

AMENDED IN SENATE JULY 1, 2008

AMENDED IN SENATE APRIL 9, 2008

AMENDED IN SENATE AUGUST 20, 2007

AMENDED IN SENATE JULY 18, 2007

AMENDED IN SENATE JUNE 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1724**

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**Introduced by Assembly Member Jones**

March 6, 2007

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~~An act to add Section 731.05 to the Code of Civil Procedure, relating to nuisance.~~ *An act to add Section 23112.8 to the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1724, as amended, Jones. ~~Nuisance abatement.~~ *Vehicles: impoundment: illegal dumping.*

*Existing law authorizes the impoundment of vehicles used for illegal dumping of waste matter on public or private property. Under existing law, it is a misdemeanor of the person to place, deposit, or dump, or cause to place, deposit, or dump commercial quantities of waste matter upon a public or private highway or road.*

*This bill would authorize a city, county, or a city and county to adopt an ordinance declaring, under specified conditions, a motor vehicle used in the commission or the attempted commission of an act that constitute the illegal dumping of commercial quantities of waste matter upon a public or private highway or road a public nuisance subject to*

*seizure and 30-day impoundment. The bill would require the ordinance to contain specified provisions related to notice and provision of a poststorage hearing, and the release of the impounded vehicle.*

~~Existing law authorizes the district attorney of a county or the city attorney of a town or city to bring a civil action to abate a public nuisance, as defined.~~

~~The California Constitution authorizes a county or city to make and enforce local ordinances that are not in conflict with state law. Existing case law holds that a local ordinance that purports to authorize motor vehicle forfeiture, if the motor vehicle is used to solicit prostitution or acquire a controlled substance, is invalid on the ground that it is in conflict with state law proscribing those acts and, therefore, is preempted.~~

~~This bill would authorize a city or county to adopt an ordinance declaring a motor vehicle to be a public nuisance subject to seizure and forfeiture when the motor vehicle is used in the commission of an act violating a city or county ordinance intended to protect public health and safety. The bill would also express the intent of the Legislature in this regard.~~

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

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

1     SECTION 1. Section 23112.8 is added to the Vehicle Code, to  
2     read:  
3     23112.8. Notwithstanding any other provision of law, a city  
4     or a county may adopt an ordinance declaring a motor vehicle to  
5     be a public nuisance subject to seizure and 30-day impoundment  
6     when the motor vehicle is used in the commission or attempted  
7     commission of an act that violates subdivision (h) of Section 374.3  
8     of the Penal Code, if the owner or operator of the vehicle has had  
9     a prior conviction under subdivision (h) of Section 374.3 of the  
10    Penal Code. The vehicle may only be impounded pursuant to a  
11    valid arrest of the driver for a violation of subdivision (h) of Section  
12    374.3 of the Penal Code. An ordinance adopted pursuant to this  
13    section shall, at a minimum, contain all of the following provisions:  
14    (a) Within two working days after impoundment, the impounding  
15    agency shall send a notice by certified mail, return receipt  
16    requested, to the legal owner of the vehicle, at the address obtained

1 from the department, informing the owner that the vehicle has  
2 been impounded. The notice shall also include notice of the  
3 opportunity for a poststorage hearing to determine the validity of  
4 the storage or to determine mitigating circumstances establishing  
5 that the vehicle should be released. The impounding agency shall  
6 be prohibited from charging for more than five days' storage if it  
7 fails to notify the legal owner within two working days after the  
8 impoundment when the legal owner redeems the impounded  
9 vehicle. The impounding agency shall maintain a published  
10 telephone number that provides information 24 hours a day  
11 regarding the impoundment of vehicles and the rights of a legal  
12 owner and a registered owner to request a hearing. The notice  
13 shall include all of the following information:

14 (1) The name, address, and telephone number of the agency  
15 providing the notice.

16 (2) The location of the place of storage and description of the  
17 vehicle, that shall include, if available, the model or make, the  
18 manufacturer, the license plate number, and the mileage.

19 (3) The authority and purpose for the removal of the vehicle.

20 (4) A statement that, in order to receive a poststorage hearing,  
21 the owners, or their agents, shall request the hearing in person,  
22 writing, or by telephone within 10 days of the date appearing on  
23 the notice.

24 (b) The poststorage hearing shall be conducted within 48 hours  
25 of the request, excluding weekends and holidays. The public agency  
26 may authorize its own officer or employee to conduct the hearing  
27 if the hearing officer is not the same person who directed the  
28 seizure of the vehicle.

29 (c) Failure of the legal and the registered owners, or their  
30 agents, to request or to attend a scheduled hearing shall satisfy  
31 the poststorage hearing requirement.

32 (d) The agency employing the person who directed the storage  
33 shall be responsible for the costs incurred for towing and storage  
34 if it is determined in the poststorage hearing that reasonable  
35 grounds for the storage are not established.

36 (e) Any period during which a vehicle is subjected to storage  
37 under an ordinance adopted pursuant to this section shall be  
38 included as part of the period of impoundment.

