps the best policy would be to synchronize these time-frames.

3. California's Stolen Vehicle System

California has a Stolen Vehicle System that helps law enforcement track and locate vehicles that have been reported stolen. The system is maintained by the California Department of Justice. Under the law, law enforcement officers must enter a vehicle into the system upon receipt of reliable information that the vehicle has been stolen, or that a leased vehicle has not been returned within five days after the owner has made written demand for its return by certified or registered mail. (Veh. Code, § 10500, subd. (a).) This bill would amend this provision to require notice shall

be sent to the Stolen Vehicle System if 48 hours following the expiration of the lease or rental agreement.

Opponents to this legislation argue that the shortening of the period from 5-days to 48-hours removes the limited opportunity for an approximation of probable cause because the delay in returning the vehicle is more than minor, and permitted actual notice to the customer who rented the vehicle.

The following amendment could mitigate the concerns of the opposition:

Section 10500 of the Vehicle Code is amended to read:

10500. (a) Every peace officer, upon receiving a report based on reliable information that any vehicle registered under this code has been stolen, taken, or driven in violation of Section 10851, or that a leased or rented vehicle has not been returned within 48 hours following the expiration of the lease or rental agreement and after the owner attempted to notify the customer pursuant to the provisions in Vehcile Code Section 10855, subd. (b), or that license plates for any vehicle have been lost or stolen, shall, immediately after receiving that information, report the information to the Department of Justice Stolen Vehicle System. An officer, upon receiving information of the recovery of any vehicle described in this subdivision, or of the recovery of plates which have been previously reported as lost or stolen, shall immediately report the fact of the recovery to the Department of Justice Stolen Vehicle System. At the same time, the recovering officer shall advise the Department of Justice Stolen Vehicle System and the original reporting police agency of the location and condition of the vehicle or license plates recovered. The original reporting police agency, upon receipt of the information from the recovering officer, shall, immediately attempt to notify the reporting party by telephone, if the telephone number of the reporting party is available or readily accessible, of the location and condition of the recovered vehicle. If the reporting party's telephone number is unknown, or notification attempts were unsuccessful, the original reporting police agency shall notify the reporting party by placing, in the mail, a notice providing the location and condition of the recovered vehicle. This written notice shall be mailed within 24 hours of the original reporting police agency's receipt of the information of the recovery of the vehicle, excluding holidays and weekends.

(b) If the recovered vehicle is subject to parking or storage charges, Section 10652.5 applies.

The provision in this amendment is the newly updated notice requirement that was amended into the bill in the Assembly Public Safety Committee. Under current law, notice must be given by registered or certified mail. The new notice procedures were seen as an update to the outdated language of using registered or certified mail to contact the driver of the vehicle. The new notice provisions read as follows:

Section 10855 of the Vehicle Code, subd. (b) states:

(b) The owner of an embezzled vehicle as described in paragraph (1) of subdivision (a) shall attempt to contact the other party to the lease or rental agreement who has failed to return the vehicle using the contact method

designated in the rental agreement for this purpose. If the owner is able to contact the party, the owner shall inform the party that if arrangements for the return of the vehicle that are satisfactory for the owner are not made, the owner may report the vehicle stolen to law enforcement. If the owner is not able to contact the other party after a reasonable number of attempts, or if upon contacting the other party, the owner is not able arrange for the satisfactory return of the vehicle, the owner may report the vehicle stolen pursuant to subdivision (c).

Should the author made the aforementioned amendment to their bill, the entry of the vehicle into the Stolen Vehicle System would not occur until the lessor of the vehicle made an attempt to notify the driver in the manner contemplated by the bill.

4. Argument in Support

According to the California District Attorneys Association:

AB 2169 would allow rental car agencies to immediately report a stolen vehicle that was not returned upon the expiration of the contract, instead of having to wait five-days under current law. Over the last several years, theft of rental vehicles has increased substantially in cities across California, and it is now more important for rental car companies to report possible thefts to law enforcement immediately in order to increase the possibility that the stolen vehicle is located and returned.

4. Argument in Opposition

According to the California Public Defenders Association:

As tempting as it may be to craft statutory means of facilitating return of leased vehicles and preventing theft it is important to remember that mere statutes cannot amend the Constitution. Before the police can initiate a seizure on the streets someone in the official chain must have probable cause to believe that a crime has occurred.

AB 2169, as amended effectively cuts the police out of the probable cause equation and makes them and the state's official Stolen Vehicle System a mere tool in a private business's efforts to retrieve its property. In doing so it gives short shrift to the civil rights of customers and pays inadequate attention to the critical issue of actual criminal guilt or innocence.

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