

ASSEMBLY BILL

No. 2811

Introduced by Assembly Member Chávez

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2811, as introduced, Chávez. Vehicles: nuisance abatement.

Existing law authorizes a city or county to adopt an ordinance declaring a motor vehicle to be a public nuisance subject to seizure and an impoundment of up to 30 days if the vehicle is used in the commission or attempted commission of the crimes of pimping, pandering, and soliciting, or agreeing to engage in, or engaging in, any act of 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 had a prior conviction for the same offense within the past 3 years.

This bill would revise this authority by deleting the requirement that the owner or operator of a vehicle convicted of illegal dumping have suffered a prior conviction for the illegal dumping offense. The bill would also remove the prior conviction requirement for the sex crimes described above if the victim is a minor or a victim of human trafficking, as defined. The bill would also make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

SECTION 1. Section 22659.5 of the Vehicle Code is amended to read:

22659.5. (a) ~~Notwithstanding any other provision of law, a city or a county~~ *a city, county, or city and 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 if~~ 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:~~ *any of the following sections and if the owner or operator of the vehicle has within the immediately preceding three years had a prior conviction for the same offense:*

(1) *Section 266h of the Penal Code.*

(2) *Section 266i of the Penal Code.*

(3) *Subdivision (b) of Section 647 of the Penal Code.*

(b) *Notwithstanding subdivision (a), a city, county, or city and 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 if the motor vehicle is used in the commission or attempted commission of an act that violates Section 266h or 266i of, or subdivision (b) of Section 647 of, the Penal Code, and the arresting officer or agency has probable cause to believe that the victim of any of these violations is a minor or a victim of human trafficking, as defined in Section 236.1 of the Penal Code.*

(c) *A city, county, or city and 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 if the motor vehicle is used in the commission or attempted commission of an act that violates subdivision (h) of Section 374.3 of the Penal Code.*

(d) *An ordinance adopted pursuant to this section may incorporate any combination or all of the offenses specified in*

1 subdivisions (a), (b), and (c). The vehicle may only be impounded
2 pursuant to a valid arrest of the driver for a violation of one of
3 these provisions.

4 (e) An ordinance adopted pursuant to this section shall, at a
5 minimum, contain all of the following provisions:

6 ~~(a)~~

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

23 ~~(1)~~

24 (A) The name, address, and telephone number of the agency
25 providing the notice.

26 ~~(2)~~

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

30 ~~(3)~~

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

32 ~~(4)~~

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

37 ~~(b)~~

38 (2) The poststorage hearing shall be conducted within 48 hours
39 of the request, excluding weekends and holidays. The public
40 agency may authorize one of its own officers or employees to

1 conduct the hearing if that hearing officer is not the same person
2 who directed the seizure of the vehicle.

3 ~~(e)~~

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

7 ~~(d)~~

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

12 ~~(e)~~

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

16 ~~(f)~~

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

20 ~~(1)~~

21 (A) The driver of the impounded vehicle was arrested without
22 probable cause.

23 ~~(2)~~

24 (B) The vehicle is a stolen vehicle.

25 ~~(3)~~

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

29 ~~(4)~~

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

34 ~~(5)~~

35 (E) The registered owner of the vehicle was neither the driver
36 nor a passenger of the vehicle at the time of the alleged violation,
37 or was unaware that the driver was using the vehicle to engage in
38 activities subject to Section 266h or 266i of, *subdivision (h) of*
39 *Section 374.3 of*, or subdivision (b) of Section 647 of, the Penal
40 Code.

1 ~~(6)~~

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

11 ~~(g)~~

12 (7) 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 ~~shall be~~ *is*
16 responsible for the towing and storage charges.

17 ~~(h)~~

18 (8) Except as provided in ~~subdivision (g)~~, *paragraph (7)*, the
19 registered owner or his or her agent shall be responsible for all
20 towing and storage charges related to the impoundment.

