

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2811

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 MAR 24 PM 4:27

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 amended, 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 *other* technical, ~~nonsubstantive~~ *nonsubstantive, and clarifying* 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:

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

3 22659.5. (a) Notwithstanding any other law, a city, county,
4 or city and county may adopt an ordinance declaring a motor
5 vehicle to be a public nuisance subject to seizure and an
6 impoundment period of up to 30 days if the motor vehicle is used
7 in the commission or attempted commission of an act that violates
8 any of the following sections and if the owner or operator of the
9 vehicle has within the immediately preceding three years had a
10 prior conviction for the same offense:

- 11 (1) Section 266h of the Penal Code.
- 12 (2) Section 266i of the Penal Code.
- 13 (3) Subdivision (b) of Section 647 of the Penal Code.

14 *A vehicle may only be impounded pursuant to a valid arrest of*
15 *the driver for a violation of one of these offenses.*

16 (b) Notwithstanding subdivision (a), a city, county, or city and
17 county may adopt an ordinance declaring a motor vehicle to be a
18 public nuisance subject to seizure and an impoundment period of
19 up to 30 days if the motor vehicle is used in the commission or
20 attempted commission of an act that violates Section 266h or 266i
21 of, or subdivision (b) of Section 647 of, the Penal Code, and the
22 arresting officer or agency has probable cause to believe that the
23 victim of any of these violations is a minor or a victim of human
24 trafficking, as defined in Section 236.1 of the Penal Code.

25 (c) ~~Notwithstanding any other law, a city, county, or city and~~
26 ~~county may adopt an ordinance declaring a motor vehicle to be a~~
27 ~~public nuisance subject to seizure and an impoundment period of~~
28 ~~up to 30 days if the motor vehicle is used in the commission or~~
29 ~~attempted commission of an act that violates subdivision (h) of~~
30 ~~Section 374.3 of the Penal Code. Code and if the owner or operator~~
31 ~~of the vehicle has within the immediately preceding three years~~
32 ~~had a prior conviction for the same offense. A vehicle may only~~
33 ~~be impounded pursuant to a valid arrest of the driver for a violation~~
34 ~~of this offense.~~

35 (d) ~~An ordinance adopted pursuant to this section may~~
36 ~~incorporate any combination or all of the offenses specified in~~
37 ~~subdivisions (a), (b), and (c). The vehicle may only be impounded~~

1 ~~pursuant to a valid arrest of the driver for a violation of one of~~
2 ~~these provisions:~~

3 (e)

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

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

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

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

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

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

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

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

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

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

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

11 (A) The driver of the impounded vehicle was arrested without
12 probable cause.

13 (B) The vehicle is a stolen vehicle.

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

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

21 (E) The registered owner of the vehicle was neither the driver
22 nor a passenger of the vehicle at the time of the alleged violation,
23 or was unaware that the driver was using the vehicle to engage in
24 activities subject to Section 266h or 266i of, subdivision (h) of
25 Section 374.3 of, or subdivision (b) of Section 647 of, the Penal
26 Code.

27 (F) A spouse, registered domestic partner, or other affected third
28 party objects to the impoundment of the vehicle on the grounds
29 that it would create a hardship if the subject vehicle is the sole
30 vehicle in a household. The hearing officer shall release the vehicle
31 where the hardship to a spouse, registered domestic partner, or
32 other affected third party created by the impoundment of the subject
33 vehicle, or the length of the impoundment, outweigh the
34 seriousness and the severity of the act in which the vehicle was
35 used.

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

1 (8) Except as provided in paragraph (7), the registered owner
2 or his or her agent shall be responsible for all towing and storage
3 charges related to the impoundment.

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

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

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

15 (10) (A) No lien sale processing fees shall be charged to the
16 legal owner who redeems the vehicle prior to the 15th day of the
17 impoundment period. Neither the impounding authority nor any
18 person having possession of the vehicle shall collect from the legal
19 owner as described in subparagraph (A) of paragraph (9), or the
20 legal owner's agent, any administrative charges imposed pursuant
21 to Section 22850.5, unless the legal owner voluntarily requested
22 a poststorage hearing.

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

32 (C) A person operating or in charge of a storage facility
33 described in subparagraph (B) who violates that subparagraph shall
34 be civilly liable to the owner of the vehicle or the person who
35 tendered the fees for four times the amount of the towing, storage,
36 and related fees not to exceed five hundred dollars (\$500).

37 (D) A person operating or in charge of the storage facility
38 described in subparagraph (B) shall have sufficient funds on the
39 premises of the primary storage facility during normal business

1 hours to accommodate, and make change for, a reasonable
2 monetary transaction.

