

## CONCURRENCE IN SENATE AMENDMENTS

AB 1197 (Calderon)

As Amended June 26, 2025

Majority vote

**SUMMARY**

Clarifies renter liability for theft of a rental vehicle and expands the circumstances under which rental car companies may use geofence technology to recover unreturned or abandoned vehicles.

**Major Provisions**

- 1) Establishes 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 geofence 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 *vehicle* is moved into an impound or tow yard.
- 4) *Requires the rental company to notify the renter that the vehicle has been detected within an impound or tow yard.*
- 5) Establishes that if a rental vehicle remains within the perimeter of the impound or tow yard for 24 hours *after the notification*, the vehicle is deemed abandoned by the renter.

**Senate Amendments**

*Require the rental company to notify the renter that the vehicle has been detected within an impound or tow yard.*

**COMMENTS**

*The problem of rental car theft.* California continues to grapple with high rates of vehicle theft, leading the nation with over 200,000 reported incidents in 2023. While comprehensive data on rental car thefts is limited, industry reports indicate a significant surge in such incidents. Rental car companies estimate that annually there are approximately 400-500 stolen vehicles where the key is not returned to the rental car company. These stolen vehicles are frequently used in the commission of other crimes, including organized retail theft and trafficking. Stolen rental cars are often found severely damaged or abandoned, sometimes even shipped out of the country. According to industry reports, the surge in rental car thefts not only results in substantial financial losses for the companies but also poses serious public safety concerns.

This bill updates California's rental car laws by clarifying renter liability for vehicle theft and modestly expanding the permissible use of electronic surveillance technologies to recover missing vehicles. First, it authorizes rental car companies to use geofence technology to detect the movement of a rental vehicle in two additional circumstances: when a vehicle is moved outside the country without authorization, and when it enters an impound or tow yard. If the vehicle remains at the impound location for 24 hours, it is deemed abandoned. These provisions build upon existing law that limits use of surveillance technology to defined recovery scenarios and require notice to renters. Second, the bill narrows the statutory presumption that a renter is not liable for theft. Under the revised language, the presumption applies only if the authorized driver both returns the ignition key furnished by the rental company and files a police report within 24 hours while reasonably cooperating with the rental company and law enforcement. This replaces current law, which allows the presumption to apply if the renter either returns the key or demonstrates that it was not left in the vehicle.

*Electronic surveillance provisions.* Under existing law, rental car companies may only activate electronic surveillance technology 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 maintains those core restrictions but adds two limited exceptions: it permits the use of geofence technology to detect when a vehicle has been moved outside the country without authorization, and when a vehicle has been moved into an impound or tow yard. If the vehicle remains at the impound location for 24 hours, it is deemed abandoned.

*Revisions to a rebuttable presumption that the renter is not liable for theft.* This bill modifies the rebuttable presumption in Civil Code Section 1939.03(b) that a renter is not liable for the theft of a rental vehicle. Existing law provides that the renter shall be presumed to have no liability if (1) an authorized driver either has possession of the ignition key furnished by the rental company or can establish that the key was not in the vehicle at the time of the theft, and (2) an authorized driver files an official police report within 24 hours and reasonably cooperates with the rental company and law enforcement. This presumption is defined as one affecting the burden of proof, meaning the burden shifts to the rental company to rebut it by showing that the renter or authorized driver committed or aided and abetted the theft.

This bill modifies the conditions for invoking the presumption by requiring the renter to return the ignition key furnished by the rental company, rather than allowing the alternative showing that the key was not in the vehicle. The requirement to file a timely police report and cooperate remains unchanged, and the bill continues to treat the presumption as one affecting the burden of proof.

The revised language establishes a more clear and objective threshold for applying the presumption, which may assist rental companies in evaluating and documenting theft claims. However, it also limits the availability of the presumption for renters who are unable to return the key due to circumstances beyond their control—such as when a key is stolen along with the vehicle or unintentionally left behind due to the design of modern keyless ignition systems, where a fob may be left in a bag or compartment without affecting operation.

From a policy perspective, the change may enhance predictability and reduce disputes, but it also narrows an important consumer protection that previously accounted for the variability of renter behavior and vehicle technology. While rental companies still bear the burden of overcoming the

presumption once triggered, fewer renters may be able to satisfy the initial requirements in order to avail themselves of the presumption.

