

---

## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

---

**Bill No:** AB 391                      **Hearing Date:** June 18, 2019  
**Author:** Voepel  
**Version:** March 11, 2019  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** GC

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

### HISTORY

Source: Author

Prior Legislation: AB 2169 (Voepel), 2018, vetoed

Support: AVIS; California District Attorneys Association; National Insurance Crime Bureau (NICB); Sixt Rent A Car LLC

Opposition: California Public Defenders Association

Assembly Floor Vote: 73 - 1

### 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:

Currently, Rental Car Companies are required to wait five days before they are allowed to file that the rented vehicle has been stolen with the local law enforcement. Furthermore, the current statute requires that the rental car company to only communicate with the renter via mail. This bill helps to address the issue by eliminating the five day waiting period by providing a tool to the rental car companies to efficiently establish communication with the renter via telephone. Once the rental car company finds that it cannot get hold of the renter it can then file an incident report with their local law enforcement agency in which to report the vehicle missing. Furthermore, this measure would ensure that fraud is reported on a mannerly fashion, especially if the renter's information was provided falsely or the identity was stolen.

### 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.

#### 4. Amendment Taken Last Year

Last year, opponents to this legislation argued that the shortening of the period from 5-days to 48-hours removed 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 was taken in this committee to 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 Vehicle 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 addition of this amendment removed some opposition, however the California Public Defenders Association remains opposed. 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).

## 5. Prior Governor's Veto Message

AB 2169 (Voepel) of the prior legislative session, as amended, and as passed by the Legislature, was identical to this bill. However, AB 2169 was vetoed. In his veto message, then-Governor Brown stated:

This bill reduces the period of time following the expiration of a vehicle lease or rental agreement from 5 days to 48 hours before the person who has leased the vehicle is presumed to have embezzled the vehicle.

I understand the importance of enabling car rental companies to protect against those who steal their cars. In this case, however, I believe there are other solutions available that would work better, such as the increased use of GPS technology.

## 6. Argument in Support

According to the *National Insurance Crime Bureau*:

When we look at rental car thefts, California leads the nation with 4,698 thefts in 2015, 6,264 in 2016 and 6,712 in 2017.

Every passing day a vehicle rental company cannot report their vehicle stolen, the likelihood of that vehicle being recovered decreases. As the days pass, stolen rental cars can be taken over the U.S.-Mexico border, dismantled for parts, re-tagged or cloned to sell to unsuspecting buyers, or used in the commission of other illegal acts.

The California District Attorneys Association, in supporting this legislation last session, opined: "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."

We encourage the committee to pass AB 391 and allow rental car companies to report stolen and fraudulently procured vehicles in a more timely manner.

Decreasing the wait period before a rental car company can report a stolen vehicle will increase the chances that the stolen vehicle is located and returned.

## 7. Argument in Opposition

According to the California Public Defenders Association:

Under current law, car rental contracts generally contain a clause explaining to the renter that failure to return a car at the originally scheduled time will result in additional charges, and a late return financial penalty. Thus, Californians who rent a vehicle are effectively informed at the time of rental that they may extend the car rental beyond the allotted time, provided they are willing to pay described, pre-set financial penalties.

Recognizing that renters will not always be able to return their vehicles on the originally scheduled date, current criminal law offers consumers a five day grace period before the car rental company can force police to treat the car as a stolen vehicle. Thus, while still subject to any contractually agreed upon civil penalties, consumer will not face potentially dangerous law-enforcement intervention until the expiration of the grace period.

However once the five day grace period has ended, not only are police required to enter the car's information into the DMV Stolen Vehicle database, but the consumer is presumed as a matter of law to have intended to steal the car, and is thereafter subject to arrest.

AB 391 proposes to remove the five day grace period for rental returns, and replace it with a strict, 48 hour time limit. Such a reduced time limit is not only arbitrary, but also exponentially increases the risk that honest consumers will be subject to dangerous interactions with the police officers now required to act as repo-men for the car rental industry or forced to arrest law abiding customers based on malfunctioning rental car computer systems....

Under AB 391, even without computer glitches, a consumer who originally intended to return a rental car on Friday but was unable to do so as a result of illness or some other emergency, could face arrest, criminal charges, and prosecution simply because they returned the car on Sunday afternoon.

-- END --