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

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

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

38 (B) Administrative costs authorized under subdivision (a) of
39 Section 22850.5 shall not be charged to the legal owner of the type
40 specified in subparagraph (A) of paragraph (9) who redeems the

1 vehicle unless the legal owner voluntarily requests a poststorage
2 hearing. A city, county, city and county, or state agency shall not
3 require a legal owner or a legal owner's agent to request a
4 poststorage hearing as a requirement for release of the vehicle to
5 the legal owner or the legal owner's agent. The law enforcement
6 agency, impounding agency, or other governmental agency, or
7 any person acting on behalf of those agencies, shall not require
8 any documents other than those specified in this subparagraph.
9 The legal owner or the legal owner's agent shall be given a copy
10 of any documents he or she is required to sign, except for a vehicle
11 evidentiary hold log book. The law enforcement agency,
12 impounding agency, or any person acting on behalf of those
13 agencies, or any person in possession of the vehicle, may
14 photocopy and retain the copies of any documents presented by
15 the legal owner or legal owner's agent. The legal owner shall
16 indemnify and hold harmless a storage facility from any claims
17 arising out of the release of the vehicle to the legal owner or the
18 legal owner's agent and from any damage to the vehicle after its
19 release, including the reasonable costs associated with defending
20 any such claims.

21 (12) A legal owner, who meets the requirements for release of
22 a vehicle pursuant to paragraph (9), or the legal owner's agent,
23 shall not be required to request a poststorage hearing as a
24 requirement for release of the vehicle to the legal owner or the
25 legal owner's agent.

26 (13) (A) A legal owner, who meets the requirements for release
27 of a vehicle pursuant to paragraph (9) or the legal owner's agent,
28 shall not release the vehicle to the registered owner of the vehicle
29 or an agent of the registered owner, unless the registered owner is
30 a rental car agency, until after the termination of the impoundment
31 period.

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

35 (14) (A) A vehicle removed and seized pursuant to an ordinance
36 adopted pursuant to this section shall be released to a rental car
37 agency prior to the end of the impoundment period if the agency
38 is either the legal owner or registered owner of the vehicle and the
39 agency pays all towing and storage fees related to the seizure and
40 impoundment of the vehicle.

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

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

DRAFT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality

DRAFT

City Attorney's Office

2016 MAR 24 PM 4:27

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER NOEL GALLO

A RESOLUTION IN SUPPORT OF ASSEMBLY BILL 2811 (CHAVEZ) WHICH AMENDS SECTION 22659.5 OF THE VEHICLE CODE, RELATED TO VEHICLES: NUISANCE ABATEMENT, WHICH DECLARES A MOTOR VEHICLE TO BE A PUBLIC NUISANCE SUBJECT TO SEIZURE AND AN IMPOUNDMENT 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. AB2811 WILL PROVIDE A REAL DETERRENT THAT WILL PREVENT 'JOHNS' FROM SEEKING TO PURCHASE SEX IN THE FUTURE

WHEREAS, Human trafficking of children for the purposes of pimping and sale of sexual services is one of the largest human rights problems facing the State of California today; as well as, affecting more than 20.9 million people worldwide, and California is considered one of the top destinations in the US for the practice of human trafficking; and in California, 72 percent of all human trafficking victims are US citizens; and

WHEREAS, in 1997, the Oakland City Council enacted Ordinance No. 11987 C.M.S. declaring vehicles used to solicit an act of prostitution or to illegally acquire a controlled substance to be public nuisances and authorized the seizure and forfeiture of said vehicles; and

WHEREAS, the Oakland City Council subsequently enacted Ordinances No. 12015, 12093, and 12684 C.M.S. amending various provisions of the original Ordinance No. 11987 C.M.S.; and

WHEREAS, AB2811 introduced by Assembly Member Rocky Chávez is an act to amend Section 22659.5 of the Vehicle Code, relating to vehicles; and

WHEREAS, currently Vehicle Code 22659.5 covers the impoundment of vehicles used in the commission of specified public nuisance, and required there to be a prior conviction of the same offense within the past three years for there to be an impoundment, the added impoundment will be without a prior conviction and at the time of the arrest; and

WHEREAS, 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 act or attempted act of the crimes of pimping,

pandering, and soliciting, or agreeing to engage in, or engaging in, any act of prostitution, if the owner or operator of the vehicle had a prior conviction for the same offense within the past three (3) years; and

WHEREAS, AB2811 would remove the prior conviction requirement for the sex crimes, above fore mentioned, if the victim is a minor or a victim of human trafficking as defined in Section 236.1 of the Penal Code; now, therefore be it

RESOLVED: that AB 2811 would remove the prior conviction requirements for the sex crimes described above if the victim is a minor or a victim of human trafficking, as defined, and it would also make other technical, *nonsubstantive, and clarifying* changes to these provisions; and be it

FURTHER RESOLVED: that the Oakland City Council hereby supports California Assembly Bill 2811 (CHAVEZ), which amends Section 22659.5 of the Vehicle Code, relating to vehicles, to allow the 30 day impoundment of vehicles used by "Johns," pimps, and/or panders when law enforcement have probable cause to believe the victim is a minor or a victim of human trafficking.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLÉN, KALB, KAPLAN,
REID AND PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California