

AMENDED IN ASSEMBLY MARCH 9, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 14

Introduced by Assembly Member Fuentes

December 1, 2008

An act to repeal and add Section 22659.5 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 14, as amended, Fuentes. Vehicles: nuisance abatement: impoundment.

Existing law authorizes a city, county, or city and county to establish a 5-year pilot program that implements a procedure to declare a motor vehicle to be a public nuisance when the motor vehicle is used in the commission of specified crimes related to prostitution.

This bill would repeal the provisions authorizing the pilot program and would instead authorize a city, county, and city or county to adopt an ordinance declaring a motor vehicle to be a nuisance subject to impoundment for not more than 30 days when the motor vehicle is involved in the commission of specified crimes related to prostitution *or illegal dumping of commercial quantities of waste matter upon a public or private highway or road*. The bill would require the ordinance to include specified provisions related to notice ~~and, the payment of towing, storage, and administrative fees, the~~ provision of a poststorage hearing, and the release of the impounded vehicle.

This bill would also require the ordinance to provide that a person operating or in charge of a storage facility is civilly liable to the owner of the vehicle or the person who tendered the towing, storage, and related fees for 4 times the amount, not to exceed \$500, if the person

operating or in charge of the storage facility fails to comply with specified requirements to accept a valid bank credit card or cash for the payment of those fees.

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 Section 22659.5 of the Vehicle Code is repealed.
- 2 SEC. 2. Section 22659.5 is added to the Vehicle Code, to read:
- 3 22659.5. 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 Section 266h or 266i of,
- 8 *subdivision (h) of Section 374.3 of*, or subdivision (b) of Section
- 9 647 of, the Penal Code, if the owner or operator of the vehicle has
- 10 had a prior conviction under one of these provisions. The vehicle
- 11 may only be impounded pursuant to a valid arrest of the driver for
- 12 a violation of one of these provisions. An ordinance adopted
- 13 pursuant to this section shall, at a minimum, contain all of the
- 14 following provisions:
- 15 (a) Within two working days after impoundment, the
- 16 impounding agency shall send a notice by certified mail, return
- 17 receipt requested, to the legal owner of the vehicle, at the address
- 18 obtained from the department, informing the owner that the vehicle
- 19 has been impounded. The notice shall also include notice of the
- 20 opportunity for a poststorage hearing to determine the validity of
- 21 the storage or to determine mitigating circumstances establishing
- 22 that the vehicle should be released. The impounding agency shall
- 23 be prohibited from charging for more than five days' storage if it
- 24 fails to notify the legal owner within two working days after the
- 25 impoundment when the legal owner redeems the impounded
- 26 vehicle. The impounding agency shall maintain a published
- 27 telephone number that provides information 24 hours a day
- 28 regarding the impoundment of vehicles and the rights of a legal
- 29 owner and a registered owner to request a hearing. The notice shall
- 30 include all of the following information:
- 31 (1) The name, address, and telephone number of the agency
- 32 providing the notice.

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

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

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

9 (b) The poststorage hearing shall be conducted within 48 hours
10 of the request, excluding weekends and holidays. The public
11 agency may authorize one of its own officers or employees to
12 conduct the hearing if that hearing officer is not the same person
13 who directed the seizure of the vehicle.

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

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

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

24 (f) The impounding agency shall release the vehicle to the
25 registered owner or his or her agent prior to the end of the
26 impoundment period under any of the following circumstances:

27 (1) The driver of the impounded vehicle was arrested without
28 probable cause.

29 (2) The vehicle is a stolen vehicle.

30 (3) The vehicle is subject to bailment and was driven by an
31 unlicensed employee of a business establishment, including a
32 parking service or repair garage.

33 (4) The driver of the vehicle is not the sole registered owner of
34 the vehicle and the vehicle is being released to another registered
35 owner of the vehicle who agrees not to allow the driver to use the
36 vehicle until after the end of the impoundment period.

37 (5) The registered owner of the vehicle was neither the driver
38 nor a passenger of the vehicle at the time of the alleged violation,
39 or was unaware that the driver was using the vehicle to engage in

1 activities subject to Section 266h or 266i of, or subdivision (b) of
2 Section 647 of, the Penal Code.

3 (6) A spouse, registered domestic partner, or other affected third
4 party objects to the impoundment of the vehicle on the grounds
5 that it would create a hardship if the subject vehicle is the sole
6 vehicle in a household. The hearing officer shall release the vehicle
7 where the hardship to a spouse, registered domestic partner, or
8 other affected third party created by the impoundment of the subject
9 vehicle, or the length of the impoundment, outweigh the
10 seriousness and the severity of the act in which the vehicle was
11 used.

12 (g) Notwithstanding any provision of law, if a motor vehicle is
13 released prior to the conclusion of the impoundment period because
14 the driver was arrested without probable cause, neither the arrested
15 person nor the registered owner of the motor vehicle is responsible
16 for towing and storage charges nor shall the motor vehicle be sold
17 to satisfy those charges.

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

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

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

28 (2) (A) The legal owner or the legal owner's agent pays all
29 towing and storage fees related to the seizure and impoundment
30 of the vehicle. *No lien sale processing fees shall be charged to the*
31 *legal owner who redeems the vehicle prior to the 15th day of*
32 *impoundment. Neither the impounding authority nor any person*
33 *having possession of the vehicle shall collect from the legal owner*
34 *as described in paragraph (1), or the legal owner's agent, any*
35 *administrative charges imposed pursuant to Section 22850.5,*
36 *unless the legal owner voluntarily requested a poststorage hearing.*

37 (B) A person operating or in charge of a storage facility where
38 vehicles are stored pursuant to this section shall accept a valid
39 bank credit card or cash for payment of towing, storage, and
40 related fees by a legal or registered owner or the owner's agent

1 claiming the vehicle. A credit card or debit card shall be in the
2 name of the person presenting the card. For purposes of this
3 section, "credit card" is as defined in subdivision (a) of Section
4 1747.02 of the Civil Code. Credit card does not include a credit
5 card issued by a retail seller.

