

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1024

Introduced by Senator Oropeza

February 11, 2010

An act to ~~amend Section 21100.4 of~~ add Section 21100.6 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1024, as amended, Oropeza. Vehicles: tow trucks: ~~payment of towing charges.~~ illegal operation.

Existing law requires a magistrate presented with the affidavit of a peace officer or a designated local transportation officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, is being operated as a taxicab or other passenger vehicle for hire in violation of licensing requirements adopted by a local authority to issue a warrant or order authorizing the peace officer or designated local transportation officer to immediately seize and cause the removal of the vehicle.

Existing law also provides that the vehicle may be impounded for a period not to exceed 30 days and establishes, among other things, procedures for storage, a poststorage hearing, payment of storage charges, and release of the vehicle. A violation of these provisions is an infraction.

This bill would establish similar procedures for the seizure and removal of a tow truck that is being operated in violation of local licensing requirements. The bill would also provide that a towing company owner, its agent, or a tow truck operator who violates licensing requirements adopted by a local authority is guilty of a misdemeanor

punishable by a \$5,000 fine. By creating a new crime, the bill would impose a state-mandated local program.

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.

~~Existing law requires a person operating or in charge of a storage facility where vehicles are stored to 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 person operating or in charge of a storage facility who violates the provision is civilly liable to the owner of the vehicle or to the person who tendered the fees for 4 times the amount of the towing, storage, and related fees, but not to exceed \$500.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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

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

- 1 SECTION 1. Section 21100.6 is added to the Vehicle Code, to
- 2 read:
- 3 21100.6. (a) (1) A magistrate presented with the affidavit of
- 4 a peace officer or a designated local transportation officer
- 5 establishing reasonable cause to believe that a vehicle, described
- 6 by vehicle type and license number, is being operated as a tow
- 7 truck in violation of licensing requirements adopted by a local
- 8 authority under subdivision (b) of Section 21100 shall issue a
- 9 warrant or order authorizing the peace officer or designated local
- 10 transportation officer to immediately seize and cause the removal
- 11 of the vehicle. As used in this section, "designated local
- 12 transportation officer" means any local public officer employed
- 13 by a local authority to investigate and enforce local towing,
- 14 storage, and vehicle for hire laws and regulations.
- 15 (2) The warrant or court order may be entered into a
- 16 computerized database.

1 (3) A vehicle so impounded may be impounded for a period not
2 to exceed 30 days.

3 (4) The impounding agency, within two working days of
4 impoundment, shall send a notice by certified mail, return receipt
5 requested, to the legal owner of the vehicle, at an address obtained
6 from the department, informing the owner that the vehicle has
7 been impounded and providing the owner with a copy of the
8 warrant or court order. Failure to notify the legal owner within
9 two working days shall prohibit the impounding agency from
10 charging for more than 15 days' impoundment when a legal owner
11 redeems the impounded vehicle. The law enforcement agency shall
12 be open to issue a release to the registered owner or legal owner,
13 or the agent of either, whenever the agency is open to serve the
14 public for regular, nonemergency business.

15 (b) (1) An impounding agency shall release a vehicle to the
16 registered owner or his or her agent prior to the end of the
17 impoundment period and without the permission of the magistrate
18 authorizing the vehicle's seizure under any of the following
19 circumstances:

20 (A) When the vehicle is a stolen vehicle.

21 (B) When the vehicle was seized under this section for an offense
22 that does not authorize the seizure of the vehicle.

23 (2) A vehicle shall not be released under this subdivision, except
24 upon presentation of the registered owner's or agent's current
25 valid license to operate the vehicle under the licensing
26 requirements adopted by the local authority under subdivision (b)
27 of Section 21100, and proof of current vehicle registration, or
28 upon order of the court.

29 (c) (1) Whenever a vehicle is impounded under this section, the
30 magistrate ordering the storage shall provide the vehicle's
31 registered and legal owners of record, or their agents, with the
32 opportunity for a poststorage hearing to determine the validity of
33 the storage.

