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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2298

Introduced by Assembly Member ~~Ma Solorio~~

February 24, 2012

~~An act to add and repeal Section 13025 of the Penal Code, relating to metal theft. An act to amend Sections 488.5, 557.5, and 791.12 of the Insurance Code, and to amend Section 16051 of the Vehicle Code, relating to insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, as amended, ~~Ma Solorio. Metal theft. Insurance: public safety employees: accidents.~~

Existing law provides that no insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the Department of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating an authorized emergency vehicle, as defined, in the performance of his or her duty during the hours of his or her employment.

This bill would also provide that no insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the Department of the California Highway Patrol, or firefighter, with respect to his or her operation of a private passenger motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating his or her private passenger motor vehicle in the performance of his or her duty at the request or direction of the employer.

Existing law provides that a peace officer, member of the Department of the California Highway Patrol, or firefighter shall not be required to report any accident in which he or she is involved while operating any employer-leased or employer-rented vehicle, in the performance of his or her duty during the hours of his or her employment, to any person who has issued that peace officer, member of the Department of the California Highway Patrol, or firefighter a private automobile insurance policy.

This bill would provide that, in the event of a loss or injury that occurs as the result of an accident during any time period when a private passenger motor vehicle is operated by an employee who is a peace officer, member of the Department of the California Highway Patrol, or firefighter and used by him or her at the request or direction of the employer in the performance of the employee's duty, the vehicle's owner shall have no liability, and the employer shall be considered the owner of the vehicle for the purpose of any liability and defense of the claim . The bill would require the peace officer, member of the Department of the California Highway Patrol, or firefighter to report and provide, within 10 days of the accident, to his or her private automobile insurer all documentation and information known to him or her related to the accident. The bill would impose a similar duty on both the employer and employee if it is subsequently discovered that the employer did not direct or request the employee to use the vehicle when the loss occurred. The bill would prohibit, only under specified circumstances, a good faith delay by an employee in reporting the accident to his or her private passenger motor vehicle liability insurer, under the circumstances described, from being used by the insurer as a basis to claim delayed reporting, noncooperation, prejudice, or the like as a means of avoiding the defense or indemnity obligations that would otherwise exist under the terms of the automobile liability insurance policy or applicable law in the absence of delayed reporting.

The bill would make conforming changes relating to proof of financial responsibility and adverse underwriting decisions, in the event of an accident involving a private passenger motor vehicle operated on behalf of a public agency, as specified.

~~Existing law provides that any person who feloniously steals, takes, or carries away the personal property of another, or who fraudulently appropriates property that has been entrusted to him or her, is guilty of theft. Existing law also provides that a person who, being a dealer in or collector of junk, metals, or secondhand materials, buys or receives any wire, cable, copper, lead, solder, mercury, iron, or brass that he or she knows or reasonably should know is ordinarily used by, or ordinarily belongs to, a railroad or other transportation, telephone, telegraph, gas, water, or electric light company or county, city, or city and county without using due diligence to ascertain that the person selling or delivering the same has a legal right to do so, is guilty of criminally receiving that property. Existing law authorizes the creation of rural crime prevention task forces for the purpose of developing rural crime prevention programs with systems for reporting rural crimes that enable the swift recovery of stolen goods and the apprehension of criminal suspects for prosecution.~~

~~This bill would require the Department of Justice, on or before January 1, 2014, to study the prevalence of metal theft in California and make recommendations to the Legislature in a report addressing the tools and resources that would be required by local law enforcement and district attorneys in order to successfully interdict the commission of metal theft and related metal recycling crimes. The bill also would require the report to include an analysis of the existing activities of rural crime prevention programs with regard to metal theft and related metal recycling crimes and the extent to which additional regional task forces could assist in deterring, investigating, and prosecuting metal theft and related metal recycling crimes.~~

~~The bill would repeal these provisions on January 1, 2018.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 488.5 of the Insurance Code is amended
2 to read:

1 488.5. (a) ~~No~~*An* insurer shall *not*, in issuing or renewing a
2 private automobile insurance policy to a peace officer, member of
3 the *Department of the California Highway Patrol*, or firefighter,
4 with respect to his or her operation of a private *passenger* motor
5 vehicle, increase the premium on that policy for the reason that
6 the insured or applicant for insurance has been involved in an
7 accident while operating an authorized emergency vehicle, as
8 defined in subdivision (a) or (f) of Section 165 of the Vehicle Code
9 or in paragraph (1) or (2) of subdivision (b) of Section 165 of the
10 Vehicle Code, *or any employer-leased vehicle or employer-rented*
11 *vehicle*, in the performance of his or her duty during the hours of
12 his or her employment, *or was involved in an accident while*
13 *operating his or her private passenger motor vehicle in the*
14 *performance of his or her duty at the request or direction of an*
15 *employer.*