6 (C) A person operating or in charge of a storage facility
7 described in subparagraph (B) who violates subparagraph (B)
8 shall be civilly liable to the owner of the vehicle or the person who
9 tendered the fees for four times the amount of the towing, storage,
10 and related fees not to exceed five hundred dollars (\$500).

11 (D) A person operating or in charge of the storage facility
12 described in subparagraph (B) shall have sufficient funds on the
13 premises of the primary storage facility during normal business
14 hours to accommodate, and make change for, a reasonable
15 monetary transaction.

16 (E) Credit charges for towing and storage services shall comply
17 with Section 1748.1 of the Civil Code. Law enforcement agencies
18 may include the costs of providing for payment by credit when
19 making agreements with towing companies on rates.

20 ~~(3) The legal owner or the legal owner's agent presents either~~
21 ~~lawful foreclosure documents or an affidavit of repossession for~~
22 ~~the vehicle, and a security agreement or title showing proof of~~
23 ~~legal ownership for the vehicle.~~

24 (3) (A) The legal owner or the legal owner's agent presents to
25 the law enforcement agency, impounding agency, person in
26 possession of the vehicle, or any person acting on behalf of those
27 agencies, a copy of the assignment, as defined in subdivision (b)
28 of Section 7500.1 of the Business and Professions Code, a release
29 from the one responsible governmental agency, only if required
30 by the agency, a government-issued photographic identification
31 card, and any one of the following as determined by the legal
32 owner or the legal owner's agent: a certificate of repossession for
33 the vehicle, a security agreement for the vehicle, or title, whether
34 or not paperless or electronic, showing proof of legal ownership
35 for the vehicle. Any documents presented may be originals,
36 photocopies, or facsimile copies, or may be transmitted
37 electronically. The law enforcement agency, impounding agency,
38 or other governmental agency, or any person acting on behalf of
39 those agencies, shall not require any documents to be notarized.
40 The law enforcement agency, impounding agency, or any person

1 acting on behalf of those agencies may require the agent of the
2 legal owner to produce a photocopy or facsimile copy of its
3 repossession agency license or registration issued pursuant to
4 Chapter 11 (commencing with Section 7500) of Division 3 of the
5 Business and Professions Code, or to demonstrate, to the
6 satisfaction of the law enforcement agency, impounding agency,
7 or any person acting on behalf of those agencies that the agent is
8 exempt from licensure pursuant to Section 7500.2 or 7500.3 of the
9 Business and Professions Code.

10 (B) Administrative costs authorized under subdivision (a) of
11 Section 22850.5 shall not be charged to the legal owner of the type
12 specified in paragraph (1) who redeems the vehicle unless the
13 legal owner voluntarily requests a poststorage hearing. A city,
14 county, city and county, or state agency shall not require a legal
15 owner or a legal owner's agent to request a poststorage hearing
16 as a requirement for release of the vehicle to the legal owner or
17 the legal owner's agent. The law enforcement agency, impounding
18 agency, or other governmental agency, or any person acting on
19 behalf of those agencies, shall not require any documents other
20 than those specified in this paragraph. The legal owner or the
21 legal owner's agent shall be given a copy of any documents he or
22 she is required to sign, except for a vehicle evidentiary hold log
23 book. The law enforcement agency, impounding agency, or any
24 person acting on behalf of those agencies, or any person in
25 possession of the vehicle, may photocopy and retain the copies of
26 any documents presented by the legal owner or legal owner's
27 agent. The legal owner shall indemnify and hold harmless a storage
28 facility from any claims arising out of the release of the vehicle to
29 the legal owner or the legal owner's agent and from any damage
30 to the vehicle after its release, including the reasonable costs
31 associated with defending any such claims.

32 (4) A failure by a storage facility to comply with any applicable
33 conditions set forth in this subdivision shall not affect the right of
34 the legal owner or the legal owner's agent to retrieve the vehicle
35 if all conditions required of the legal owner or legal owner's agent
36 under this subdivision are satisfied.

37 (j) A legal owner, who meets the requirements for release of a
38 vehicle pursuant to subdivision (i), or the legal owner's agent, shall
39 not be required to request a poststorage hearing as a requirement

1 for release of the vehicle to the legal owner or the legal owner's
2 agent.

3 (k) (1) A legal owner, who meets the requirements for release
4 of a vehicle pursuant to subdivision (i), or the legal owner's agent,
5 shall not release the vehicle to the registered owner of the vehicle
6 or an agent of the registered owner, unless the registered owner is
7 a rental car agency, until after the termination of the impoundment
8 period.

9 (2) Prior to relinquishing the vehicle, the legal owner may
10 require the registered owner to pay all towing and storage charges
11 related to the seizure and impoundment.

12 (l) (1) A vehicle removed and seized pursuant to an ordinance
13 adopted pursuant to this section shall be released to a rental car
14 agency prior to the end of the impoundment period if the agency
15 is either the legal owner or registered owner of the vehicle and the
16 agency pays all towing and storage fees related to the seizure and
17 impoundment of the vehicle.

18 (2) The owner of a rental vehicle that was seized under an
19 ordinance adopted pursuant to this section may continue to rent
20 the vehicle upon recovery of the vehicle. However, the rental car
21 agency shall not rent another vehicle to the driver of the vehicle
22 that was seized until the impoundment period has expired.

23 (3) The rental car agency may require the person to whom the
24 vehicle was rented to pay all towing and storage charges related
25 to the seizure and impoundment.