*What happens to a renter who does not return the key?* If the presumption under Civil Code Section 1939.03(b) is not triggered—for example, because the renter cannot return the ignition key furnished by the rental company—then the statutory presumption that the renter is not liable for theft does not apply, and the case proceeds under the default standard in the statute. Even without the presumption, the rental company still bears the burden of proving, by clear and convincing evidence, that the renter or authorized driver failed to exercise ordinary care while in possession of the vehicle. This is a high evidentiary standard. They cannot prevail simply because the key is missing. For example, if the key was lost during a mugging, or stolen along with the vehicle despite reasonable precautions, the renter may still avoid liability—so long as the facts show that they acted with ordinary care. But the absence of the presumption means that the factfinder (e.g., a court or arbitrator) starts with a neutral posture, rather than one in the renter's favor.

As introduced, this bill also removed the "clear and convincing evidence" standard, which would have permitted liability to attach upon a showing that the renter or driver simply failed to exercise ordinary care—presumably under a preponderance of the evidence standard, the default standard in civil cases. (Evidence Code Section 115.) By reducing the standard to a preponderance—i.e., more likely than not—the bill would have lowered the threshold for imposing liability on consumers, increasing their financial exposure in borderline cases involving ambiguity or minimal evidence of carelessness. *Assembly* amendments re-insert the "clear and convincing evidence" standard that serves as a critical consumer protection backstop for renters who are unable to invoke the statutory presumption of non-liability—for example, because they cannot return the ignition key or satisfy the other triggering conditions. In such cases, the renter loses the procedural benefit of the burden-shifting presumption, but the heightened evidentiary standard still functions to guard against unjust or speculative liability claims by the rental company. When the renter cannot trigger the statutory presumption—such as when the key was lost or stolen along with the vehicle—the clear and convincing evidence standard becomes the renter's primary legal shield. It effectively raises the threshold the rental company must meet, ensuring that renters are not held liable based on weak, uncorroborated, or speculative allegations, such as "the key was probably left inside" or "the area seemed risky." In other words, it ensures that rental companies may not impose liability lightly, and must instead prove with substantial, persuasive evidence that the renter failed to act with ordinary care. This preserves a meaningful balance between loss recovery for businesses and protection from overreach for consumers, particularly in a context where the contractual and evidentiary playing fields are often unequal.

### **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. With these high rates of car theft, rental car fleets are easy targets since car theft rings face limited repercussions. AB 1197 strengthens protections for consumers by limiting their liability and modernizes rental car cost recovery in the event of a theft.

**Arguments in Support**

CalTravel, the trade advocacy association for the travel and tourism industry in California, explains its support of this measure:

Our membership includes destinations, lodging, amusement parks, transportation companies, and other organizations for whom travel and tourism is important. Travelers infused \$156.4 billion into California's economy in 2024, which supported 1.2 million jobs and generated \$12.6 billion in local and state tax revenue.

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. These tools help ensure that rental cars remain available and in good condition for the millions of travelers who rely on them each year. For these reasons we respectfully urge your support of AB 1197.

**Arguments in Opposition**

The Consumer Federation of California and the Consumers for Auto Reliability and Safety, oppose the earlier version of this measure, including the striking of the "clear and convincing evidence" standard. As amended *in the Assembly*, the bill re-inserts that language and should thus assuage those concerns. Nevertheless, the opposition has raised additional concerns about other provisions of the bill in print:

Section [2] of the 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. This language should be eliminated or, at a bare minimum, significantly narrowed to limit the ability of rental car companies to geo-track consumers.

**FISCAL COMMENTS**

None

**VOTES:****ASM JUDICIARY: 11-0-1**

**YES:** Kalra, Dixon, Bryan, Connolly, Harabedian, Macedo, Pacheco, Papan, Sanchez, Stefani, Zbur

**ABS, ABST OR NV:** Bauer-Kahan

**ASM PRIVACY AND CONSUMER PROTECTION: 14-0-1**

**YES:** Bauer-Kahan, Dixon, Bryan, DeMaio, Irwin, Lowenthal, Macedo, McKinnor, Ortega, Patterson, Pellerin, Petrie-Norris, Ward, Wilson

**ABS, ABST OR NV:** Wicks

**ASSEMBLY FLOOR: 73-0-6**

**YES:** Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Caloza, Carrillo, Castillo, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wilson, Zbur, Rivas

**ABS, ABST OR NV:** Bryan, Chen, Nguyen, Sanchez, Sharp-Collins, Wicks

**UPDATED**

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CONSULTANT: Shiran Zohar / JUD. / (916) 319-2334

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