16 (b) ~~No~~*An* insurer shall *not*, in issuing or renewing a private
17 automobile insurance policy to a federal officer or federal customs
18 agent, with respect to his or her operation of a private motor
19 vehicle, increase the premium on that policy for the reason that
20 the insured or applicant for insurance has been involved in an
21 accident while operating an official government vehicle in the
22 performance of his or her duty during the hours of his or her
23 employment.

24 (c) As used in this section:

25 (1) “Peace officer” means every person defined in Chapter 4.5
26 (commencing with Section 830) of Title 3 of Part 2 of the Penal
27 Code.

28 (2) “Policy” shall have the same meaning as defined in
29 subdivision (a) of Section 660.

30 *SEC. 2. Section 557.5 of the Insurance Code is amended to*
31 *read:*

32 557.5. ~~No~~*(a)* A peace officer, member of the *Department of*
33 *the California Highway Patrol*, or firefighter shall *not* be required
34 to report, *nor shall any employer of the same be authorized to*
35 *request or require that a peace officer, member of the Department*
36 *of the California Highway Patrol, or firefighter report, any*
37 accident in which he or she is involved while operating an
38 authorized emergency vehicle, as defined in subdivision (a), (b),
39 or (f) of Section 165 of the Vehicle Code, or any employer-leased
40 or employer-rented vehicle in the performance of his or her duty

1 during the hours of his or her employment, to any person who has
2 issued that peace officer, member of the California Highway Patrol,
3 or firefighter a private automobile insurance policy.

4 *(b) (1) Notwithstanding any other provision of law or any*
5 *provision in a private passenger motor vehicle owner's automobile*
6 *liability insurance policy, in the event of a loss or injury that occurs*
7 *as the result of an accident during any time period when that*
8 *private passenger motor vehicle is operated by an employee who*
9 *is a peace officer, member of the Department of the California*
10 *Highway Patrol, or firefighter and is used by him or her at the*
11 *request or direction of the employer in the performance of the*
12 *employee's duty, the vehicle's owner shall have no liability. The*
13 *peace officer, member of the Department of the California Highway*
14 *Patrol, or firefighter shall report and provide, within 10 days of*
15 *the accident, to his or her private automobile insurer all*
16 *documentation and information known to him or her related to*
17 *the accident. The employer shall be considered the owner of the*
18 *vehicle for the purpose of any liability and defense of the claim,*
19 *and any losses shall be borne solely by the employer.*

20 *(2) Notwithstanding any other provision of law, the employer*
21 *shall assume liability for and defense of a claim in which a dispute*
22 *exists as to whether the employer directed or requested the*
23 *employee to use the private passenger motor vehicle when the loss*
24 *occurred that gave rise to the claim.*

25 *(3) If it is subsequently determined that the employer did not*
26 *direct or request the employee to use the private passenger motor*
27 *vehicle when the loss occurred, the employer and employee shall*
28 *provide notice to the private passenger motor vehicle's insurer of*
29 *this determination and provide all documentation and information*
30 *known to him or her related to the claim or loss to the private*
31 *passenger motor vehicle's insurer within 10 days of the*
32 *determination. The private passenger motor vehicle insurer that*
33 *insures the vehicle shall reimburse the employer the reasonable*
34 *costs of defense to the extent of the insurer's obligation and up to*
35 *the coverage limits under the applicable automobile liability*
36 *insurance policy.*

37 *(4) A good faith delay by an employee in reporting the accident*
38 *to his or her private passenger motor vehicle liability insurer,*
39 *under the circumstances described in this section, shall not be*
40 *used by the insurer as a basis to claim delayed reporting,*

1 *noncooperation, prejudice, or the like as a means of avoiding the*
 2 *defense or indemnity obligations that would otherwise exist under*
 3 *the terms of the automobile liability insurance policy or applicable*
 4 *law in the absence of delayed reporting. This subdivision shall*
 5 *apply only if the employee complies with requirements set forth in*
 6 *paragraphs (1) and (3).*

