

Date of Hearing: May 6, 2025

Fiscal: No

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1197 (Calderon) – As Amended April 24, 2025

PROPOSED AMENDMENTS

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

SYNOPSIS

California prohibits rental car companies from using, accessing, or obtaining any information relating to a customer's use of the rental vehicle that was obtained using electronic surveillance technology, except in a few narrowly defined situations including when the customer fails to return the vehicle within three days of the contracted return date.

This bill, sponsored by the American Car Rental Association, would expand the ability of rental companies to use location surveillance technology in order to make sure that their rental cars are not impounded and do not leave the country without authorization. The bill also narrows a legal presumption that the renter has no liability for loss due to theft by limiting it to circumstances in which the renter returns the key to the rental company – striking language in existing law that additionally entitles renters to this presumption if they can establish that the key was not in the vehicle when it was stolen.

The Committee amendments described in Comment #5 address a concern raised by the opposition that the current language allowing them to use any location surveillance technology for purposes of determining if a car is taken out of the country or is impounded is too broad and potentially allows for constant surveillance. The amendments limit the rental car companies to using geo-fencing technology at the border and around tow and impound yards.

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

THIS BILL:

- 1) Clarifies a presumption that the renter is not liable for theft of a rental car if:
 - a) The ignition key is returned, and
 - b) A police report is filed within 24 hours and the renter reasonably cooperates with law enforcement and the rental company in providing information concerning the theft.
- 2) Specifies that the presumption affects the burden of proof and may be rebutted by showing the renter or authorized driver committed or assisted in the theft.
- 3) Provides that a rental company can use, access, or obtain information relating to the renter's use of the rental vehicle using electronic surveillance technology if the rental company uses

location-based technology to detect the movement of a rental vehicle in either of the following circumstances:

- a) The rental vehicle is moved outside the country, if travel outside the country is not authorized by the rental agreement.
 - b) The rental agreement is moved into an impound or tow yard.
- 4) Establishes that if a rental vehicle remains within the perimeter of the impound or tow yard for 24 hours, the vehicle is deemed abandoned by the renter.

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 one week 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 issued pursuant to Section 8594 of the Government Code. 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 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).)

- 6) 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).)
- 7) 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).)
- 8) Provides that the renter may be held liable for loss due to theft of the rental vehicle, up to its fair market value, if the rental company establishes by clear and convincing evidence that the renter or authorized driver failed to exercise ordinary care. (Civil Code § 1939.03(b).)
- 9) Establishes a rebuttable presumption that the renter is not liable for theft if: (1) the ignition key was in the possession of an authorized driver or was not left in the vehicle; and (2) the renter filed a timely police report and reasonably cooperated with the rental company and law enforcement. (*Ibid.*)

COMMENTS:

1) **Author's statement.** According to the author:

Since 2023, California has experienced the most auto thefts in the country. According to the National Insurance Crime Bureau, over 200,000 auto crimes have been reported in our state over the last two years. Rental car fleets are easy targets, since car theft rings face limited repercussions under current law. AB 1197 modernizes rental car recovery in the event of a theft or unauthorized usage of the vehicle.

2) **Privacy, automobiles, and electronic surveillance technology.** Placed in the state constitution by ballot proposition in 1972, the inalienable right to privacy is guaranteed to all Californians. Consistent with that right, the Legislature has enacted numerous policies intended to safeguard individuals' privacy, including the surveillance restrictions this bill would amend. After reports of a Connecticut rental company charging customers extra for speeding, California

became one of only a handful of states to restrict the practice of using electronic surveillance technology in rental cars.¹

AB 2840 (Corbett, Ch. 317, Stats. 2004) defined “electronic surveillance technology” to mean a technological method or system used to observe, monitor, or collect information, including telematics, GPS, wireless technology, or location-based technologies, and recognized that despite electronic surveillance technology’s utility to the entities employing it and the populations being surveilled, such technology also may violate an individual’s right to privacy. Since 2004, concerns about protecting the privacy of Californians have grown significantly in an age where the use of surveillance technology has increased at lightning speed.

Since 2012, when General Motors’ OnStar debuted Family Link, a service that allowed remote users to track their family members and receive alerts about where the car goes, this type of remote vehicle location technology has become more sophisticated and common with most new cars offering remote vehicle technology that allows someone with a smart phone app to check a car’s location, including following the movement of the car in real time; track the history of where the car has been driven; lock and unlock the vehicle remotely; turn it on or off; set the car’s climate controls; make the horn honk; and turn on its lights.²

In addition to the remote tracking technology used by consumers, vehicles now often contain exterior and interior cameras that can be used to gather information on drivers. In-vehicle cameras serve a variety of functions, ranging from using facial-recognition technology to automatically adjust seat and mirror settings for each driver, to detecting drowsy or distracted drivers and either alerting them or capping vehicle speed. In the United States, all new cars are required to have backup cameras to help drivers avoid accidents, and other countries have already expanded such safety requirements to include in-vehicle, driver-directed sensors and cameras. However, little is known about how data collected by these cameras is stored and used. Meanwhile, most new cars sold in the United States, including all new Fords, GMs, and BMWs, and nearly all Toyotas and Volkswagens, come with built-in internet connections.

