

Date of Hearing: April 22, 2019

**ASSEMBLY COMMITTEE ON TRANSPORTATION**

Jim Frazier, Chair

AB 516 (Chiu) – As Amended March 28, 2019

**SUBJECT:** Authority to remove vehicles

**SUMMARY:** Repeals existing law that authorizes peace officers to tow vehicles for having five or more delinquent parking or traffic violations, for leaving a vehicle on a road for 72 or more consecutive hours, and for a having a lapsed vehicle registration in excess of six months.

Specifically, **this bill:**

- 1) Repeals existing law that authorizes peace officers to tow vehicles for having five or more delinquent parking violations, for leaving a vehicle on a road for 72 or more consecutive hours, and for a having a lapsed vehicle registration in excess of six months.
- 2) Repeals existing law allowing for an immobilization of a vehicle that has five or more unpaid parking or traffic tickets.

**EXISTING LAW:**

- 1) Authorizes peace officers to tow a vehicle for the following reasons:
  - a) The vehicle is obstructing traffic;
  - b) The vehicle was reported as stolen;
  - c) The vehicle is blocking a driveway;
  - d) The vehicle is blocking a fire hydrant;
  - e) The vehicle lacks a license plate;
  - f) The vehicle is parked in a spot where notice was given for street cleaning, repair or construction purposes;
  - g) The vehicle is located in spots where all vehicles are prohibited from parking;
  - h) The vehicle is parked for more than 24 hours on a portion of the highway located within the boundaries of a common interest development;
  - i) The vehicle is parked at a rest area for more than 8 hours;
  - j) The vehicle has a mobile billboard advertising displayed;
  - k) The vehicle has five or more unpaid parking tickets or traffic tickets;
  - l) The vehicle was parked in one place for more than 72 hours against a local ordinance;
  - m) The vehicle registration has lapsed by more than 6 months;

- n) The vehicle was operating autonomously without a permit.
- 2) Allows a local authority, if a vehicle was towed for unpaid parking tickets or traffic violations, to sell an unclaimed vehicle for the purposes of recovering lost revenue, but makes the parking tickets and traffic tickets subordinate to the towing and storage costs.
- 3) Authorizes a peace officer to install an immobilization device on vehicles for having five or more unpaid parking tickets or traffic tickets.

**FISCAL EFFECT:** Unknown.

**COMMENTS:** As the dependence of cars developed, so too did the problem of regulating where those cars can park and what to do with cars parked in undesirable ways. As a result, new laws were passed as a means of regulating curbside parking and removing unwanted or illegally parked vehicles. In 1959, California law allowed law enforcement to tow and store a vehicle when a vehicle was left unattended on a bridge, viaduct or causeway in a manner that obstructs traffic, when a vehicle had been reported stolen, when a vehicle was illegally parked to block a private driveway and it was impractical to move the vehicle to another place, when a vehicle was blocking a fire hydrant, or when a vehicle was left unattended for more than four hours on the right-of-way on a freeway.

In 1977 the Legislature expanded law enforcement's ability to tow a vehicle for the following reasons: for vehicles with five or more delinquent parking tickets if it was an out of state vehicle (later amended to include in-state vehicles), for vehicles that's registration has been expired for more than six months, or if a vehicle is parked in one location for more than 72 hours against a local ordinance. The vehicle can be towed even if it was in a legal parking place at the time of the tow. Presumptively some of these new towing allowances were to make it easier for cities to enforce their curbside parking rules to control congestion. Others were made as a means of recovering lost parking ticket revenue.

*Towed into Debt: How Towing Practices in California Punish Poor People*, a report published in 2019 by the sponsors of this bill, highlights how California's cities attempts to regulate downtown parking have resulted in disproportionate punishments for low income individuals. Based on an analysis of eight California cities, the sponsors estimate that one fourth of all tows conducted are because the owner had unpaid parking or traffic tickets, lapsed registration, or for being parked in one place for 72 hours. Vehicles towed for these reasons are 2 to 6 times more likely to be sold at a lien sale than the average towed cars. 50% of the vehicles towed in San Francisco for unpaid parking tickets and 57% of the vehicles towed for lapsed registration were sold by the tow companies, compared to only 9% of other vehicles that were towed for other reasons. In 2016 the City of San Francisco ordered more than 42,000 tows and sold more than 5,300 vehicles in lien sales. In total, it is estimated that public agencies in California towed nearly one million vehicles in 2016.

Recovering a vehicle after it has been towed is expensive. *Towed into Debt* notes that the average tow fee in California is \$189, with a \$53 storage fee per day and a \$150 administrative fee. After three days of storage a towing fee could come out to \$499. If a vehicle was towed for having five or more unpaid parking violations or for vehicle registration purposes, the individual must also pay the unpaid parking debt and vehicle registration before they can retrieve their vehicle.

In Los Angeles, the average parking citation is \$68, with late fees doubling the price of the ticket. Five or more delinquent tickets would result in a \$680 cost to pay off all of the tickets to retrieve a vehicle. In total, a three day tow plus paying off all of the parking tickets would result in a total cost

of \$1,179, or nearly 100% of someone's monthly income who makes the maximum amount of money to qualify for Medi-Cal. If that individual somehow had enough savings to afford that type of fee, recovering the vehicle may not even be worth it, as 46% of all cars registered in California are worth less than \$5,000.

