

Date of Hearing: January 10, 2022

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Laura Friedman, Chair  
AB 294 (Santiago) – As Introduced January 21, 2021

**SUBJECT:** Vehicle Tow and Storage Act

**SUMMARY:** Creates the Vehicle Towing and Storage Board (VTSB) within the Department of Consumer Affairs (DCA), requires businesses that tow and store vehicles to receive a permit from VTSB, and authorizes VTSB to resolve disputes associated with the tow and storage of vehicles. Specifically, **this bill:**

- 1) Comprises VTSB of the following nine members to meet at least once a month:
  - a) Seven members who shall be appointed by the Governor, including two members from the law enforcement community, at least one of whom is from the Department of the California Highway Patrol (CHP); two members from the towing industry who have at least 10 years of direct management or ownership experience with a business that primarily conducted services with a tow truck; two members from the insurance industry; and one member from an automotive repair facility regulated by the Bureau of Automotive Repair.
  - b) Two members of the public, one of whom shall be appointed by the President Pro Tempore of the Senate and one of whom shall be appointed by the Speaker of the Assembly.
- 2) Provides that members of the board shall serve for a term of four years, specifies that there shall be no term limits, and provides that a member of the board shall receive a per diem and expenses.
- 3) Requires a business to obtain a Vehicle Tow and Storage Permit from VTSB prior to operating a tow truck, requires them to pay an annual fee based on fleet size, and requires them to post the permit in the office area of the storage facility, in plain view of the public.
- 4) Makes it a misdemeanor, punishable by a fine of up to \$2,500, or imprisonment in county jail for no more than 3 months, or both, for a motor carrier of property to retrieve or release a vehicle through the use of a tow truck from the premises of another motor carrier of property without retrieving a copy of the Vehicle Tow and Storage Permit.
- 5) Specifies that a towing business operating without a permit be issued a corrective violation until January 1, 2023, and after January 1, 2023 to be issued a fine not exceeding 5, 10 or 25 thousand dollars for a first, second or third offense.
- 6) Requires VTSB to maintain a database on a publicly available website containing various information regarding permit holders.

- 7) Requires VTSB to review the following disputes from a vehicle owner or their agent:
  - a) Whether the business that towed or stored the vehicle had a valid Vehicle Tow and Storage Permit at the time of the tow or storage.
  - b) Whether the fees charged for the tow or storage exceeded the rates authorized by law, the rates approved by the applicable law enforcement entity that initiated the tow, or were otherwise reasonable.
  - c) Whether the business that towed or stored the vehicle charged for unreasonably excessive time.
  - d) Whether an insurer's check was accepted when the vehicle was retrieved by an insurer.
- 8) Provides that VTSB shall not review, nor issue determinations, on any of the following disputes:
  - a) Tow or storage charges when the tow was initiated by a motor club holding a certificate of authority.
  - b) Tow or storage charges when a written agreement between the vehicle owner and the business charging for tow or storage was entered into prior to the incident that triggered the tow.
- 9) Requires the vehicle owner or agent to file the dispute with VTSB within 30 days following the payment of tow or storage charges on which the dispute is based and requires the towing company to respond to VTSB within 15 business days.
- 10) Requires the vehicle owner to include in the dispute sufficient information to identify the towing company, the basis for the dispute, and, if a vehicle owner's agent is filing the dispute, the name of the vehicle owner that it represents.
- 11) Places the burden on the towing company to prove the dispute is meritless and has the burden to prove the charges were reasonable.
- 12) Permits the towing company to not contest the dispute and return the full amount charges for towing or storage to VTSB to be returned to the complaining party.
- 13) Authorizes VTSB to assess a penalty four times the cost of the tow or storage, but no more than \$10,000, if the towing company was not licensed with VTSB at the time of the dispute.
- 14) Authorizes VTSB to assess a penalty four times the cost of the tow or storage if the tow or storage fee was unreasonable, with a maximum penalty of \$10,000.
- 15) Authorizes VTSB to assess penalties if it determines that the towing company charged for unreasonably excessive time for a first adverse determination related to charging unreasonably excessive time within a rolling 18-month period, a penalty equivalent to the amount charged for the time determined to be excessive, for a second offense, two times the

amount charged, and for a third or subsequent offense, three times amount charged; with a maximum fine of \$10,000.

