

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1197 (Calderon)
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Hearing Date: June 24, 2025
Fiscal: No
Urgency: No
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SUBJECT

Rental passenger vehicles: electronic surveillance technology: renter liability for loss
due to theft

DIGEST

This bill expands the authority of rental vehicle companies to use electronic surveillance of rental vehicles and rolls back liability protections for rental vehicle customers in the event a rental vehicle is stolen.

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. Just last year legislation authorized the use of this technology on unreturned vehicles 24 hours after a rental period has ended. This bill now authorizes rental companies to use electronic surveillance technology to access information about a renter's use of the vehicle if it is deploying geofence technology showing the vehicle has moved out of the country or has moved into an impound or tow yard. Currently, in the event a rental car is stolen, a rental company can hold the consumer liable under certain circumstances. However, the law has certain protective but rebuttable presumptions against a consumer's liability. This bill rolls back one of the conditions affording this protection to consumers when a key is shown to not have been in the vehicle when stolen.

This bill is supported by the California Travel Association. It is opposed by the Consumer Federation of California and Consumers for Auto Reliability and Safety.

Should the bill pass this Committee, it will then be referred to the Senate Public Safety Committee.

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 24 hours after the contracted return date or after the end of an extension of that return date.
 - 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 paragraph 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 24 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, as provided. 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) Allows a rental company to use, access, or obtain information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, if the rental company uses geofence technology to detect the movement of a rental vehicle in either of the following circumstances:
 - a) The rental vehicle is moved outside of the country, if travel outside of the country is not authorized by the rental agreement.
 - b) The rental vehicle is moved into an impound or tow yard.
- 2) Provides that if a vehicle remains within the perimeter of the impound or tow yard for 24 hours, the vehicle shall be deemed abandoned by the renter.
- 3) 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. The presumption is only established if the renter returns the key.

COMMENTS

1. Protecting rental car consumers from 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 after the contracted return date or the end of an extension of that date.

Previously, the rental company could only take advantage of this latter exception if the vehicle was not returned one week after the agreed upon 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 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.

Last year, AB 2741 (Haney, Ch. 970, Stats. 2024) loosened these protections. It removed the sunset entirely and lowered the timeline to 24 hours rather than 72 hours. It also removed the requirement to provide a verbal notice in certain circumstances.

2. Expanding the use of electronic surveillance technology

This bill again expands the ability for rental companies to use, access, or obtain information relating to the renter's use of the rental vehicle through surveillance technology. This time the bill allows a rental company to use geofence technology to detect the movement of a rental that is moved outside of the country, if travel outside of the country is not authorized by the rental agreement; and where the rental vehicle is moved into an impound or tow yard. Furthermore, if the vehicle remains within the perimeter of the impound or tow yard for 24 hours, the vehicle can be deemed abandoned by the renter, without any outreach to or notice from the renter.

Some concerns have been raised that this erodes consumers' privacy rights. The author responds: "It is not the intent of the bill to run counter to consumer protections or existing privacy laws. The language is written so that the use of geo-fencing technology is strictly limited to two circumstances." The author may wish to consider language that further refines the utilization of geofence technology, which is not defined in the bill. It is unclear if technology currently exists that would provide the location of a vehicle only if it crosses into certain areas and not outside of those zones as would be required under the bill, as it is clear that no collection of location or any other attendant information is permissible unless the vehicle has entered the specified locations or another exception under existing law applies.

There are concerns that allowing another level of surveillance of vehicles and the authorization to treat a vehicle as abandoned if geofence technology indicates it is at, for instance, a tow yard, could result in improper attempts to repossess vehicles without a renter's knowledge. Under the bill, a consumer is not even required to be made aware that the vehicle has been deemed abandoned or that the rental company knows where the vehicle is.

Those concerns are not completely hypothetical. 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 accused of stealing vehicles, with many 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.

...

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.”¹

In response, the author has agreed to amendments that require a rental company to notify the renter that the vehicle has been detected within an impound or tow yard. The vehicle can be deemed abandoned if the vehicle remains within the impound or tow yard for 24 hours after that notification.

3. Rolling back liability protections for consumers

This 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

¹ 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 18, 2025].

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. Furthermore, the presumption can only be established if the renter returns the key to the rental company.

The author asserts that consumers are using the existing presumption to steal rental cars, although only anecdotal evidence has been provided:

[T]his bill does not eliminate protections of liability, instead it revises the presumption when the keys are not returned to the rental car companies. The renter of the car still receives the presumption if they return the keys. If the car is stolen and a consumer cannot produce the keys, it is reasonable for the presumption to not apply.

4. Stakeholder positions

The California Travel Association writes in support:

As a state known for our vibrant tourism industry – from coastal destinations and national parks to gateway cities – California depends on a rental car infrastructure that is secure, efficient, and responsive to customer needs. This legislation enables rental car companies to responsibly use location-based technologies to manage and protect their fleets, detect unauthorized movement, and recover stolen vehicles.

The Consumer Federation of California and Consumers for Auto Reliability and Safety write in joint opposition:

Modern vehicles are so highly technologically advanced that they are being dubbed “smartphones on wheels”. Although such services provide access to drivers’ data to enable customizable features, consumers have very limited control over what happens to their personal information – especially in cases where the car is rented rather than owned. A survey conducted by the non-profit Mozilla Foundation, titled “It’s official: Cars are the worst product category we have ever reviewed for privacy,” draws attention to the lack of control drivers have over the personal data

collected by their vehicles. The survey findings indicate that security standards in this area are often unclear, which raises significant concerns given the automotive industry's past vulnerabilities to hacking. Specifically, after analyzing 25 car brands, researchers identified several problematic practices common among most or all of these brands. These problematic practices include excessive collection of personal data, sharing or selling consumers' data, and providing limited control to drivers over their personal data. The commodification of consumers' data is an ongoing concern, and allowing rental car companies access to consumers' private information significantly erodes decades of privacy protections in California. Instead of adding to existing protections, AB 1197 goes the opposite direction by weakening consumer protections, most importantly consumer privacy protections.

SUPPORT

California Travel Association

OPPOSITION

Consumer Federation of California

Consumers for Auto Reliability and Safety

RELATED LEGISLATION

Pending Legislation: AB 1374 (Berman, 2025) updates the existing pricing transparency law applying to rental vehicle companies to require these companies to provide the total charges estimate for the entire rental, including all taxes and fees imposed by a government, as soon as dates, location, and vehicle type or class for the rental are provided to the rental company or third party. Third parties are also incorporated into the regulatory scheme. AB 1374 is currently pending in this Committee and set for hearing the same date as this bill.

Prior Legislation:

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

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 14, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
