

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 2741 (Haney)  
Version: May 2, 2024  
Hearing Date: July 2, 2024  
Fiscal: No  
Urgency: No  
CK

**SUBJECT**

Rental car companies: electronic surveillance technology

**DIGEST**

This bill shortens the time a rental car company must wait to activate electronic surveillance technology after a vehicle has not been returned from 72 hours to 24 hours. The bill also removes several consumer protections that require rental car consumers be notified verbally of the surveillance policy and acknowledge it. The bill also removes a presumption in favor of consumers when determining their fault for a stolen vehicle.

**EXECUTIVE SUMMARY**

In response to reports that rental car companies were misusing electronic surveillance technology in their vehicles to track the driving habits of renters, the Legislature created clear guidelines for when such technology could be used. Existing protections for renters' privacy prohibit a rental company's access to or use of information gathered using electronic surveillance technology except in certain limited situations. This includes in response to a specific request from law enforcement pursuant to a subpoena or search warrant or when the vehicle is missing or stolen. This latter basis requires certain conditions be met, such as the renter or law enforcement report the vehicle as stolen or missing or there is an AMBER alert. Relevant here, companies can utilize the tracking when a car has not been returned for 72 hours, despite notice to the renter. The authority to turn on this technology in this latter circumstance sunsets on January 1, 2028.

This bill lowers that timeline to 24 hours to respond to concerns that the longer period allows too much time for nefarious activity in stolen rental cars, and eliminates the sunset date. However, the bill also rolls back several consumer protection aspects of the relevant law, removing notice and acknowledgement requirements on rental companies and removing a protection for renters when a vehicle they have rented is stolen and the key is not in the vehicle.

This bill is sponsored by the American Car Rental Association. It is supported by law enforcement agencies and the California Travel Association. It is opposed by consumer and privacy groups, including the Consumer Federation of California and Consumers for Auto Reliability and Safety.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (Cal. Const., art.1, § 1.)
- 2) Governs the obligations arising from rental passenger vehicle transactions. (Civ. Code § 1939.01 et seq.)
- 3) Prohibits a rental car 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, except in limited circumstances. (Civ. Code § 1939.23(a).)
- 4) Provides that rental car companies are permitted to use electronic surveillance technology in response to a specific request from law enforcement pursuant to a subpoena or search warrant or for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:
  - a) The renter or law enforcement has informed the rental car company that the vehicle is missing or has been stolen or abandoned.
  - b) The rental vehicle has not been returned following 72 hours after the contracted return date or one week after the end of an extension of that return date. This provision sunsets on January 1, 2028.
  - c) 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, unless law enforcement has already informed the rental company that the vehicle is missing or has been stolen or abandoned.
  - d) The rental vehicle is the subject of an AMBER Alert. If the rental company uses the equipment in connection with this provision relating to an AMBER Alert, the rental company shall notify law enforcement that one of the rental company's vehicles is the subject of an AMBER Alert upon becoming aware of the situation, unless law enforcement has already informed the rental company that the vehicle was the subject of an AMBER Alert. (Civ. Code § 1939.23(a).)
- 5) Requires a rental car company taking advantage of the condition referenced in Section 4b above to provide notice of activation of the electronic surveillance

technology 24 hours prior to activation, by telephone and electronically, unless the renter has not provided a telephone number or the renter has not agreed to electronic communication. The rental or lease agreement shall advise the renter that electronic surveillance technology may be activated if the rental vehicle has not been returned within 72 hours after the contracted return date or extension of the return date. The renter shall acknowledge this advisement in the rental or lease agreement by initials. The advisement shall also be made orally to the renter at the time of executing the rental or lease agreement. The advisements are not required to be made to members of the rental company's membership program executing a rental or lease agreement; however, a renter shall be given those advisements upon enrolling in the rental company's membership program. (Civ. Code § 1939.23(a).)

- 6) Requires a rental car company to maintain a record of information relevant to the activation of electronic surveillance technology, including information regarding communications with the renter and law enforcement. Existing law specifies that this information shall include the return date, the date and time the electronic surveillance technology was activated, and, if relevant, a record of written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. (Civ. Code § 1939.23(a)(1)(B).)
- 7) Permits a rental company to equip its rental vehicles with certain electronic surveillance technology, but prohibits the rental company from using, accessing, or obtaining any information relating to the renter's use of the rental vehicle that was obtained using the electronic surveillance technology, except:
  - e) To discover or repair a defect in global positioning systems (GPS)-based technology that provides navigation assistance to the occupants of the rental vehicle.
  - f) To allow for the remote locking or unlocking of a vehicle at the request of the renter.
  - g) To provide roadside assistance, such as towing, flat tire, or fuel services at the request of the renter.
  - h) For the sole purpose of determining the date and time the vehicle departs from or is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. (Civ. Code § 1939.23(b)-(c).)
- 8) Prohibits a rental car company from using electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle. (Civ. Code § 1939.23(d).)
- 9) Provides that a rental company and renter will be responsible for no more than specified losses and damages. This includes loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of

that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (1) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (2) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this subdivision is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft. (Civ. Code § 1939.03.)

