Assembly Bill No. 14

Passed the Assembly September 9, 2009

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Chief Clerk of the Assembly

Passed the Senate September 2, 2009

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2009, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 14, 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, or city and county to adopt an ordinance declaring a motor vehicle to be a nuisance subject to an impoundment period of up to 30 days when the motor vehicle is involved in the commission of any one or more of specified crimes related to prostitution or illegal dumping of commercial quantities of waste matter upon a public or private highway or road, if the owner or operator of the vehicle has had a prior conviction for the same offense within the past 3 years. 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.

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

SECTION 1. Section 22659.5 of the Vehicle Code is repealed.

SEC. 2. Section 22659.5 is added to the Vehicle Code, to read:

22659.5. Notwithstanding any other provision of law, a city or a county may adopt an ordinance declaring a motor vehicle to be a public nuisance subject to seizure and an impoundment period of up to 30 days when the motor vehicle is used in the commission or attempted commission of an act that violates Section 266h or 266i of, subdivision (h) of Section 374.3 of, or subdivision (b) of Section 647 of, the Penal Code, if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years. An ordinance adopted pursuant to this section may incorporate any combination or all of these offenses. The vehicle may only be impounded pursuant to a valid arrest of the driver for a violation of one of these provisions. An ordinance adopted pursuant to this section shall, at a minimum, contain all of the following provisions:

(a) Within two working days after impoundment, the impounding agency shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. The notice shall also include notice of the opportunity for a poststorage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The impounding agency shall be prohibited from charging for more than five days' storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle. The impounding agency shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing. The notice shall include all of the following information:

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

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

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

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

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

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

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

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

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

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

(2) The vehicle is a stolen vehicle.

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

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

(5) The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using the vehicle to engage in activities subject to Section 266h or 266i of, or subdivision (b) of Section 647 of, the Penal Code.

(6) A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household. The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the

seriousness and the severity of the act in which the vehicle was used.

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

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

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

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

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

(j) (1) No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner as described in paragraph (1) of subdivision (i), or the legal owner's agent, any administrative charges imposed pursuant to Section 22850.5, unless the legal owner voluntarily requested a poststorage hearing.

(2) A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. For purposes of this section, "credit card" is as defined in subdivision (a) of Section 1747.02 of the Civil Code. Credit card does not include a credit card issued by a retail seller.

(3) A person operating or in charge of a storage facility described in paragraph (2) who violates paragraph (2) shall be

civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed five hundred dollars ($500).

(4) A person operating or in charge of the storage facility described in paragraph (2) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change for, a reasonable monetary transaction.

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

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

(k) (1) The legal owner or the legal owner's agent shall present to the law enforcement agency, impounding agency, person in possession of the vehicle, or any person acting on behalf of those agencies, a copy of the assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions Code, a release from the one responsible governmental agency, only if required by the agency, a government-issued photographic identification card, and any one of the following as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether or not paperless or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency,

or any person acting on behalf of those agencies that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

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

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

(m) (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.

(n) (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.

Approved _____, 2009

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Governor