According to *Towed into Debt*, the average lien sale of a vehicle towed for parking tickets or registration is \$797.17, nearly \$400 less than the cost recovery of a vehicle stored for only three days, and \$2,400 less than the fees owed at the time of the sale. A car towed for violating a 72 hour ordinance only sells for \$487.92, indicating that most of these tows are very old or cheap cars. The towing and storage costs have a priority over unpaid parking tickets and traffic tickets. As a result, the average sale of these cars results in no revenue for the local authority who authorized the tow to begin with.

Because of the explosion of car use in the United States, cities are often designed around having a vehicle and not around public transit. As *Towed into Debt* highlights, owning a vehicle is identified as the second biggest barrier to employment, behind reliable child care; owning a vehicle plays a bigger role in getting a job than having a high school diploma, and that those with a car are almost twice as likely to remain employed over a full 18 to 24 months period than workers without a car. Towing someone's car can have detrimental effects if they are unable to recover it. For many it could result in a loss of their job. It is estimated that one-third of the estimated 39,000 homeless individuals in Los Angeles live in vehicles. For these individuals, towing their car could result in a loss of their only shelter.

The sponsors of this bill also contend that the towing rationales this bill seeks to remove are unconstitutional. According to the Western Center of Law and Poverty, "Both the U.S. Supreme Court and several lower courts have recently found that towing of cars violates the 4th, 8th and 14th Amendments of the Constitution. *Towed into Debt* noted that: California has also recognized the importance of ensuring that any towing of a vehicle complies with the protections of the Fourth Amendment. In 2018, the state legislature passed AB 2876 (Jones-Sawyer) clarifying that 'any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence.' The new law clarifies that tows without a warrant are constitutional only if they fall under one of the exceptions to the warrant requirement, 'such as ensuring the safe flow of traffic or protecting property from theft or vandalism.'

Cities across California violate the Fourth Amendment when they tow cars without warrants just because the owner owes fines and fees, has not paid the vehicle registration fee, or has not moved their car for 72 hours. None of these rationales for vehicle tows are sufficient to justify a warrantless seizure under the Fourth Amendment. None are emergencies, none are crimes, and none implicate safety concerns.

According to the author, "Towing is a stressful & unpleasant experience for anyone, but for tens of thousands of Californians each year, towing has a devastating economic impact. There are many good reasons for cars to get towed, such as for public safety reasons or traffic flow, but there are 3 "poverty related tows" that solely target Californians for minor offenses based on their income. These are tows for unpaid parking tickets, an outdated car registration or for when a car has been legally parked for 72 hours on a public street. If you can't afford to pay your parking tickets or car registration, or afford private parking, you can't afford hundreds or thousands of dollars to get your car out of a tow yard. This results in low-income Californians losing their cars, their ability to get to

work, their jobs, and even their shelter. Tow yards lose money having to cover the costs of towing, storage and lien sales. And cities lose money as they never recoup the original debts from car-owners. Low income people lose - tow yards lose - local governments lose. This bill simply stops this vicious cycle that isn't working for anyone."

While this bill seeks to eliminate one of the economic harms faced by homeless individuals living in their cars face, other bills introduced this session are focusing on trying to provide a legal place for those cars to park at night. AB 891 (Burke) requires cities with over 330,000 individuals to have a safe parking program to provide safe parking locations and options for individuals and families living in their vehicles. That bill does not have a requirement for the number of spots that must be available for safe parking. AB 302 (Berman) requires community colleges that have parking facilities on campus to grant overnight access to those facilities to any homeless students.

Other bills, like AB 1325 (Jones-Sawyer), seek to reduce the burden of parking tickets on homeless individuals by requiring parking agencies to offer community service before they can contact DMV to place a hold on vehicle registration renewal until parking tickets are paid. AB 1187 (Jones-Sawyer) and SB 369 (Hertzberg) would require DMV to issue a temporary operating permit up to 90 days for those in a safe parking program, as defined, if their vehicle registration is expired. SB 369 also exempts participants in safe parking programs from smog check requirements, allow them to perform community service in lieu of paying a parking ticket, requires DMV to waive late fees and penalties for driver's licenses or vehicle registration, and establishes a monthly payment plan for any other fees or penalties owed to DMV.

AB 461 (Lackey) requires DMV to offer installment payment plans for vehicle registration for those who are indigent, and AB 867 and AB 1103 (Patterson) require an installment payment plan to be offered to everyone who needs to pay vehicle registration fees.

*Committee comments:* This bill repeals three sections of law that originated in 1977 that allow for the towing of vehicles for unpaid parking and traffic tickets, lapsed vehicle registration, or being parked in a spot for more than 72 hours. While cities need tools to regulate curbside parking as a means of combating congestion, towing vehicles for these three reasons has had a disproportionate effect on low income individuals.