- 16) Authorizes VTSB, in the event a towing company refuses to accept an insurance check, to assess a penalty equivalent to the cost of the tow or storage in dispute plus four times the amount charged, but in no event shall the total penalty exceed ten thousand dollars (\$10,000).
- 17) Authorizes VTSB to retain one fourth of the penalties to fund its activities, with the remaining funds to be paid to the complainant.
- 18) Removes the authority for towing and storage facilities to charge fees that are comparable to related rates and fees charged by other facilities in the same locale and instead provides that towing and storage charges are only reasonable if they are the same rates charged for similar services provided in the same geographical organization area established by the CHP in response to requests initiated by a public agency.
- 19) Modifies the existing Towing and Storage Fees Access Notice that storage facilities are required to post to include information on VTSB and how to file a dispute with VTSB.

**EXISTING LAW:**

- 1) Defines a tow truck as “a motor vehicle which has been altered or designed and equipped for, and primarily used in the business of, transporting vehicles by means of a crane, hoist, tow bar, tow line, or dolly or is otherwise primarily used to render assistance to other vehicles. A ‘roll-back carrier’ designed to carry up to two vehicles is also a tow truck. A trailer for hire that is being used to transport a vehicle is a tow truck. ‘Tow truck’ does not include an automobile dismantlers’ tow vehicle or a reposessor’s tow vehicle.”
- 2) Requires the operator of a tow truck to have a Motor Carrier Permit.
- 3) Requires the driver of a tow truck to have a class B Commercial Driver’s License.
- 4) Requires all storage and towing fees charged to a legal owner of a motor vehicle to be reasonable, as specified. Requires all towing and storage fees charged when those services are performed as a result of an accident or recovery of a stolen vehicle to be reasonable. Deems a towing and storage charge to be reasonable if it does not exceed those rates and fees charged for similar services provided in response to requests initiated by a public agency, including but not limited to, the CHP or local police department. Deems a storage rate and fee to be reasonable if it is comparable to storage-related rates and fees charged by other facilities in the same locale, but does not preclude a rate or fee that is higher or lower if it is otherwise reasonable.
- 5) Specifies that the following rates and fees are presumptively unreasonable: administrative or filing fees, except those incurred related to documentation from DMV and those related to the lien sale of a vehicle; security fees; dolly fees; load and unload fees; pull-out fees; and, gate fees, except when the owner or insurer of the vehicle requests that the vehicle be released outside of regular business hours.

- 6) Clarifies that 2) above does not prohibit any fees authorized in an agreement between a law enforcement agency and a towing company, if the tow was initiated by the law enforcement agency.
- 7) Authorizes a vehicle owner, his or her agent, or a reposessor prior to paying any towing, recovery, or storage related fees to inspect the vehicle without paying a fee or have an insurer inspect the vehicle at the storage facility at no charge during normal business hours; however, the storage facility may limit the inspection to increments of 45 consecutive minutes in order to provide service to customers, as specified.
- 8) Requires a towing or storage facility to accept an insurer's check as a form of payment.
- 9) Requires a storage facility to be open and accessible during normal business hours and outside of normal business hours, the facility must provide a telephone number that permits the caller to leave a message and calls must be returned no later than six business hours after a message has been left.
- 10) Adds information to the towing and storage fees and access notice related to vehicle inspections and releases by insurance carriers. Defines, for purposes of this bill, "insurer" to mean either a first-party insurer or third-party insurer.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

The California Legislature has taken steps to reduce a number of anti-consumer behaviors by some towing and storage companies, including the passage of AB 519 (Solorio), Chapter 566, Statutes of 2010, which required towing companies to provide consumers a Towing Fees and Access Notice and an itemized invoice of all towing and storage fees. Towing companies are also required to accept credit cards, debit cards, and insurance checks.

In 2018, the Legislature passed AB 2392 (Santiago), Chapter 432. The goal of AB 2392 was to protect consumers against unreasonable towing fees by clarifying what towing fees were considered reasonable and what fees were considered unreasonable, with the general rule creating a presumption that fees that were higher than the prevailing rate in the area or higher than the negotiated cost made with local law enforcement or the CHP were unreasonable.

CHP currently has towing service agreements with towing companies that they use and CHP negotiates the price of the tow for consumers. Rates higher than the rate for the standard towing agreement are presumed unreasonable under the law even if the towing company does not have an agreement for CHP. The CHP will suspend a towing company from its preferential towing list if there are repeated complaints against the company brought by consumers.

Under existing law, if an individual is charged unreasonable fees they are entitled to bring a lawsuit against a towing and storage facility for damages. Existing law authorizes damages to be as much as four times the cost of the towing and storage charges (the damages are limited to a maximum of \$10,000 if brought in small claims court). If a towing agency refuses to accept a credit card, insurer's check, or a bank draft, fails to provide a Towing Fees and Access Notice

and an itemized invoice, or is not open during normal business hours they can be found civilly liable up to two times the amount charge but a maximum liability of \$500 per vehicle.

According to the Personal Insurance Federation of California (PIFC) many towing companies are not operating in compliance with the law. They argue “ PIFC documented more than 130 examples of storage fees at auto body repair shops of \$200 or more per day from 2019 and 2020 with some charging in excess of \$2,000 per day. By comparison, the storage rate paid by CHP in San Francisco is about \$93 per day. There are also hundreds of examples that include total car storage expenses exceeding \$5,000-\$10,000, some more than \$20,000.”

According to the author, “AB 294 will help relieve low-income consumers burdened by high tow and storage fees charged for the towing and storage of their vehicles. Because consumers often need towing services in times of crisis, such as when they get into a car accident, they are often stuck choosing the most convenient towing service. Towing companies can charge hundreds of dollars a day in vehicle storage fees, and consumers face a long and cumbersome pathway to challenge excessive charges.

California consumers, especially those in low-income communities, should not face a cumbersome process to dispute unjust charges. AB 294 will provide consumers with a quick and fair process to resolve certain disputes by establishing the Vehicle Tow and Storage Board. This bill also establishes a permit system whereby all businesses would be required to obtain a Vehicle Tow and Storage Permit before operating a tow truck in California or charging for the storage of a towed vehicle to help prevent bad actor towing companies from taking advantage of desperate consumers.”

The California Tow Truck Association (CTTA), writing in support, argues “ CTTA has a long track record of working with the Legislature and stakeholders, including consumer advocates, law enforcement agencies, and insurance representatives, to address perceived abuses within the tow industry, notably overcharging. While these efforts have resulted in landmark legislation – including AB 519 (2011) requiring all towers to provide a detailed written invoice and a Towing and Storage Fees and Access Notice to consumers and AB 2392 (2018) prohibiting certain “unreasonable” fees in the towing industry – California is left with a patchwork of laws that oftentimes leave vehicle owners confused and without adequate recourse to quickly and affordably challenge fees that they believe to be excessive. Oftentimes, this lack of accountability for towing companies leaves vulnerable consumers with a terrible choice, either pay the excessive fees or abandon their vehicle entirely. Either option can unfortunately only initiate or perpetuate a cycle of poverty.

Low-income vehicle owners are least likely to have the resources necessary to fight a towing company in court, as is required under current law. Further, losing a vehicle is most likely to have the biggest impact on low-income consumers, who inevitably rely upon their vehicle to obtain and keep a job, not to mention those individuals living in their vehicles that may be deprived of their primary shelter. AB 294 addresses this inadequacy in California law by creating a state oversight entity, named the Vehicle Tow and Storage Board within the Department of Consumer Affairs.”

In order to address the lack of compliance with AB 2392, this bill creates an alternative dispute resolution process within the newly created VTSB Board in the case that towing companies

violate several provisions of existing law. These provisions include: charging unreasonable rates or failing to accept an insurance check.

VTSB would exist under DCA, which currently oversees 38 bureaus and boards, all of which are primarily funded through licensing fees. Unlike most other boards under DCA, VTSB will establish no criteria in order to become a licensee, does not have term limits for its board members, and serves the primary function of having a dispute process that ultimately rewards damages to an aggrieved consumer for being charged too much. Unlike other bureaus or boards, VTSB will lack the authority to suspend or revoke a licensee for repeated violations.

