

ASSEMBLY BILL

No. 2147

Introduced by Assembly Member Eggman

February 17, 2016

An act to amend Section 22659.5 of, and to add Section 22659.7 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2147, as introduced, Eggman. Vehicles: impoundment: prostitution.

Existing law authorizes 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. Existing law requires 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 provide that a vehicle used in the commission of a crime related to prostitution by a person buying or attempting to buy sexual services is a nuisance subject to an impoundment period of up to 30 days. The bill would impose the same procedures for impoundment, storage, and release of the vehicle as are provided under the ordinance-authorizing provisions described above, without the requirement that an ordinance be passed in order to authorize local

authorities to make use of the impounding authority. The bill would make additional conforming changes.

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 amended
2 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 an impoundment period
6 of up to 30 days when the motor vehicle is used in the commission
7 or attempted commission of an act that violates Section 266h or
8 266i of, *or* subdivision (h) of Section 374.3 of, ~~or subdivision (b)~~
9 ~~of Section 647 of~~, the Penal Code, if the owner or operator of the
10 vehicle has had a prior conviction for the same offense within the
11 past three years. An ordinance adopted pursuant to this section
12 may incorporate any combination or all of these offenses. The
13 vehicle may only be impounded pursuant to a valid arrest of the
14 driver for a violation of one of these provisions. An ordinance
15 adopted pursuant to this section shall, at a minimum, contain all
16 of the following provisions:
17 (a) Within two working days after impoundment, the
18 impounding agency shall send a notice by certified mail, return
19 receipt requested, to the legal owner of the vehicle, at the address
20 obtained from the department, informing the owner that the vehicle
21 has been impounded. The notice shall also include notice of the
22 opportunity for a poststorage hearing to determine the validity of
23 the storage or to determine mitigating circumstances establishing
24 that the vehicle should be released. The impounding agency shall
25 be prohibited from charging for more than five days' storage if it
26 fails to notify the legal owner within two working days after the
27 impoundment when the legal owner redeems the impounded
28 vehicle. The impounding agency shall maintain a published
29 telephone number that provides information 24 hours a day
30 regarding the impoundment of vehicles and the rights of a legal
31 owner and a registered owner to request a hearing. The notice shall
32 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, 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 shall be
17 responsible for the towing and storage charges.

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

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

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

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

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

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

10 (3) A person operating or in charge of a storage facility
11 described in paragraph (2) who violates paragraph (2) shall be
12 civilly liable to the owner of the vehicle or the person who tendered
13 the fees for four times the amount of the towing, storage, and
14 related fees not to exceed five hundred dollars (\$500).

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

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

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

29 (k) (1) The legal owner or the legal owner's agent shall present
30 to the law enforcement agency, impounding agency, person in
31 possession of the vehicle, or any person acting on behalf of those
32 agencies, a copy of the assignment, as defined in subdivision (b)
33 of Section 7500.1 of the Business and Professions Code, a release
34 from the one responsible governmental agency, only if required
35 by the agency, a government-issued photographic identification
36 card, and any one of the following as determined by the legal owner
37 or the legal owner's agent: a certificate of repossession for the
38 vehicle, a security agreement for the vehicle, or title, whether or
39 not paperless or electronic, showing proof of legal ownership for
40 the vehicle. Any documents presented may be originals,

1 photocopies, or facsimile copies, or may be transmitted
2 electronically. The law enforcement agency, impounding agency,
3 or other governmental agency, or any person acting on behalf of
4 those agencies, shall not require any documents to be notarized.
5 The law enforcement agency, impounding agency, or any person
6 acting on behalf of those agencies may require the agent of the
7 legal owner to produce a photocopy or facsimile copy of its
8 repossession agency license or registration issued pursuant to
9 Chapter 11 (commencing with Section 7500) of Division 3 of the
10 Business and Professions Code, or to demonstrate, to the
11 satisfaction of the law enforcement agency, impounding agency,
12 or any person acting on behalf of those agencies that the agent is
13 exempt from licensure pursuant to Section 7500.2 or 7500.3 of the
14 Business and Professions Code.

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

38 (l) A legal owner, who meets the requirements for release of a
39 vehicle pursuant to subdivision (i), or the legal owner's agent, shall
40 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 (m) (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 (n) (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.

26 SEC. 2. Section 22659.7 is added to the Vehicle Code, to read:

27 22659.7. Notwithstanding any other law, a motor vehicle is a
28 public nuisance subject to seizure by a local law enforcement
29 agency and an impoundment period of up to 30 days when the
30 motor vehicle is used in the commission or attempted commission
31 of a violation of subdivision (b) of Section 647 of the Penal Code
32 by a person buying or attempting to buy sexual services if the
33 owner or operator of the vehicle has had a prior conviction for the
34 same offense within the past three years. The vehicle may only be
35 impounded pursuant to a valid arrest by a local law enforcement
36 agency of the driver for a violation of subdivision (b) of Section
37 647 of the Penal Code for buying or attempting to buy sexual
38 services. The following procedures shall apply:

39 (a) Within two working days after impoundment, the
40 impounding agency shall send a notice by certified mail, return

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

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

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

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

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

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

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

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

38 (e) Any period during which a vehicle is subjected to storage
39 pursuant to this section shall be included as part of the period of
40 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 was driven by an
8 unlicensed driver employed by a business establishment, including
9 a 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 (b) of Section 647 of the Penal
18 Code.

