

Assembly Bill No. 519

Passed the Assembly August 25, 2010

Chief Clerk of the Assembly

Passed the Senate August 24, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 3068.1 of the Civil Code, and to add Section 22651.07 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, Solorio. Vehicles: Towing Fees and Access Notice.

(1) Existing law provides that every person has a possessory lien for the compensation to which he or she is legally entitled for the towing, storage, or labor associated with recovery or load salvage of any vehicle that has been authorized to be removed by a public agency, a private property owner, or a lessee, operator, or registered owner of the vehicle. Existing law requires that a person requesting release of the vehicle present documentation establishing that he or she is entitled to possession of the vehicle and authorizes an inspection of the vehicle by the legal owner or lessor, or his or her agent, within a specified time period after receiving a written demand for the inspection.

This bill would define “documentation” and “agent” for these purposes and would also provide that a lienholder is not liable for any claim or dispute arising out of the reliance on the documentation for purposes of releasing a vehicle.

(2) Existing law authorizes a peace officer, or a regularly employed and salaried public employee, who is engaged in directing traffic or enforcing parking laws and regulations, to remove a vehicle located within the territorial limits in which the officer or employee is allowed to act under specified circumstances, including, among other things, when a vehicle is illegally parked and blocks the movement of a legally parked vehicle. A violation of this provision is an infraction.

This bill would establish, and require a person that charges for towing or storage, or both, to post a specified copy of “Towing Fees and Access Notice” that contains specific information regarding a vehicle owner’s rights and responsibilities if his or her vehicle is towed, and would require, among other things, that it be posted in the office area of the storage facility in plain view of the public, with exceptions, and would also require that copies be made readily available to the public.

The bill would require a person that charges for towing or storage, or both, to provide, upon request, a copy of the Towing Fees and Access Notice to any owner or operator of a towed or stored vehicle and would require the person to provide an itemized invoice for any towing and storage charges. The bill would also provide that a registered automotive repair dealer, that did not provide the tow, and that passes along, from the tower to the consumer, any of the information required on the itemized invoice, is not responsible for the accuracy of those items of information that remain unaltered.

By creating a new crime, the bill would impose a state-mandated local program.

The bill would also provide that a person who violates these provisions is civilly liable to a registered or legal owner of the vehicle, or a registered owner's insurer, for up to 2 times the amount charged, not to exceed \$500 per vehicle.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 3068.1 of the Civil Code is amended to read:

3068.1. (a) (1) Every person has a lien dependent upon possession for the compensation to which the person is legally entitled for towing, storage, or labor associated with recovery or load salvage of any vehicle subject to registration that has been authorized to be removed by a public agency, a private property owner pursuant to Section 22658 of the Vehicle Code, or a lessee, operator, or registered owner of the vehicle. The lien is deemed to arise on the date of possession of the vehicle. Possession is deemed to arise when the vehicle is removed and is in transit, or when vehicle recovery operations or load salvage operations have begun. A person seeking to enforce a lien for the storage and safekeeping of a vehicle shall impose no charge exceeding that for one day of storage if, 24 hours or less after the vehicle is placed

in storage, the vehicle is released. If the release is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full-calendar-day basis for each day, or part thereof, that the vehicle is in storage. If a request to release the vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's charge may be required to be paid until after the first business day. A "business day" is any day in which the lienholder is open for business to the public for at least eight hours. If the request is made more than 24 hours after the vehicle is placed in storage, charges may be imposed on a full-calendar-day basis for each day, or part thereof, that the vehicle is in storage.

(2) "Documentation" that would entitle a person to possession of the vehicle includes, but is not limited to, a certificate of ownership, vehicle registration, information in the possession of the lienholder including ownership information obtained from the Department of Motor Vehicles or a facially valid registration found within the vehicle, or a notarized letter or statement from the legal or registered owner providing authorization to release to a particular person with a government-issued photographic identification card. Documentation that establishes that a person is the owner's insurance representative includes, but is not limited to, a faxed letter or other letter from the owner's insurance company. A lienholder is not responsible for determining the authenticity of documentation specifically described in this subdivision that establishes either a person's entitlement to possession or that a person is the owner's insurance representative.

(b) If the vehicle has been determined to have a value not exceeding four thousand dollars (\$4,000), the lien shall be satisfied pursuant to Section 3072. Lien sale proceedings pursuant to Section 3072 shall commence within 15 days of the date the lien arises. No storage shall accrue beyond the 15-day period unless lien sale proceedings pursuant to Section 3072 have commenced. The storage lien may be for a period not exceeding 60 days if a completed notice of a pending lien sale form has been filed pursuant to Section 3072 within 15 days after the lien arises.