1 (f) *The impounding agency shall release the vehicle to the*  
2 *registered owner or his or her agent prior to the end of the*  
3 *impoundment period under any of the following circumstances:*

4 (1) *The driver of the impounded vehicle was arrested without*  
5 *probable cause.*

6 (2) *The vehicle is a stolen vehicle.*

7 (3) *The vehicle is subject to bailment and is driven by an*  
8 *unlicensed employee of a business establishment, including a*  
9 *parking service or repair garage.*

10 (4) *The driver of the vehicle is not the sole registered owner of*  
11 *the vehicle and the vehicle is being released to another registered*  
12 *owner of the vehicle who agrees not to allow the driver to use the*  
13 *vehicle until after the end of the impoundment period.*

14 (5) *The registered owner of the vehicle was neither the driver*  
15 *nor a passenger of the vehicle at the time of the alleged violation,*  
16 *or was unaware that the driver was using the vehicle to engage in*  
17 *activities subject to subdivision (h) of Section 374.3 of the Penal*  
18 *Code.*

19 (6) *A spouse, registered domestic partner, or other affected*  
20 *third party objects to the impoundment of the vehicle on the*  
21 *grounds that it would create a hardship if the subject vehicle is*  
22 *the sole vehicle in a household. The hearing officer shall release*  
23 *the vehicle where the hardship to a spouse, registered domestic*  
24 *partner, or other affected third party created by the impoundment*  
25 *of the subject vehicle, or the length of the impoundment, outweigh*  
26 *the seriousness and the severity of the act in which the vehicle was*  
27 *used.*

28 (g) *Notwithstanding any provision of law, if a motor vehicle is*  
29 *released prior to the conclusion of the impoundment period*  
30 *because the driver was arrested without probable cause, neither*  
31 *the arrested person nor the registered owner of the motor vehicle*  
32 *is responsible for towing and storage charges nor shall the motor*  
33 *vehicle be sold to satisfy those charges.*

34 (h) *The registered owner or his or her agent shall be responsible*  
35 *for all towing and storage charges related to the impoundment.*

36 (i) *A vehicle removed and seized under an ordinance adopted*  
37 *pursuant to this section shall be released to the legal owner of the*  
38 *vehicle or the legal owner's agent prior to the end of the*  
39 *impoundment period if all of the following conditions are met:*

1 (1) *The legal owner is a motor vehicle dealer, bank, credit union,*  
2 *acceptance corporation, or other licensed financial institution*  
3 *legally operating in this state, or is another person who is not the*  
4 *registered owner and holds a security interest in the vehicle.*

5 (2) *The legal owner or the legal owner's agent pays all towing*  
6 *and storage fees related to the seizure and impoundment of the*  
7 *vehicle.*

8 (3) *The legal owner or the legal owner's agent presents either*  
9 *lawful foreclosure documents or an affidavit of repossession for*  
10 *the vehicle, and a security agreement or title showing proof of*  
11 *legal ownership for the vehicle.*

12 (j) *A legal owner who meets the requirements for release of a*  
13 *vehicle pursuant to subdivision (i), or the legal owner's agent,*  
14 *shall not be required to request a poststorage hearing as a*  
15 *requirement for release of the vehicle to the legal owner or the*  
16 *legal owner's agent.*

17 (k) (1) *A legal owner who meets the requirements for release*  
18 *of a vehicle pursuant to subdivision (i), or the legal owner's agent,*  
19 *shall not release the vehicle to the registered owner of the vehicle*  
20 *or an agent of the registered owner, unless the registered owner*  
21 *is a rental car agency, until after the termination of the*  
22 *impoundment period.*

23 (2) *Prior to relinquishing the vehicle, the legal owner may*  
24 *require the registered owner to pay all towing and storage charges*  
25 *related to the seizure and impoundment.*

26 (l) (1) *A vehicle removed and seized pursuant to an ordinance*  
27 *adopted pursuant to this section shall be released to a rental car*  
28 *agency prior to the end of the impoundment period if the agency*  
29 *is either the legal owner or registered owner of the vehicle and*  
30 *the agency pays all towing and storage fees related to the seizure*  
31 *and impoundment of the vehicle.*

32 (2) *The owner of a rental vehicle that was seized under an*  
33 *ordinance adopted pursuant to this section may continue to rent*  
34 *the vehicle upon recovery of the vehicle. However, the rental car*  
35 *agency shall not rent another vehicle to the driver of the vehicle*  
36 *that was seized until the impoundment period has expired.*

37 (3) *The rental car agency may require the person to whom the*  
38 *vehicle was rented to pay all towing and storage charges related*  
39 *to the seizure and impoundment.*

1 SECTION 1. ~~Section 731.05 is added to the Code of Civil~~  
2 ~~Procedure, immediately following Section 731, to read:~~  
3 ~~731.05. (a) (1) Notwithstanding any other provision of law,~~  
4 ~~a city, county, or city and county may adopt an ordinance declaring~~  
5 ~~a motor vehicle to be a public nuisance subject to seizure and~~  
6 ~~forfeiture if the ordinance meets both of the following conditions:~~  
7 ~~(A) The motor vehicle is used in the commission of an act~~  
8 ~~violating a city or county ordinance.~~  
9 ~~(B) The ordinance is intended to protect the public health and~~  
10 ~~safety.~~  
11 ~~(2) An ordinance adopted pursuant to this section shall be~~  
12 ~~deemed not to conflict with state law. In enacting this subdivision~~  
13 ~~it is the intent of the Legislature to address the issue raised in~~  
14 ~~O'Connell v. City of Stockton (2007) 41 Cal.4th 1061, 1076, fn.4,~~  
15 ~~which held that a local seizure and forfeiture ordinance was invalid~~  
16 ~~on the ground that it was preempted by state law, but stated that~~  
17 ~~the Legislature has the power to expressly authorize local entities~~  
18 ~~to enact such an ordinance. It is the intent of the Legislature to~~  
19 ~~provide that express legislative authorization for such an ordinance.~~  
20 ~~(b) An ordinance adopted pursuant to subdivision (a) shall~~  
21 ~~include procedural due process safeguards, including, but not~~  
22 ~~limited to, provisions that protect the interests of innocent vehicle~~  
23 ~~owners and ensure the owner's right to a prompt postseizure~~  
24 ~~hearing.~~