This bill:

- 1) Shortens the timeline for activating electronic surveillance technology to 24 hours after the scheduled return date and removes the sunset on the provision.
- 2) Eliminates the sunset date on the authority described above.
- 3) Eliminates the right of a consumer to receive an oral advisement of the company's ability to activate surveillance technology within the vehicle if the car is not timely returned and removes the requirement that the rental car company get an acknowledgement by initials of this policy at the time of executing the rental or lease agreement.
- 4) Deletes the presumption in favor of a consumer when determining liability for the theft of a vehicle where the consumer can establish that the ignition key was not in the vehicle at the time of the theft.

### COMMENTS

#### 1. Protecting rental car consumers from excessive electronic surveillance

AB 2840 (Corbett, Ch. 317, Stats. 2004) was enacted into law in response to press accounts of rental car companies using electronic surveillance technology, such as global positioning systems (GPS), to monitor the driving habits of renters and thereby violating their privacy rights in the process. Companies used the systems to track renters' routes and speeds, imposing fees and penalties. AB 2840 created protections for renters' privacy by prohibiting a rental company's access to or use of information gathered using electronic surveillance technology except in certain limited situations. It was supported by rental car companies, civil liberties organizations, consumer groups,

and the Attorney General. These provisions were later reorganized and are currently found in Section 1939.23 of the Civil Code.

Existing law now provides several narrowly circumscribed exceptions to the general prohibition on electronic surveillance technology use. A rental company is prohibited from using, accessing, or obtaining any information relating to a renter's use of a rental vehicle that was obtained using electronic surveillance technology, except in two circumstances. The first exception is in direct response to a specific request from law enforcement pursuant to a subpoena or search warrant. The second is when the equipment is used only for the purpose of locating a stolen, abandoned, or missing rental vehicle. This latter exception requires certain conditions, including that the rental company has discovered the rental vehicle has been stolen or abandoned, either through the renter, law enforcement, or other means; that the vehicle is the subject of an AMBER Alert; or that the vehicle has not been returned following one week after the contracted return date or the end of an extension of that date.

Concerns were raised that the one-week timeframe in this last exception was too long. In response, AB 2620 (Ting, Ch. 344, Stats. 2018) additionally authorized, until January 1, 2024, electronic surveillance technology to be used by a rental company in circumstances in which the rental vehicle has not been returned within 72 hours after the contract return date or extension of the return date. The sunset was extended last year to 2028 by AB 1756 (Committee on Judiciary, Ch. 478, Stats. 2023).

While a missed return date should not automatically trigger the rather exceptional power to electronically track the customer's vehicle, it was found reasonable that after three days, the customer has lost the right to privacy over the vehicle's whereabouts in the face of the countervailing interest of the rental company locating a vehicle kept so far beyond a contractually agreed-upon return date.

In this Committee's analysis of AB 2620, it was highlighted that customers' privacy interests are further buttressed by several consumer protections included in the statute. First, there is a required disclosure in the rental agreement, specifically acknowledged by the renter's initials, that electronic surveillance of the vehicle under these circumstances may take place. Additionally, to mitigate concerns of this Committee that "renters may still not fully comprehend that surveillance technology will be used," amendments were agreed to in Committee that further required rental car companies to verbally advise the renter at the time of executing the agreement of this potential electronic surveillance.

## 2. Expanding the use of electronic surveillance technology

This bill again amends this exception allowing the surveillance technology to be used if the rental vehicle is not returned, now shortening the timeline from 72 hours to 24 hours after the contracted return date or the end of an extension of that date.

According to the author:

Car theft in the State of California is higher than any in the nation. The increase in theft – and also rental car theft – means many of these vehicles are being used to commit crimes. They are often left abandoned, and sometimes they are never recovered. This is a straightforward proposal that will allow the cars to be recovered more quickly, prevent their use in committing crimes, and make sure they are found before they are damaged beyond repair.

The American Car Rental Association, the sponsor of this bill, explains the purpose of the bill:

Allowing rental car companies to remotely locate a vehicle after the vehicle is due and when the renter is non-responsive is a reasonable and common sense approach to allowing car rental companies to protect and recover their assets, while also limiting the possibility that stolen rental cars may be used in the commission of additional crimes.

The goal of this bill is simply that: improve management of abandoned, misused, overdue, or stolen vehicles and deter criminal activity.

Writing in support, a coalition of law enforcement agencies, including the Riverside Sheriffs' Association, assert:

Criminals are recognizing how easy it is to commit crimes with a rental car – it is registered to a company and that company can't take any action on them for three days – giving them ample time to commit a crime. Due to these outdated policies, it is clear that criminals can disappear long before the company can even attempt to locate the car. One can imagine how far a vehicle or person could travel three days after committing a crime.

AB 2741 would allow rental car companies to initiate vehicle tracking 24 hours after an individual fails to return a vehicle on time, thereby improving the ability of law enforcement to hold rental car thieves accountable.

The statements from the author and sponsor as well as the support letters all focus on the reduction of the timeline to 24 hours. However, the bill makes several other changes not mentioned in those letters that roll back important consumer protections without clear benefit to combatting vehicle theft.