Along with this surveillance technology, smartphones that track virtually every movement of their users, both online and in the real world, have become nearly universal. Vehicles as well, have become computers on wheels along with driver assistance systems, large display screens, internet connections, a multitude of ways to sync smartphones, and contain as many as 200 sensors for collecting data. All of this data is being collected, stored, shared, used, and sold by auto manufacturers and third-party vendors.

3) What this bill would do. This bill changes existing law in two respects. First, existing law provides that a rental contract may hold the renter responsible for the fair market value of a stolen vehicle if the rental company establishes by clear and convincing evidence that the renter or authorized driver failed to exercise ordinary care while in possession of the vehicle. Existing law presumes the renter is not liable if an authorized driver (1) has possession of the key or can establish that it was not in the vehicle at the time of the theft, and (2) files an official police report within 24 hours and reasonably cooperates with the rental company and law enforcement. The rental company can rebut this presumption by showing that the renter or authorized driver

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

² Hill, Kashmir. “Your Car Is Tracking You. Abusive Partners May Be, Too.” *The New York Times* (Dec. 31, 2023) available at <https://www.nytimes.com/2023/12/31/technology/car-trackers-gps-abuse.html>.

committed or aided and abetted the theft. This bill changes (1) by making it apply only if an authorized driver returns the key to the rental company.

Second, under existing law, rental companies may activate electronic surveillance technology only in narrowly defined circumstances, such as when a vehicle is reported stolen, has not been returned within 24 hours after the agreed-upon return date (with notice to the renter), or in response to a subpoena or law enforcement request. This bill additionally allows rental companies to use location surveillance technology if the vehicle is moved to an impound yard or has been driven out of the country without authorization.

4) **Opposition arguments.** The sponsors, the American Rental Car Association, contend that the bill would allow rental car companies to use GPS to detect the movement of a rental vehicle outside the country, if not authorized by the rental agreement, or if deemed abandoned in a tow yard for more than 24 hours. However, the opponents of the bill, Consumer Federation of California and Consumers for Auto Reliability and Safety, argue that the current language allowing the use of surveillance technology is unduly broad and would allow for the constant surveillance of the renters. They note:

[T]he bill, which amends current Section 1939.23 of the Civil Code, would significantly expand rental car companies' ability to utilize tracking technology on their customers. The provision is supposedly under the guise of protecting against rental cars leaving the country or being taken to an impound lot or tow yards, but the language of the bill is vague enough to all but guarantee virtually unlimited tracking of consumers when they rent a car.

As currently drafted, the bill could allow rental car companies to continuously track their customers under the auspices of ensuring that their cars do not leave the country or end up in an impound lot. The bill authorizes the companies to use "location-based technology, including but not limited to, a geo-fence or other virtual perimeter..." which would allow companies to use any location surveillance technology they choose, including continuously monitoring the movements of the car. However, the company would still be prohibited under Section 1939.23(a) from using that location data for any other purpose.

5) **Amendments.** In order to limit the type of technology used and the locations where it can be used, the author has agreed to the following amendments:

1939.23 (a)(3) The rental company uses ~~location-based geofence technology, including, but not limited to, a geofence or other virtual perimeter,~~ 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. If the vehicle remains within the perimeter of the impound or tow yard for 24 hours, the vehicle shall be deemed abandoned by the renter.

ARGUMENTS IN SUPPORT: The American Car Rental Association, sponsors of the bill, write in support:

Vehicle theft, fraud, the commission of crimes in rental vehicles, abandonment and misuse of vehicles, and predatory towing practices are significant issues in California. Additional circumstances frequently arise during the rental of a vehicle, including accidents, citations or vehicle recalls which require timely assistance or recovery of vehicles by rental car companies. Unfortunately, current law makes it difficult to successfully recover rental vehicles quickly and does not contemplate recent technology and changes in privacy laws. This excessively restricts car rental companies in the management of their fleets, their ability to deter criminal activity, and protect our customers' safety.

AB 1197 would allow rental car companies to use GPS to detect the movement of a rental vehicle outside the country, if not authorized by the rental agreement, or if deemed abandoned in a tow yard for more than 24 hours. Additionally, this bill presumes that a renter has no liability for any loss due to theft if an authorized driver returns the ignition key furnished by the rental company.

ARGUMENTS IN OPPOSITION: In opposition to the previous version of the bill, Consumer Federation of California and Consumers for Auto Reliability and Safety argue:

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.

REGISTERED SUPPORT / OPPOSITION:

Support

American Car Rental Association (ACRA) (Sponsor)
California Travel Association (CALTRAVEL)

Oppose

Consumer Federation of California
Consumers for Auto Reliability and Safety

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