7 *(5) This subdivision shall not apply to the operation of a private*
 8 *passenger motor vehicle when operated by an employee, otherwise*
 9 *subject to this section, for the purposes of reporting to or from his*
 10 *or her regularly assigned work location.*

11 ~~As~~

12 *(c) As used in this section:*

13 ~~(a)~~

14 *(1) “Peace officer” means every person defined in Chapter 4.5*
 15 *(commencing with Section 830) of Title 3 of Part 2 of the Penal*
 16 *Code.*

17 ~~(b)~~

18 *(2) “Policy” shall have the same meaning as defined in*
 19 *subdivision (a) of Section 660.*

20 *(3) “Private passenger motor vehicle” or “private motor*
 21 *vehicle” means a motor vehicle that is insured under a personal*
 22 *automobile liability insurance policy insuring a single individual*
 23 *or individuals residing in the same household as the named*
 24 *insured, but does not include a vehicle with less than four wheels.*

25 *SEC. 3. Section 791.12 of the Insurance Code is amended to*
 26 *read:*

27 *791.12. No insurance institution or agent may base an adverse*
 28 *underwriting decision in whole or in part on the following:*

29 *(a) On the fact of a previous adverse underwriting decision or*
 30 *on the fact that an individual previously obtained insurance*
 31 *coverage through a residual market mechanism; provided, however,*
 32 *an insurance institution or agent may base an adverse underwriting*
 33 *decision on further information obtained from an insurance*
 34 *institution or agent responsible for a previous adverse underwriting*
 35 *decision. The further information, when requested, shall create a*
 36 *conclusive presumption that the information is necessary to perform*
 37 *the requesting insurer’s function in connection with an insurance*
 38 *transaction involving the individual and, when reasonably*
 39 *available, shall be furnished the requesting insurer and the*
 40 *individual, if applicable.*

1 (b) On personal information received from an insurance-support
2 organization whose primary source of information is insurance
3 institutions; provided, however, an insurance institution or agent
4 may base an adverse underwriting decision on further personal
5 information obtained as the result of information received from
6 an insurance-support organization.

7 (c) On the fact that an individual has previously inquired and
8 received information about the scope or nature of coverage under
9 a residential fire or property insurance policy, if the information
10 is received from an insurance-support organization whose primary
11 source of information is insurance institutions and the inquiry did
12 not result in the filing of a claim.

13 (d) *On the fact that an accident involving a peace officer,*
14 *member of the Department of the California Highway Patrol, or*
15 *firefighter has been reported and the insurer retains no liability*
16 *pursuant to Section 488.5 and subdivision (b) of Section 557.5.*

17 SEC. 4. Section 16051 of the Vehicle Code is amended to read:

18 16051. (a) Evidence may be established by filing a report
19 indicating that the motor vehicle involved in the accident was
20 owned, rented, or leased by or under the direction of the United
21 States, this state, or any political subdivision of this state or
22 municipality thereof.

23 (b) *Evidence may be established by filing a report indicating*
24 *that the motor vehicle involved in the accident was owned and*
25 *operated by a peace officer, member of the Department of the*
26 *California Highway Patrol, or firefighter in the performance of*
27 *his or her duty, and at the request of or under the direction of the*
28 *United States, this state, or any political subdivision or*
29 *municipality of this state.*

30 ~~SECTION 1. Section 13025 is added to the Penal Code, to~~
31 ~~read:~~

32 ~~13025. (a) On or before January 1, 2014, the Department of~~
33 ~~Justice shall study the prevalence of metal theft in California and~~
34 ~~make recommendations to the Legislature in a report addressing~~
35 ~~the tools and resources that would be required by local law~~
36 ~~enforcement and district attorneys in order to successfully interdict~~
37 ~~the commission of metal theft and related metal recycling crimes.~~

38 ~~(b) The report also shall include, but not be limited to, an~~
39 ~~analysis of the existing activities of rural crime prevention~~
40 ~~programs authorized pursuant to Section 14171 and 14181 with~~

1 ~~regard to metal theft and related metal recycling crimes, and the~~
2 ~~extent to which additional regional task forces could assist in~~
3 ~~detering, investigating, and prosecuting metal theft and related~~
4 ~~metal recycling crimes.~~

5 ~~(e) The report shall be submitted in compliance with Section~~
6 ~~9795 of the Government Code.~~

7 ~~(d) This section shall remain in effect only until January 1, 2018,~~
8 ~~and as of that date is repealed, unless a later enacted statute, that~~
9 ~~is enacted before January 1, 2018, deletes or extends that date.~~