34 (2) A notice of the storage shall be mailed or personally
35 delivered to the registered and legal owners within 48 hours after
36 issuance of the warrant or court order, excluding weekends and
37 holidays, by the person or agency executing the warrant or court
38 order, and shall include all of the following information:

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

1 (B) The location of the place of storage and a description of the
2 vehicle, which shall include, if available, the name or make, the
3 manufacturer, the license plate number, and the mileage of the
4 vehicle.

5 (C) A copy of the warrant or court order and the peace officer's
6 affidavit, as described in subdivision (a).

7 (D) A statement that, in order to receive their poststorage
8 hearing, the owners, or their agents, are required to request the
9 hearing from the magistrate issuing the warrant or court order in
10 person, in writing, or by telephone, within 10 days of the date of
11 the notice.

12 (3) The poststorage hearing shall be conducted within two court
13 days after receipt of the request for the hearing.

14 (4) At the hearing, the magistrate may order the vehicle released
15 if he or she finds any of the circumstances described in subdivision
16 (b) or (e) that allow release of a vehicle by the impounding agency.

17 (5) Failure of either the registered or legal owner, or his or her
18 agent, to request, or to attend, a scheduled hearing satisfies the
19 poststorage hearing requirement.

20 (6) The agency employing the peace officer or designated local
21 transportation officer who caused the magistrate to issue the
22 warrant or court order shall be responsible for the costs incurred
23 for towing and storage if it is determined in the poststorage hearing
24 that reasonable grounds for the storage are not established.

25 (d) The registered owner or his or her agent is responsible for
26 all towing and storage charges related to the impoundment, and
27 any administrative charges authorized under Section 22850.5.

28 (e) A vehicle removed and seized under subdivision (a) shall be
29 released to the legal owner of the vehicle or the legal owner's
30 agent prior to the end of the impoundment period and without the
31 permission of the magistrate authorizing the seizure of the vehicle
32 if all of the following conditions are met:

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

37 (2) (A) The legal owner or the legal owner's agent pays all
38 towing and storage fees related to the seizure of the vehicle. A lien
39 sale processing fee shall not be charged to the legal owner who
40 redeems the vehicle prior to the 15th day of impoundment. Neither

1 the impounding authority nor a person having possession of the
2 vehicle shall collect from the legal owner as specified in paragraph
3 (1), or the legal owner's agent, any administrative charges imposed
4 pursuant to Section 22850.5 unless the legal owner voluntarily
5 requested a poststorage hearing.

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

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

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

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

30 (3) (A) The legal owner or the legal owner's agent presents to
31 the law enforcement agency or impounding agency, or any person
32 acting on behalf of those agencies, a copy of the assignment, as
33 defined in subdivision (b) of Section 7500.1 of the Business and
34 Professions Code, a release from the one responsible governmental
35 agency, only if required by the agency, a government-issued
36 photographic identification card, and any one of the following as
37 determined by the legal owner or the legal owner's agent: a
38 certificate of repossession for the vehicle, a security agreement
39 for the vehicle, or a title, whether paper or electronic, showing
40 proof of legal ownership for the vehicle. The law enforcement

1 agency, the impounding agency, or any other governmental agency,
2 or any person acting on behalf of those agencies, shall not require
3 the presentation of any other documents.

4 (B) The legal owner or the legal owner's agent presents to the
5 person in possession of the vehicle, or any person acting on behalf
6 of the person in possession of the vehicle, a copy of the assignment,
7 as defined in subdivision (b) of Section 7500.1 of the Business and
8 Professions Code, a release from the one responsible governmental
9 agency, only if required by the agency, a government-issued
10 photographic identification card, and any one of the following as
11 determined by the legal owner or the legal owner's agent: a
12 certificate of repossession for the vehicle, a security agreement
13 for the vehicle, or a title, whether paper or electronic, showing
14 proof of legal ownership for the vehicle. The person in possession
15 of the vehicle, or any person acting on behalf of the person in
16 possession of the vehicle, shall not require the presentation of any
17 other documents.

