

ANTI CARJACKING LAW IS ENACTED IN CHILE

Recently, Law Number 21,170, popularly known as “Fabián Law” or “Anti Carjacking Law”, was enacted in Chile. The main objective of this law is to improve the prosecution of car theft, by increasing the criminal sanctions against the perpetrators and also including several obligations related industries, in order to reduce the trade of stolen vehicles in Chile.

One of the reforms to the Criminal Code is the incorporation of “portonazos”, or carjackings that take place as the owner is pulling into their residence, as a modus operandi of the crime of robbery by intimidation, incorporating in the definition given by the Chilean Criminal Code of intimidation, “the appropriation of motorized vehicles, when the perpetrator makes use of surprise, distraction or any maneuver against the victim, with the purpose to generate the surrender of the vehicle by the victim to facilitate its appropriation, in both cases, at the time the victim prepares to enter or leave a place of residence or intended as a residence, or its premises, or the victim’s work place, except in those cases where there is violence or intimidation, in which the provisions of the first paragraph shall apply”. With this modification, the law settles the discussion regarding cases where there was no direct threat against the victim, and instead, the perpetrator used several maneuvers to take position of the vehicle. If the perpetrators engage in the previously described conducts, they could face between 5 years and 1 day to 20 years of imprisonment.

This law also considers as intimidation the rupture of car windows when there are persons inside the vehicle, to appropriate or obtain the surrender of the vehicle or the things inside of it, establishing criminal sanctions that range from 10 years and 1 day to 20 years.

Finally, the law incorporates, as an aggravating circumstance of robbery by intimidation, if, at the time of the robbery or theft, there are infants or people with reduced mobility inside of the vehicle.

Law Number 21,170 includes several modifications to other laws and new specific rules, which compel companies to implement a battery

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43.
Las Condes, Santiago, Chile.
www.carey.cl

of measures to prevent and improve the prosecution of car thefts and illegal trade of stolen vehicles in Chile. Among them:

Regarding the automotive industry:

- Companies that import finished or ready-made cars are obligated to register the vehicle in the Vehicle Register Office and obtain the license plate. Fines of up to 200% of the customs value of the vehicle could be imposed if companies fail to fulfill the obligations described, according to section 16 of Law No. 18.483.
- New vehicles will have to implement anti-theft measures to avoid the unauthorized use of cars, e.g. kill switches or circuit breakers, which will be regulated by the Ministry of Transportation and Telecommunications, and the Ministry of Interior and Public Security.

Regarding the Vehicle Insurance companies:

They are obliged to provide, without any cost, GPS devices to the beneficiary, leaving the instalment and activation to the latter. The Government will regulate the technical requirements of the devices.

Regarding the Motorway Concessionaries:

Companies operating with an electronic bill payment system are required to immediately provide the Public Prosecutor's Office with updated information on the transit of any vehicle registered in their systems, which was previously reported as stolen or commercialization of stolen vehicles. Fines from USD 600 to USD 7,000 could be imposed if companies fail to fulfill the obligations described.