

Senate Bill No. 317

CHAPTER 101

An act to amend Section 666.5 of the Penal Code, and to amend Sections 10851 and 40000.11 of the Vehicle Code, relating to crimes.

[Approved by Governor July 17, 1995. Filed with
Secretary of State July 18, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 317, Solis. Crimes: vehicle theft.

(1) Existing law set forth in the Vehicle Code generally provides that offenses related to vehicle theft are punishable as either a misdemeanor or a felony and that any person who has previously been convicted of 2 misdemeanor offenses related to vehicle theft and who is subsequently convicted of a misdemeanor or felony offense related to vehicle theft, as specified, shall be punished for the subsequent conviction by imprisonment in the state prison for 2, 3, or 4 years. A provision in the Penal Code provides that any person who has previously been convicted of felony vehicle theft and who is subsequently convicted of felony vehicle theft shall be punished for the subsequent conviction by imprisonment in the state prison for 2, 3, or 4 years, or by a \$10,000 fine, or by both that imprisonment and fine.

This bill would make a clarifying change to the Penal Code and the Vehicle Code by providing that any person who has been convicted of one or more previous felony offenses related to vehicle theft shall be sentenced as provided in the Penal Code provision.

(2) Existing law specifies a fine and term of imprisonment in the county jail for a person convicted of driving a motor vehicle when that person's driving privilege is suspended or revoked.

This bill would clarify that that crime is a misdemeanor and not an infraction.

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

SECTION 1. Section 666.5 of the Penal Code, as amended by Section 10 of Chapter 1125 of the Statutes of 1993, is amended to read:

666.5. (a) Every person who, having been previously convicted of felony vehicle theft under Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of

any of these offenses shall be punished by imprisonment in the state prison for three, four, or five years, or a fine of ten thousand dollars (\$10,000), or both the fine and the imprisonment.

(b) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 2. Section 666.5 of the Penal Code, as amended by Section 11 of Chapter 1125 of the Statutes of 1993, is amended to read:

666.5. (a) Every person who, having been previously convicted of felony vehicle theft under Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of subdivision (d) of Section 487, former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison for two, three, or four years, or a fine of ten thousand dollars (\$10,000), or both the fine and the imprisonment.

(b) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(c) This section shall become operative on January 1, 1997.

SEC. 3. Section 10851 of the Vehicle Code, as amended by Section 13 of Chapter 1125 of the Statutes of 1993, is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars (\$10,000), or both, or by imprisonment in the county jail not to exceed one year or a fine of not more than one thousand dollars (\$1,000), or both.

(b) (1) Any person who, having been convicted of two previous misdemeanor violations of this section, subdivision (d) of Section 487



or Section 487h of the Penal Code, involving an automobile, or any combination of these offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) shall be punished for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(2) Any person who has been convicted of one or more previous felony violations of this section, or felony grand theft involving a vehicle in violation of former subdivision (3) of Section 487 of the Penal Code, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h of the Penal Code, is punishable as set forth in Section 666.5 of the Penal Code. The existence of any fact that would bring a person under Section 666.5 of the Penal Code shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

(c) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, four, or six years and by a fine of not more than ten thousand dollars (\$10,000).

(d) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a), (b), or (c), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a) or (c), the offense set forth in subdivision (d) of Section 487 of the Penal Code, involving a vehicle, or the offense set forth in Section 487h of the Penal Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(2) If the court grants probation under paragraph (1), it shall specify on the court record the reason or reasons for that order.

(e) In any prosecution for a violation of subdivision (a) or (c), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on



a previous occasion to the taking or driving of the vehicle by the same or a different person.

(f) The existence of any fact which makes subdivision (c) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(g) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 4. Section 10851 of the Vehicle Code, as amended by Section 14 of Chapter 1125 of the Statutes of 1993, is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person who is party or an accessory in the driving or unauthorized taking or stealing, the offense is a felony punishable by imprisonment in the state prison for two, three, or four years or by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment.

(c) In any prosecution for a violation of subdivision (a) or (b), the consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking or driving of the vehicle by the same or a different person.

(d) The existence of any fact which makes subdivision (b) applicable shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established



by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(e) Any person who has been convicted of one or more previous felony violations of this section, or felony grand theft of a vehicle in violation of subdivision (d) of Section 487 of the Penal Code, former subdivision (3) of Section 487 of the Penal Code, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or Section 487h of the Penal Code, is punishable as set forth in Section 666.5 of the Penal Code. The existence of any fact that would bring a person under Section 666.5 of the Penal Code shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

(f) This section shall become operative on January 1, 1997.

SEC. 5. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

(b) Section 12500, subdivision (a), relating to unlicensed drivers.

(c) Section 12515, subdivision (b), relating to persons under 21 years of age driving, and the employment of those persons to drive, vehicles engaged in interstate commerce or transporting hazardous substances or wastes.

(d) Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

(e) Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

(f) Section 12520, relating to a special driver's certificate to operate a tow truck.

(g) Section 12804, subdivision (d), relating to medical certificates.

(h) Section 12951, subdivision (b), relating to refusal to display license.

(i) Section 13004, relating to unlawful use of identification card.

(j) Section 13004.1, relating to identification documents.

(k) Section 14601, 14601.1, or 14601.2, relating to driving with a suspended or revoked driver's license.

(l) Section 14604, relating to unlawful use of a vehicle.

(m) Section 14610, relating to unlawful use of a driver's license.

(n) Section 14610.1, relating to identification documents.

(o) Section 15501, relating to use of false or fraudulent license by a minor.