Notwithstanding this 60-day limitation, the storage lien may be for a period not exceeding 120 days if any one of the following occurs:

(1) A Declaration of Opposition form is filed with the department pursuant to Section 3072.

(2) The vehicle has an out-of-state registration.

(3) The vehicle identification number was altered or removed.

(4) A person who has an interest in the vehicle becomes known to the lienholder after the lienholder has complied with subdivision (b) of Section 3072.

(c) If the vehicle has been determined to have a value exceeding four thousand dollars (\$4,000) pursuant to Section 22670 of the Vehicle Code, the lien shall be satisfied pursuant to Section 3071. The storage lien may be for a period not exceeding 120 days if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071.

(d) (1) Any lien under this section shall be extinguished, and a lien sale shall not be conducted, if any one of the following occurs:

(A) The lienholder, after written demand to inspect the vehicle made by either personal service or certified mail with return receipt requested by the legal owner or the lessor, fails to permit the inspection by the legal owner or lessor, or his or her agent, within a period of time of at least 24 hours, but not to exceed 72 hours, after the receipt of that written demand, during the normal business hours of the lienholder. The legal owner or lessor shall comply with inspection and vehicle release policies of the impounding public agency.

(B) The amount claimed for storage exceeds the posted rates.

(2) "Agent" includes, but is not limited to, any person designated to inspect the vehicle by the request of the legal owner or lessor, in writing or by telephone, to the lienholder. A lienholder is not responsible for determining the authenticity of documentation establishing a person's agency for the purposes of inspection of a vehicle.

(e) A lienholder shall not be liable for any claim or dispute directly arising out of the reliance on documentation specifically described in paragraph (2) of subdivision (a) for purposes of releasing a vehicle.

SEC. 2. Section 22651.07 is added to the Vehicle Code, to read:

22651.07. (a) A person that charges for towing or storage, or both, except for storage unrelated to a tow, shall do all of the following:

(1) (A) Except as provided in subparagraph (B), post in the office area of the storage facility, in plain view of the public, the Towing Fees and Access Notice and have copies readily available to the public.

(B) An automotive repair dealer, registered pursuant to Article 3 (commencing with Section 9884) of Chapter 20.3 of Division 3 of the Business and Professions Code, that does not provide towing services is exempt from the requirement to post the Towing Fees and Access Notice in the office area.

(2) Provide, upon request, a copy of the Towing Fees and Access Notice to any owner or operator of a towed or stored vehicle.

(3) Provide a distinct notice on an itemized invoice for any towing or storage, or both, charges stating: "Upon request, you are entitled to receive a copy of the Towing Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type.

(b) Prior to receiving payment for any towing, recovery, or storage-related fees, a person that charges for towing or storage, or both, shall provide an itemized invoice of actual charges to the vehicle owner or his or her agent. If an automotive repair dealer, registered pursuant to Article 3 (commencing with Section 9884) of Chapter 20.3 of Division 3 of the Business and Professions Code, did not provide the tow, and passes along, from the tower to the consumer, any of the information required on the itemized invoice, pursuant to subdivision (e), the automotive repair dealer shall not be responsible for the accuracy of those items of information that remain unaltered.

(c) Prior to paying any towing, recovery, or storage-related fees, a vehicle owner or his or her agent shall have the right to all of the following:

(1) Receive his or her personal property, at no charge, during normal business hours. Normal business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays.

(2) Retrieve his or her vehicle during the first 72 hours of storage and not pay a lien fee.

(3) Request a copy of the Towing Fees and Access Notice.

(4) Be permitted to pay by cash or a valid bank credit card. 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 agreeing with a towing or storage provider on rates.

(d) The Towing Fees and Access Notice shall be a standardized document plainly printed in no less than 10-point type. A person may distribute the form using its own letterhead, but the language of the Towing Fees and Access Notice shall read as follows:

<u>Towing Fees and Access Notice</u>
Note: The following information is intended to serve as a general summary of some of the laws that provide vehicle owners certain rights when their vehicle is towed. It is not intended to summarize all of the laws that may be applicable nor is it intended to fully and completely state the entire law in any area listed. Please review the applicable California code for a definitive statement of the law in your particular situation.
<u>How much can a towing company charge?</u>
Rates for public tows and storage are generally established by an agreement between the law enforcement agency requesting the tow and the towing company (to confirm the approved rates, you may contact the law enforcement agency that initiated the tow; additionally, these rates are required to be posted at the storage facility).
Rates for private property tows and storage cannot exceed the approved rates for the law enforcement agency that has primary jurisdiction for the property from which the vehicle was removed or the towing company's approved CHP rate.
Rates for owner's request tows and storage are generally established by mutual agreement between the requestor and the towing company, but may be dictated by agreements established between the requestor's motor club and motor club service provider.
<u>Where can you complain about a towing company?</u>