21 ~~(i)~~

22 (9) 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 both of the following conditions are met:

26 ~~(1)~~

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

31 ~~(2)~~

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

35 ~~(j) (1)~~

36 (10) (A) No lien sale processing fees shall be charged to the
37 legal owner who redeems the vehicle prior to the 15th day of the
38 impoundment period. Neither the impounding authority nor any
39 person having possession of the vehicle shall collect from the legal
40 owner as described in ~~paragraph (1) of subdivision (i)~~,

1 *subparagraph (A) of paragraph (9)*, or the legal owner's agent,
2 any administrative charges imposed pursuant to Section 22850.5,
3 unless the legal owner voluntarily requested a poststorage hearing.

4 ~~(2)~~

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

14 ~~(3)~~

15 (C) A person operating or in charge of a storage facility
16 described in ~~paragraph (2)~~ *subparagraph (B)* who violates
17 ~~paragraph (2) that subparagraph~~ shall be civilly liable to the owner
18 of the vehicle or the person who tendered the fees for four times
19 the amount of the towing, storage, and related fees not to exceed
20 five hundred dollars (\$500).

21 ~~(4)~~

22 (D) A person operating or in charge of the storage facility
23 described in ~~paragraph (2)~~ *subparagraph (B)* shall have sufficient
24 funds on the premises of the primary storage facility during normal
25 business hours to accommodate, and make change for, a reasonable
26 monetary transaction.

27 ~~(5)~~

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

32 ~~(6)~~

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

38 ~~(k) (1)~~

39 (II) (A) The legal owner or the legal owner's agent shall
40 present to the law enforcement agency, impounding agency, person

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

25 ~~(2)~~

26 (B) Administrative costs authorized under subdivision (a) of
27 Section 22850.5 shall not be charged to the legal owner of the type
28 specified in ~~paragraph (1) of subdivision (i)~~ *subparagraph (A) of*
29 *paragraph (9)* who redeems the vehicle unless the legal owner
30 voluntarily requests a poststorage hearing. A city, county, city and
31 county, or state agency shall not require a legal owner or a legal
32 owner's agent to request a poststorage hearing as a requirement
33 for release of the vehicle to the legal owner or the legal owner's
34 agent. The law enforcement agency, impounding agency, or other
35 governmental agency, or any person acting on behalf of those
36 agencies, shall not require any documents other than those specified
37 in this ~~paragraph~~ *subparagraph*. The legal owner or the legal
38 owner's agent shall be given a copy of any documents he or she
39 is required to sign, except for a vehicle evidentiary hold log book.
40 The law enforcement agency, impounding agency, or any person

1 acting on behalf of those agencies, or any person in possession of
2 the vehicle, may photocopy and retain the copies of any documents
3 presented by the legal owner or legal owner's agent. The legal
4 owner shall indemnify and hold harmless a storage facility from
5 any claims arising out of the release of the vehicle to the legal
6 owner or the legal owner's agent and from any damage to the
7 vehicle after its release, including the reasonable costs associated
8 with defending any such claims.

9 ~~(f)~~

10 (12) A legal owner, who meets the requirements for release of
11 a vehicle pursuant to ~~subdivision (i), paragraph (9)~~, or the legal
12 owner's agent, shall not be required to request a poststorage hearing
13 as a requirement for release of the vehicle to the legal owner or
14 the legal owner's agent.

15 ~~(m) (1)~~

16 (13) (A) A legal owner, who meets the requirements for release
17 of a vehicle pursuant to ~~subdivision (i), paragraph (9)~~ or the legal
18 owner's agent, shall not release the vehicle to the registered owner
19 of the vehicle or an agent of the registered owner, unless the
20 registered owner is a rental car agency, until after the termination
21 of the impoundment period.

22 ~~(2)~~

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

26 ~~(n) (1)~~

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

33 ~~(2)~~

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

39 ~~(3)~~

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

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