First, the bill removes the requirement to verbally notify a renter at the time of signing the rental agreement that this technology can be used under these circumstances. This Committee specifically requested this language to balance legitimate interests in securing stolen cars in a timely manner with the privacy rights of consumers. The bill additionally removes the requirement that a consumer acknowledge the relevant advisement by initialing it. This leaves only the requirement that an advisement be given in the rental agreement, allowing it to be buried in the sea of legalese.

Writing in opposition, Consumer for Auto Reliability and Safety (CARS) states:

CARS is concerned about the potential for increased risks of false arrests and unjust convictions and prison sentences that could ensue from enactment of AB 2741 (Haney) in its current form, harming innocent vehicle renters.

Those concerns are certainly well-justified. For example, according to numerous news reports, rental car company Hertz has a history of erroneously and negligently reporting rental vehicles as stolen, resulting in hundreds of vehicle renters being subjected to false arrest, sometimes at gun point. Some were incarcerated for months, when they had done nothing wrong.

The incident cited resulted in serious harms for innocent consumers:

For years, the rental car company Hertz falsely accused hundreds of innocent customers of stealing its vehicles — accusations that, for some customers, resulted in arrests, felony charges and jail time.

Now, the company will pay \$168 million to settle those claims, Hertz announced Monday.

In total, the settlement will cover 364 people falsely accused of car theft. In a statement, the company said the number represents “more than 95%” of such claims.

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One Hertz customer was driving her rental car in Chicago when she got a flat tire, and she called Hertz to have the car towed, court records state. Months later, she was pulled over for wearing a seatbelt incorrectly when police informed her she had a warrant for her arrest; she was jailed for more than 30 days, she said in a lawsuit.

Another customer in Florida extended her Hertz rental four times — but the car was reported stolen before the end of the extension period in spite of text message communications with a Hertz employee confirming her

plans to return it, court records show. She was jailed for 37 days, separated from her two children and missing her nursing school graduation, the suit said.

And a Mississippi man spent more than 6 months in jail after Hertz reported his rental car stolen; he had returned it and paid in full, but the company had failed to inform prosecutors, he said in his suit. He missed a hearing date and was incarcerated for months, the suit states.

Several customers reported in lawsuits that they lost employment opportunities over pending felony charges. Others said they were arrested at gunpoint.

Hertz had initially fought in bankruptcy court to keep the allegations under seal. After a report by CBS News made some incidents public, Hertz responded that vehicles were only reported stolen after “exhaustive attempts to reach the customer.”<sup>1</sup>

Given these troubling practices and the serious privacy implications, and potential safety concerns, of a rental company tracking a consumer’s vehicle and potentially seeking to repossess it or calling the police, the author has agreed to amendments that replace the consumer protective requirements in the law. However, practical issues have been raised by the rental car companies that many consumers do not physically come into offices anymore to even pick up their vehicles. Therefore, the requirement to verbally notify the consumer will only apply if the transaction is completed in person or by phone.

Finally, the bill also amends another section regarding the determination of liability when a rental vehicle is stolen. Currently a renter is presumed to have no liability for any loss due to theft if (1) an authorized driver has possession of the ignition key furnished by the rental company or (2) an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft. The driver must also have filed an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperate with the rental company and the police or other law enforcement agency in providing information concerning the theft before the presumption applies. The presumption can be rebutted by the rental company.

This bill removes the presumption for where a driver can establish the key was not in the vehicle at the time of the theft. Arguably there is no solid basis for removing this

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<sup>1</sup> Becky Sullivan, *Hertz will pay \$168 million to customers it falsely accused of stealing its cars* (December 6, 2022) NPR, <https://www.npr.org/2022/12/06/1140998674/hertz-false-accusation-stealing-cars-settlement> [as of June 27, 2024].



consumer protection and seemingly no connection to combatting vehicle theft. Therefore, the author has agreed to remove this portion of the bill.

### SUPPORT

American Car Rental Association (sponsor)  
Arcadia Police Officers' Association  
Burbank Police Officers' Association  
California Coalition of School Safety Professionals  
California Narcotic Officers' Association  
California Reserve Peace Officers Association  
California Travel Association  
Claremont Police Officers Association  
Corona Police Officers Association  
Culver City Police Officers' Association  
Deputy Sheriffs' Association of Monterey County  
Fullerton Police Officers' Association  
Los Angeles School Police Management Association  
Los Angeles School Police Officers Association  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Novato Police Officers Association  
Palos Verdes Police Officers Association  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association  
Santa Ana Police Officers Association  
Upland Police Officers Association

### OPPOSITION

Consumer Federation of California  
Consumer for Auto Reliability and Safety  
Oakland Privacy

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2840 (Corbett, Ch. 317, Stats. 2004) *See Comment 1.*

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AB 2620 (Ting, Ch. 344, Stats. 2018) *See* Comment 1.

AB 1756 (Committee on Judiciary, Ch. 478, Stats. 2023) *See* Comment 1.

**PRIOR VOTES:**

Assembly Floor (Ayes 73, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 11, Noes 0)

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