

AMENDED IN ASSEMBLY MARCH 12, 2009

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, 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 Section 22659.5 of the Vehicle Code is repealed.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:

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

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

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

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

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

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

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

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

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

29 (1) The driver of the impounded vehicle was arrested without
30 probable cause.

31 (2) The vehicle is a stolen vehicle.

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

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

39 (5) The registered owner of the vehicle was neither the driver
40 nor a passenger of the vehicle at the time of the alleged violation,

1 or was unaware that the driver was using the vehicle to engage in
2 activities subject to Section 266h or 266i of, or subdivision (b) of
3 Section 647 of, the Penal Code.

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

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

19 (h) ~~The~~ *Except as provided in subdivision (g),* the registered
20 owner or his or her agent shall be responsible for all towing and
21 storage charges related to the impoundment.

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

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

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

39 (B) A person operating or in charge of a storage facility where
40 vehicles are stored pursuant to this section shall accept a valid

1 bank credit card or cash for payment of towing, storage, and related
2 fees by a legal or registered owner or the owner's agent claiming
3 the vehicle. A credit card or debit card shall be in the name of the
4 person presenting the card. For purposes of this section, "credit
5 card" is as defined in subdivision (a) of Section 1747.02 of the
6 Civil Code. Credit card does not include a credit card issued by a
7 retail seller.

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

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

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

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

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

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

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

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

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

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

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

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

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

CORRECTIONS:

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