For public tows: Contact the law enforcement agency initiating the tow.
<u>Your rights if your vehicle is towed:</u>
Generally, prior to paying any towing and storage-related fees you have the right to:
<ul style="list-style-type: none"> • Receive an itemized invoice of actual charges. • Receive your personal property, at no charge, during normal business hours. • Retrieve your vehicle during the first 72 hours of storage and not pay a lien fee. • Request a copy of the Towing Fees and Access Notice. • Pay by cash or valid bank credit card. • Inspect your vehicle or have your insurance carrier inspect your vehicle at the storage facility, at no charge, during normal business hours.
You have the right to have the vehicle released to you upon (1) payment of all towing and storage-related fees, (2) presentation of a valid photo identification, (3) presentation of reliable documentation showing that you are the owner of the vehicle or that the owner has authorized you to take possession of the vehicle, and (4), if applicable, presentation of any required police or law enforcement release documents.
Prior to your vehicle being repaired:
<ul style="list-style-type: none"> • You have the right to choose the repair facility and to have no repairs made to your vehicle unless you authorize them in writing. • Any authorization you sign for towing and any authorization you sign for repair must be on separate forms.
<u>What if I do not pay the towing and storage-related fees or abandon my vehicle at the towing company?</u>
Pursuant to Sections 3068.1 to 3074, inclusive, of the Civil Code, a towing company may sell your vehicle and any moneys received will be applied to towing and storage-related fees that have accumulated against your vehicle.
You are responsible for paying the towing company any outstanding balance due on any of these fees once the sale is complete.
<u>Who is liable if my vehicle was damaged during towing or storage?</u>

Generally the owner of a vehicle may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.
What happens if a towing company violates the law?
If a tow company does not satisfactorily meet certain requirements detailed in this notice, you may bring a lawsuit in court, generally in small claims court. The tower may be civilly liable for damages up to two times the amount charged, not to exceed \$500, and possibly more for certain violations.

(e) “Itemized invoice,” as used in this section, means a written document that contains the following information. Any document that substantially complies with this subdivision shall be deemed an “itemized invoice” for purposes of this section:

- (1) The name, address, telephone number, and carrier identification number as required by subdivision (a) of Section 34507.5 of the person that is charging for towing and storage.
- (2) If ascertainable, the registered owner or operator’s name, address, and telephone number.
- (3) The date service was initiated.
- (4) The location of the vehicle at the time service was initiated, including either the address or nearest intersecting roadways.
- (5) A vehicle description that includes, if ascertainable, the vehicle year, make, model, odometer reading, license plate number, or if a license plate number is unavailable, the vehicle identification number (VIN).
- (6) The service dispatch time, the service arrival time of the tow truck, and the service completion time.
- (7) A clear, itemized, and detailed explanation of any additional services that caused the total towing-related service time to exceed one hour between service dispatch time and service completion time.
- (8) The hourly rate or per item rate used to calculate the total towing and recovery-related fees. These fees shall be listed as separate line items.

(9) If subject to storage fees, the daily storage rate and the total number of days stored. The storage fees shall be listed as a separate line item.

(10) If subject to a gate fee, the date and time the vehicle was either accessed, for the purposes of returning personal property, or was released after normal business hours. Normal business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays. A gate fee shall be listed as a separate line item.

(11) A description of the method of towing.

(12) If the tow was not requested by the vehicle's owner or driver, the identity of the person or governmental agency that directed the tow. This paragraph shall not apply to information otherwise required to be redacted under Section 22658.

(13) A clear, itemized, and detailed explanation of any additional services or fees.

(f) "Person," as used in this section, has the same meaning as described in Section 470.

(g) An insurer or insurer's agent shall be permitted to pay for towing and storage charges by bank draft.

(h) A person who violates this section is civilly liable to a registered or legal owner of the vehicle, or a registered owner's insurer, for up to two times the amount charged. For any action brought under this section, liability shall not exceed five hundred dollars (\$500) per vehicle.

(i) This section shall not apply to the towing or storage of a repossessed vehicle by any person subject to, or exempt from, the Collateral Recovery Act (Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code).

(j) This section does not relieve a person from the obligation to comply with the provision of any other law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor