

Date of Hearing: April 8, 2019

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 410 (Nazarian) – As Amended March 21, 2019

SUBJECT: Vehicles: motor vehicle sideshows

SUMMARY: Makes it a misdemeanor or a felony to participate in, or aid and abet, a motor vehicle sideshow, as defined. Specifically, **this bill:**

- 1) Provides that any person who actively participates in, or aids and abets, a motor vehicle sideshow is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed \$10,000, or by both imprisonment and fine.
- 2) Provides that a second violation of this provision is a misdemeanor or a felony and a fine not to exceed \$25,000.
- 3) Provides that any violation of this provision that proximately causes bodily injury to a person other than the driver is guilty of a felony.
- 4) Defines a “motor vehicle sideshow” to mean an event in which two or more persons block or impede traffic on a highway or other public place open to vehicle traffic, or access private property without the consent of the owner, operator, or agent thereof, for the purpose of performing motor vehicle stunts, motor vehicle speed contents, motor vehicle exhibitions of speed or reckless driving, for spectators.
- 5) Specifies that participants in a motor vehicle sideshow include drivers or passengers of the involved motor vehicles, and any pedestrians, drivers, or passengers who barricade or prevent access to a highway or other property where the motor vehicle sideshow is being performed.
- 6) Specifies that an aider or abettor to a motor vehicle sideshow is any person who organizes, facilitates, encourages, or promotes a motor vehicle sideshow.
- 7) Specifies that liability for a violation of this section shall not be imposed upon a person who is merely present as a spectator at a place where a violation is occurring.
- 8) Allows for a vehicle involved in a motor vehicle sideshow to be impounded for a period up to 30 days, as specified.
- 9) Allows for an impounded vehicle to be released prior to the impoundment period to the registered owner or the registered owner’s agent under the following circumstances:
 - a) The vehicle is stolen.
 - b) The vehicle is subject to bailment and the violation of this section was committed by an employee of a business establishment, including a parking service or repair garage.
 - c) The registered owner of the vehicle was not the person who violated this section.

- 10) Establishes a notice requirement to be mailed to the legal owner if the vehicle is impounded.
- 11) Imposes the cost of towing and storing the vehicle on the owner unless it is determined at a post-storage hearing that reasonable grounds for the storage were not established.
- 12) Allows a rental car agency to recover the costs of the towing and storage charges from the person to whom the vehicle was rented.

EXISTING LAW:

- 1) Provides that any person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
- 2) Prohibits a person from engaging in any motor vehicle speed contest which includes a motor vehicle race against another vehicle, a clock, or other timing device.
- 3) Prohibits a person from aiding or abetting in a speed contest.
- 4) Specifies the penalty for a speed contest or the exhibition of speed is a misdemeanor.
- 5) Provides that when a person is arrested for street racing or a speed contest, an officer may impound the vehicle for not more than 30 days and that the registered and legal owner of the vehicle is required to be provided a hearing regarding the storage of the vehicle.
- 6) Provides that when a person is convicted of a speed contest the court may impound the vehicle for not less than one day nor more than 30 days.
- 7) Prohibits a person from bringing a vehicle to a complete stop upon a highway in a manner that impedes or blocks the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law.

FISCAL EFFECT: Unknown

COMMENTS: In the 1980s in Oakland, California, a new tradition began to take hold in mall parking lots: sideshows. The original sideshows were just meant to show off cars, but they developed into larger events under Oakland's unique hyphy culture in the 1990s. These events involve customized cars and hyphy music, an Oakland slang term meaning "hyperactive" that was coined by Rapper Keak da Sneak and popularized by E-40's song, "Hyphy."

According to an Interview by KQED with Sean Kennedy, a multimedia producer and local hip-hop historian in Oakland, sideshows began to change when guys with cheap cars started doing stunts to gain attention. These stunts include doing donuts (360 degree tire burnouts) and ghost riding the whip (exiting a moving vehicle and dancing beside and around it). Kennedy has noted that these sideshows have a nomadic, extra-legal element to them, as people often bring guns and sell drugs at the shows.

As sideshows grew in popularity and moved out of mall parking lots and onto streets, highways and bridges, the city of Oakland began to pass ordinances making even spectating at a sideshow

a criminal offense. After the death of U'kendra K. Johnson, a 22-year old woman who was killed by a sideshow driver fleeing police in Oakland, the Legislature passed SB 1489 (Perata) Chapter 411, Statutes of 2002, also known as the U'kendra K. Johnson Memorial Act, which granted law enforcement the ability to impound a vehicle for reckless driving.

In recent years sideshows have gained popularity outside of Oakland. The Sacramento Bee reported in January of 2019 that sideshows have been occurring on the streets in North Sacramento County nearly every weekend. Some of the larger sideshows included one in November of 2017 on Highway 50 in Sacramento that involved 500 vehicles and 1,000 people participating in a sideshow that blocked all eastbound lanes of traffic for 15 minutes. The size of these events has made it difficult for law enforcement to effectively apprehend everyone involved.

This bill makes it unlawful for a person to participate in a motor vehicle sideshow. The bill defines a sideshow as an event with two or more persons that block or impede traffic on a highway or other public place open to vehicle traffic for the purpose of performing motor vehicle stunts, motor vehicle speed contests, motor vehicle exhibitions of speed, or reckless driving, for spectators.

While the bill provides that a person who is merely spectating is not criminally liable, a participant could be held liable if a law enforcement officer determines that the person was barricading or preventing access to a highway or other property. So in essence, anyone watching the sideshow that is not standing on a sidewalk could be criminally liable under this law.

Many of the acts that occur at sideshows are already illegal under California's reckless driving laws, speed contest laws, or laws prohibiting the blocking of a highway. Many of the arrests that occur at these events also involve individuals fleeing a police officer in a vehicle, which is also against the law.

Nonetheless, the author contends that a specific crime for sideshows is necessary. According to the author, "Clearly defining a motor vehicle sideshow will deter participation and keep our roads safer. As social media evolves and creates new avenues for event organizers, law enforcement should be given clear direction on how to combat the proliferation of motor vehicle sideshows. AB 410 is a simple and necessary step to protect public safety. Through clear definitions and penalties, this policy will reaffirm California's commitment to stop reckless behavior."

This bill also grants the authority to law enforcement to tow someone's vehicle that is involved in a sideshow as long as a magistrate judge was presented with an affidavit of a peace officer that established reasonable cause to believe that the vehicle was instrumentally used in the officer's presence in violation of the provisions in this bill. The crimes of reckless driving, fleeing an officer in a vehicle and speed contests also allow law enforcement to tow and store a vehicle upon arrest.

The Department of Motor Vehicles (DMV), in conjunction with the National Highway Traffic Safety Administration commissioned a series of studies to evaluate the deterrence effect of impounding a vehicle. While a study on the general deterrence effect of the law "did not find compelling evidence of a general deterrent impact of vehicle impoundment and forfeiture on crashes for one of the main groups it targets," another study on the specific deterrent effect found the law had a great impact on future traffic offenses.

The DMV report, *An Evaluation of the Specific Deterrent Effect of Vehicle Impoundment on Suspended, Revoked and Unlicensed Driver's in California* (DeYoung, 1997), found that first time offenders who had their vehicles impounded for driving while unlicensed (DWU) or driving with a suspended license (DWS) saw a 23.8 percent drop in subsequent convictions for DWU or DWS. For repeat offenders, subsequent violations dropped 34.2 percent. Those drivers who had their vehicles impounded also saw an 18 percent drop in total traffic convictions, and a 22.3 percent drop in traffic violations for repeat offenders.

The cost to recover an impounded vehicle could be substantial. According to a 2019 report from Western Center and Law and Poverty entitled *Towed into Debt: How Towing Practices in California Punish Poor People*, the average towing fee in California is \$189, the cost of storage averages \$53 a day, and the average administrative fee is \$153. If a judge were to elect to impound someone's vehicle for 30 days, as is allowed in this bill, the towing and storage fee to recover the vehicle could be \$1,929.

Nearly 50% of all vehicles in California are valued under \$5,000. With a \$1,925 towing and storage fee, many drivers will likely lose their car as a result of a tow authorized under this bill because the cost of recovering their vehicle will either by half or all of its total value. The number of vehicles impounded could be substantial, as The California Highway Patrol alone has issued a total of 5,675 citations for reckless driving and speed contests between 2014 and 2018.

Double Referral: This bill will be referred to the Assembly Public Safety Committee should it pass out of this committee. That analysis will likely cover the criminal sanctions in this bill and their effects.

Committee concerns: It is important to note that California law considers a motor vehicle any vehicle that is self-propelled. As a result, this bill may have implications beyond the author's intent. For example, two 18 year-olds using a shared electric scooter and performing stunts or racing them could be found criminally liable if they or spectators were blocking a road as the stunts were being performed.

This bill also provides that anyone who encourages or promotes a motor vehicle sideshow could be criminally charged with a felony if someone is injured. This may include anyone who shares or "likes" a Facebook post about a sideshow.

In addition to jail time, this bill provides that someone who violates this law could face a fine of up to \$10,000 for a first offense, and \$25,000 for a second offense or \$25,000 for the first offense if a violation of this section proximately causes bodily injury to a person other than a driver. These fines do not include the total costs of all fees and assessments.

As noted earlier, many of the behaviors this bill seeks to criminalize are already against the law. Existing law also carries significant fines. Reckless driving, in addition to criminal penalties, includes a total fine of \$684, or \$2,145 if an injury is caused. Speed contests, in addition to criminal penalties, includes a total fine of \$485, or \$3,150 if an injury is caused. Fleeing a peace officer in a vehicle, in addition to criminal penalties, includes fine costs of \$2,145, or \$20,575 if an injury is caused. Blocking traffic can result in \$238 fine.

The Legislature should consider if the additional penalties this bill prescribes for this violation are necessary.

Related Legislation:

SB 67 (Perata) Chapter 727, Statutes of 2007 reenacted provisions that were allowed to sunset that provide for vehicle impoundments when a person is arrested for reckless driving, exhibition of speed, or a speed contest.

SB 1489 (Perata) Chapter 411, Statutes of 2002 gave law enforcement the authority to seize and impound a vehicle for no more than 30 days when a person was arrested for reckless driving, exhibition of speed, or a speed contest. This bill sunsets on January 1, 2007.

AB 1407 (Friedman, 2019) Provides that a vehicle may be impounded for 30 days if the vehicle's registered owner is convicted of reckless driving or engaging in a speed contest while operating the vehicle, as specified. This bill is set to be heard in this committee.

SB 699 (Galgiani, 2017) would have made it a crime to engage in, or aid or abet, a speed contest or an exhibition of speed in a parking facility. That bill passed out of the Senate and was later amended into a different measure and died in Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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