This bill does not remove a city's ability to regulate their curbs. Cars will still be allowed to be towed for the following: obstructing traffic, being reported as stolen, blocking a driveway, blocking a fire hydrant, lacking a license plate, parking in a spot where notice was given for cleaning, repair or construction purposes; in spots where all vehicles are prohibited from parking, when a vehicle is parked for more than 24 hours on a portion of the highway located within the boundaries of a common interested development, for parking at a rest area for more than 8 hours, when a mobile billboard advertising is displayed, or operating an autonomous vehicle without a permit.

In addition, cities will still be able to tow a vehicle that is considered abandoned, wrecked, dismantled or inoperative. The CHP considers a vehicle as abandoned "if it is left on a highway, public property, or private property in such inoperable or neglected condition that the owner's intent to relinquish all further rights or interests in it may be reasonably concluded. In reaching a reasonable conclusion, one must consider the amount of time the vehicle has not been moved, its condition, statements from the owner and witnesses."

While this bill may remove one tool from local authorities to collect unpaid parking debt and the state to collect late registration fees, other collection methods will still exist, including blocks on vehicle

registration until parking ticket debt is paid off. DMV can also ask the Franchise Tax Board to impose wage garnishments or a bank levy for unpaid vehicle registration.

*Related legislation:*

AB 302 (Berman, 2019), requires a community college campus that has parking facilities on campus to grant overnight access to those facilities, on or before July 1, 2020, to any homeless student who is enrolled in coursework, has paid any enrollment fees that have not been waived, and is in good standing with the community college for the purpose of sleeping in the student's vehicle overnight. AB 302 is pending a hearing in Assembly Appropriations Committee.

AB 461 (Lackey, 2019) requires DMV to provide an indigent person, as defined, with a payment plan option for vehicle registration fees. That bill is pending a hearing in this committee.

AB 867 (Wood, 2019) and AB 1103 (Patterson, 2019) requires DMV to provide everyone an option to pay their vehicle registration fees in installment payments. Those bills are pending a hearing in this committee.

AB 891 (Burke, 2019) requires cities with more than 330,000 people to have a safe parking program, as defined. That bill is currently pending a hearing in Accountability and Administrative Review.

AB 1325 (Jones-Sawyer, 2019) requires processing agencies to offer indigent and homeless individuals community service in lieu of paying a parking ticket before they can request DMV to place a hold on someone's vehicle registration until the parking tickets are paid off. That bill is set for the April 22<sup>nd</sup> hearing in this committee.

SB 369 (Hertzberg, 2019) establishes a safe parking program and requires DMV to create installment payment plans for participants in the safe parking program, to waive late fees for driver's license renewals and vehicle registration, and waive smog check requirements. That bill is pending a hearing in Senate Transportation Committee.

*Previous Legislation:*

AB 2544 (Lackey) Chapter 494, Statutes of 2018) and AB 503 (Lackey), Chapter 741, Statutes of 2017, requires processing agencies to take several steps prior to asking DMV to collect their unpaid debt from indigent individuals, including establishing a payment program and waiving late fees and penalty assessments.

SB 85 (Committee on Budget and Fiscal Review), Chapter 26, Statutes of 2015, authorizes an 18-month traffic amnesty program, by October 1, 2015, for delinquent debt. This program expired on March 31, 2017.

AB 2260 (Ting) would have authorized a five year traffic amnesty program, by December 1, 2024, for delinquent debt. AB 2260 died in Assembly Transportation Committee.

SB 185 (Hertzberg) would have required a court to determine a defendant's ability to pay traffic violations and make specified accommodations if it determines the defendant to be indigent. SB 185 was held under suspense in Assembly Appropriations Committee.

**REGISTERED SUPPORT / OPPOSITION:****Support**

American Civil Liberties Union of California (Sponsor)  
Lawyers' Committee For Civil Rights (Sponsor)  
Western Center On Law & Poverty, Inc. (Sponsor)  
Access Women's Health Justice  
Act For Women And Girls  
Asian Americans Advancing Justice - California  
Bay Area Community Services  
Bend The Arc: Jewish Action  
California Low-Income Consumer Coalition  
California Partnership  
California Public Defenders Association  
California Reinvestment Coalition  
California State Council Of Service Employees  
California Voices For Progress  
Community Housing Partnership  
Community Legal Services In East Palo Alto  
Courage Campaign  
Disability Rights California  
Ella Baker Center For Human Rights  
Equal Rights Advocates  
Food For People, The Food Bank For Humboldt County  
Friends Committee On Legislation Of California  
Homeboy Industries  
Initiate Justice  
Kiwa  
Law Foundation Of Silicon Valley  
Legal Aid Of Marin  
Legal Services For Prisoners With Children  
Legal Services Of Northern California  
National Council Of Jewish Women Ca  
National Lawyers Guild Los Angeles  
Parent Voices California  
Rubicon Programs  
San Francisco Public Defender's Office  
San Francisco Senior And Disability Action  
The W. Haywood Burns Institute  
Tipping Point Community  
UDW/AFSCME Local 3930  
United Food And Commercial Workers, Western States Council  
Youth Alive!  
Youth Justice Coalition

**Opposition**

None on file

**Analysis Prepared by:** David Sforza / TRANS. / (916) 319-2093