In order to pay for the costs of VTSB to handle these disputes, all towing companies will be required to get a Vehicle Tow and Storage Permit in order to operate, and will be required to pay an annual fee ranging from \$125 to \$1,135.50 depending on the size of the fleet of towing vehicles. VTSB is also entitled to keep one quarter of the penalties paid to the board, with the rest of the penalties to be paid to the complaining party. According to CTTA, it is unclear how many towing companies operate in California, but they estimate there are at least 5,800 towing companies in California.

The Automotive Services Councils of California, writing in opposition, argue that automotive repair dealers, including their tow trucks, are already regulated by the Bureau of Automotive Repair (BAR), and should be exempt from the provisions in this bill. They cite AB 471 (Low), Chapter 372, Statutes of 2021, which authorized BAR to establish an informal citation conference for automotive repair dealers, creating a three-member panel to issue citations and fines on low-level citations that can result in a Bureau-approved remedial training course.

*Committee comments:* It is unclear if all towing companies in California would be required to receive a permit. Under the provisions of the bill, a “tow truck or tow vehicle” is required to have a permit. A “tow truck or tow vehicle” means a vehicle specified in section 615 of the Vehicle Code. That section lists three different types of vehicles, including a tow truck, a Repossessor’s tow vehicle and an automobile dismantler’s tow vehicle. The definition of “tow truck” explicitly excludes the second two vehicles and many of the laws applied to tow trucks that VTSB is charged with enforcing do not apply to reposseors’ or automobile dismantlers’ tow vehicles. However it is possible “tow truck or tow vehicle” under this bill captures all three vehicle types. Unlike “tow trucks” reposseors’ tow vehicles are licensed under DCA’s Bureau of Security and Investigative Services. Automobile Dismantlers are licensed by the DMV.

Tow companies will have to get a permit immediately in order to operate, however failing to operate without a permit will only result in a fix-it violation until January 1, 2023. Starting January 1, 2022 if a motor carrier of property either retrieves or releases a vehicle using a tow truck without receiving a copy of another carrier’s Vehicle Tow and Storage Permit they will be guilty of a misdemeanor.

Notably, the provisions in law not included in VTSB dispute resolution process with higher fines than provided under existing law are issues an insurance company would be less likely to have with a towing company, including refusing to accepting a credit card, failing to provide a consumer with an itemized list of fees, failing to stay open during normal business hours, failing to allow a person to retrieve their personal property in the car at no charge, or failure to return a message within 6 business hours.

While a towing company could under this process have to pay four times the amount of a tow at a maximum of \$10,000 for a towing company refusing to accept an insurance check, a consumer who was denied to right to pay with a credit card or bank draft or any of the above mentioned violations will only be eligible for two times the cost of the tow at a maximum of \$500 in civil court.

*Double referral:* Should this bill pass this committee it will be referred to the Committee on Business and Professions.

*Previous legislation:*

AB 471 (Low), Chapter 372, Statutes of 2021, authorized BAR to establish an informal citation conference for automotive repair dealers, creating a three-member panel to issue citations and fines on low-level citations that can result in a Bureau-approved remedial training course.

AB 2932 (Santiago) Chapter 432, Statutes of 2018, required all towing and storage fees to be reasonable and enhances consumer protections for towing and storage customers, as specified.

AB 519 (Solorio), Chapter 566, Statutes of 2010, required towing companies to provide consumers a Towing Fees and Access Notice and an itemized invoice of all towing and storage fees.

AB 515 (Hagman), Chapter 322, Statutes of 2009, made numerous changes to the Collateral Recovery Act, including requiring impound agencies to accept a valid bank credit card or cash.

AB 2656 (Chen) of 2018 would have required towing and storage facilities to accept a debit card from licensed repossessioners. That bill was vetoed by the Governor.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Tow Truck Association (Sponsor)

Personal Insurance Federation of California (Sponsor)

CALPIRG

Property Casualty Insurers Association of America Db a Association of California Insurance Companies

### **Oppose Unless Amended**

Automotive Service Councils of California

California Autobody Association

California Automotive Business Coalition

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