18 (C) All presented documents may be originals, photocopies,
19 facsimile copies, or transmitted electronically. The law enforcement
20 agency, the impounding agency, or any person in possession of
21 the vehicle, or anyone acting on behalf of these agencies or the
22 person in possession of the vehicle, shall not require any documents
23 to be notarized. The law enforcement agency, the impounding
24 agency, or any person acting on behalf of those agencies, may
25 require the agent of the legal owner to produce a photocopy or
26 facsimile copy of its repossession agency license or registration
27 issued pursuant to Chapter 11 (commencing with Section 7500)
28 of Division 3 of the Business and Professions Code, or to
29 demonstrate, to the satisfaction of the law enforcement agency,
30 the impounding agency, or any person in possession of the vehicle,
31 or anyone acting on behalf of these agencies or the person in
32 possession of the vehicle, that the agent is exempt from licensure
33 pursuant to Section 7500.2 or 7500.3 of the Business and
34 Professions Code.

35 (D) The administrative costs authorized under subdivision (a)
36 of Section 22850.5 shall not be charged to the legal owner as
37 specified in paragraph (1) who redeems the vehicle unless the
38 legal owner voluntarily requests a poststorage hearing. A city,
39 county, city and county, or state agency shall not require a legal
40 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, the impounding agency, or any 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 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 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 logbook. The law enforcement agency, the 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.

(4) 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.

(f) (1) A legal owner or the legal owner's agent that obtains release of the vehicle pursuant to subdivision (e) shall not release the vehicle to the registered owner of the vehicle or the person who was listed as the registered owner when the vehicle was impounded or any agents of the registered owner until the termination of the impoundment period.

(2) The legal owner or the legal owner's agent shall not relinquish the vehicle to the registered owner or the person who was listed as the registered owner when the vehicle was impounded until the registered owner or that owner's agent presents his or her valid driver's license or valid temporary driver's license, and an operator's license that is in compliance with the licensing requirements adopted by the local authority under subdivision (b) of Section 21100, to the legal owner or the legal owner's agent. The legal owner or the legal owner's agent or the person in possession of the vehicle shall make every reasonable effort to ensure that the licenses presented are valid and possession of the vehicle will not be given to the driver who was involved in the original impoundment proceeding until the expiration of the impoundment period.

1 (3) Prior to relinquishing the vehicle, the legal owner may
2 require the registered owner to pay all towing and storage charges
3 related to the impoundment and the administrative charges
4 authorized under Section 22850.5 that were incurred by the legal
5 owner in connection with obtaining the custody of the vehicle.

6 (4) Any legal owner who knowingly releases or causes the
7 release of a vehicle to a registered owner or the person in
8 possession of the vehicle at the time of the impoundment or any
9 agent of the registered owner in violation of this subdivision shall
10 be guilty of a misdemeanor and subject to a civil penalty in the
11 amount of two thousand dollars (\$2,000).

12 (5) The legal owner, registered owner, or person in possession
13 of the vehicle shall not change or attempt to change the name of
14 the legal owner or the registered owner on the records of the
15 department until the vehicle is released from the impoundment.

16 (g) Notwithstanding any other provision of this section, the
17 registered owner and not the legal owner shall remain responsible
18 for any towing and storage charges related to the impoundment
19 and the administrative charges authorized under Section 22850.5
20 and any parking fines, penalties, and administrative fees incurred
21 by the registered owner.

22 (h) The law enforcement agency and the impounding agency,
23 including any storage facility acting on behalf of the law
24 enforcement agency or impounding agency, shall comply with this
25 section and shall not be liable to the registered owner for the
26 improper release of the vehicle to the legal owner or the legal
27 owner's agent if the release complies with this section. The legal
28 owner shall indemnify and hold harmless a storage facility from
29 any claims arising out of the release of the vehicle to the legal
30 owner or the legal owner's agent and from any damage to the
31 vehicle after its release, including the reasonable costs associated
32 with defending the claims. A law enforcement agency shall not
33 refuse to issue a release to a legal owner or the agent of a legal
34 owner on the grounds that it previously issued a release.

35 (i) A towing company owner, its agent, or a tow truck operator
36 who fails to comply with the licensing requirements adopted by a
37 local authority under subdivision (b) of Section 21100 is guilty of
38 a misdemeanor punishable by a fine of five thousand dollars
39 (\$5,000).

1 *SEC. 2. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

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12 **All matter omitted in this version of the bill**
13 **appears in the bill as introduced in the**
14 **Senate, February 11, 2010. (JR11)**
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