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

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

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

36 (i) A vehicle removed and seized pursuant to this section shall
37 be released to the legal owner of the vehicle or the legal owner's
38 agent prior to the end of the impoundment period if both of the
39 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 (j) (1) No lien sale processing fees shall be charged to the legal
9 owner who redeems the vehicle prior to the 15th day of the
10 impoundment period. Neither the impounding authority nor any
11 person having possession of the vehicle shall collect from the legal
12 owner, as described in paragraph (1) of subdivision (i), or the legal
13 owner's agent, any administrative charges imposed pursuant to
14 Section 22850.5 unless the legal owner voluntarily requested a
15 poststorage hearing.

16 (2) A person operating or in charge of a storage facility where
17 vehicles are stored pursuant to this section shall accept a valid
18 bank credit card, debit card, or cash for payment of towing, storage,
19 and related fees by a legal or registered owner or the owner's agent
20 claiming the vehicle. A credit card or debit card shall be in the
21 name of the person presenting the card. For purposes of this
22 section, "credit card" is as defined in subdivision (a) of Section
23 1747.02 of the Civil Code. A credit card does not include a credit
24 card issued by a retail seller.

25 (3) A person operating or in charge of a storage facility
26 described in paragraph (2) who violates paragraph (2) shall be
27 civilly liable to the owner of the vehicle or the person who tendered
28 the fees for four times the amount of the towing, storage, and
29 related fees, not to exceed five hundred dollars (\$500).

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

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

39 (6) A failure by a storage facility to comply with any applicable
40 conditions set forth in this subdivision shall not affect the right of

1 the legal owner or the legal owner's agent to retrieve the vehicle
2 if all conditions required of the legal owner or legal owner's agent
3 under this subdivision are satisfied.

4 (k) (1) The legal owner or the legal owner's agent shall present
5 to the law enforcement agency, impounding agency, person in
6 possession of the vehicle, or any person acting on behalf of those
7 agencies, a copy of the assignment, as defined in subdivision (b)
8 of Section 7500.1 of the Business and Professions Code, a release
9 from the one responsible governmental agency, only if required
10 by the agency, a government-issued photographic identification
11 card, and any one of the following as determined by the legal owner
12 or the legal owner's agent: a certificate of repossession for the
13 vehicle, a security agreement for the vehicle, or title, whether or
14 not paperless or electronic, showing proof of legal ownership for
15 the vehicle. Any documents presented may be originals,
16 photocopies, or facsimile copies or may be transmitted
17 electronically. The law enforcement agency, impounding agency,
18 or other governmental agency, or any person acting on behalf of
19 those agencies, shall not require any documents to be notarized.
20 The law enforcement agency, impounding agency, or any person
21 acting on behalf of those agencies may require the agent of the
22 legal owner to produce a photocopy or facsimile copy of its
23 repossession agency license or registration issued pursuant to
24 Chapter 11 (commencing with Section 7500) of Division 3 of the
25 Business and Professions Code, or to demonstrate, to the
26 satisfaction of the law enforcement agency, impounding agency,
27 or any person acting on behalf of those agencies that the agent is
28 exempt from licensure pursuant to Section 7500.2 or 7500.3 of the
29 Business and Professions Code.

30 (2) Administrative costs authorized under subdivision (a) of
31 Section 22850.5 shall not be charged to the legal owner of the type
32 specified in paragraph (1) of subdivision (i) who redeems the
33 vehicle unless the legal owner voluntarily requests a poststorage
34 hearing. A city, county, city and county, or state agency shall not
35 require a legal owner or a legal owner's agent to request a
36 poststorage hearing as a requirement for release of the vehicle to
37 the legal owner or the legal owner's agent. The law enforcement
38 agency, impounding agency, or other governmental agency, or
39 any person acting on behalf of those agencies, shall not require
40 any documents other than those specified in this paragraph. The

1 legal owner or the legal owner's agent shall be given a copy of
2 any documents he or she is required to sign, except for a vehicle
3 evidentiary hold log book. The law enforcement agency,
4 impounding agency, or any person acting on behalf of those
5 agencies, or any person in possession of the vehicle, may
6 photocopy and retain the copies of any documents presented by
7 the legal owner or legal owner's agent. The legal owner shall
8 indemnify and hold harmless a storage facility from any claims
9 arising out of the release of the vehicle to the legal owner or the
10 legal owner's agent and from any damage to the vehicle after its
11 release, including the reasonable costs associated with defending
12 those claims.

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

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

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

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

32 (2) The owner of a rental vehicle that was seized pursuant to
33 this section may continue to rent the vehicle upon recovery of the
34 vehicle.

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