

RESOLUTION 11-01-2020

DIGEST

Impounded Vehicles: Mandating Storage Facility Fees Payable by Credit Card

Amends Vehicle Code section 22658 to require acceptance of credit card payments for towing and storage service or be compelled to accept a 50% cash payment as payment in full.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 22658 to require acceptance of credit card payments for towing and storage service or be compelled to accept a 50% cash payment as payment in full. This resolution should be disapproved because other statutory provisions adequately address the problem which this resolution seeks to remedy.

When vehicles are impounded, subdivisions (h) through (k) of Vehicle Code section 22658 permit towing companies and storage facilities to charge the registered or legal owner, or their agent (e.g., insurance company), fees for their services as a condition for releasing the vehicle to the owner. The reasonableness of the charges is regulated by law, and governed by objectively discernable standards. (See, e.g., Veh. Code, §§ 10652.5, 22524.5, 22651.07, 222656, subd. (j).) Subdivision (k) of Vehicle Code section 22658 directs that the storage facility where the vehicle is stored “shall accept a valid bank credit card or cash for payment of towing and storage.” Section 22651.1 of the Vehicle Code declares that “A person operating or in charge of any storage facility who refuses to accept a valid bank credit card shall be liable to the owner of the vehicle or to the person who tendered the fees for four times the amount of the towing and storage charges, but not to exceed five hundred dollars (\$500).” It goes on to provide that the “storage facility shall have sufficient funds on the premises to accommodate and make change in a reasonable monetary transaction.”

The resolution would force the storage facilities which decline a credit card payment to accept 50 cents on the dollar of the charged fees as payment in full.

This resolution should be disapproved because Vehicle Code section 22651.1 effectively penalizes shops which do not accept credit card payment. In addition, the current statutory scheme already has provisions to control the reasonableness of the rates which may be charged to individuals and their insurers alike. Even if the current remedies often are not pursued by the vehicle owner when the storage facility purports it is unable to accept payment by credit or debit card, there is no assurance that the immediate penalty proposed by this resolution would in fact occur, any more than penalties under existing law, in cases involving unscrupulous shop owners and vehicle owners who at the time are unaware of their rights. Section 22651.1 already offers robust protection for the consumer which the vehicle owner can be pursued at any time. The

competing remedy offered by this resolution will likely foster confusion and conflict, and would still cause problems for the cash-strapped individuals it seeks to protect.

Therefore, this resolution should be disapproved.

This resolution is related to Resolutions 11-02-2020 and 11-03-2020.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 22658 to read as follows:

1 § 22658

2 (a) The owner or person in lawful possession of private property, including an association
3 of a common interest development as defined in Sections 4080 and 4100 or Sections 6528 and
4 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage
5 facility that meets the requirements of subdivision (n) under any of the following circumstances:

6 (1) There is displayed, in plain view at all entrances to the property, a sign not less than
7 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public
8 parking and indicating that vehicles will be removed at the owner's expense, and containing the
9 telephone number of the local traffic law enforcement agency and the name and telephone
10 number of each towing company that is a party to a written general towing authorization
11 agreement with the owner or person in lawful possession of the property. The sign may also
12 indicate that a citation may also be issued for the violation.

13 (2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed
14 since the issuance of that notice.

15 (3) The vehicle is on private property and lacks an engine, transmission, wheels, tires,
16 doors, windshield, or any other major part or equipment necessary to operate safely on the
17 highways, the owner or person in lawful possession of the private property has notified the local
18 traffic law enforcement agency, and 24 hours have elapsed since that notification.

19 (4) The lot or parcel upon which the vehicle is parked is improved with a single-family
20 dwelling.

21 (b) The tow truck operator removing the vehicle, if the operator knows or is able to
22 ascertain from the property owner, person in lawful possession of the property, or the registration
23 records of the Department of Motor Vehicles the name and address of the registered and legal
24 owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the
25 registered and legal owner of the fact of the removal, the grounds for the removal, and indicate
26 the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a
27 copy of the notice shall be given to the proprietor of the storage facility. The notice provided for
28 in this section shall include the amount of mileage on the vehicle at the time of removal and the
29 time of the removal from the property. If the tow truck operator does not know and is not able to
30 ascertain the name of the owner or for any other reason is unable to give the notice to the owner
31 as provided in this section, the tow truck operator shall comply with the requirements of
32 subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer
33 removing a vehicle from private property.

34 (c) This section does not limit or affect any right or remedy that the owner or person in
35 lawful possession of private property may have by virtue of other provisions of law authorizing
36 the removal of a vehicle parked upon private property.

37 (d) The owner of a vehicle removed from private property pursuant to subdivision (a)
38 may recover for any damage to the vehicle resulting from any intentional or negligent act of a
39 person causing the removal of, or removing, the vehicle.

40 (e) (1) An owner or person in lawful possession of private property, or an association of a
41 common interest development, causing the removal of a vehicle parked on that property is liable
42 for double the storage or towing charges whenever there has been a failure to comply with
43 paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle
44 if requested by the legal or registered owner of the vehicle as required by subdivision (f).

45 (2) A property owner or owner's agent or lessee who causes the removal of a vehicle
46 parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1)
47 of subdivision (l) and fails to comply with that subdivision is guilty of an infraction, punishable
48 by a fine of one thousand dollars (\$1,000).

49 (f) An owner or person in lawful possession of private property, or an association of a
50 common interest development, causing the removal of a vehicle parked on that property shall
51 notify by telephone or, if impractical, by the most expeditious means available, the local traffic
52 law enforcement agency within one hour after authorizing the tow. An owner or person in lawful
53 possession of private property, an association of a common interest development, causing the
54 removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle,
55 shall state the grounds for the removal of the vehicle if requested by the legal or registered owner
56 of that vehicle. A towing company that removes a vehicle from private property in compliance
57 with subdivision (l) is not responsible in a situation relating to the validity of the removal. A
58 towing company that removes the vehicle under this section shall be responsible for the
59 following:

60 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

61 (2) The removal of a vehicle other than the vehicle specified by the owner or other person
62 in lawful possession of the private property.

63 (g) (1) (A) Possession of a vehicle under this section shall be deemed to arise when a
64 vehicle is removed from private property and is in transit.

65 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing
66 company or its driver shall immediately and unconditionally release a vehicle that is not yet
67 removed from the private property and in transit.

68 (C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

69 (2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph
70 (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful
71 location.

72 (h) A towing company may impose a charge of not more than one-half of the regular
73 towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the
74 person in lawful possession of the private property pursuant to this section if the owner of the
75 vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow
76 truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the
77 ground by means of a conventional trailer, and before it is removed from the private property.
78 The regular towing charge may only be imposed after the vehicle has been removed from the
79 property and is in transit.

80 (i) (1) (A) A charge for towing or storage, or both, of a vehicle under this section is
81 excessive if the charge exceeds the greater of the following:

82 (i) That which would have been charged for that towing or storage, or both, made at the
83 request of a law enforcement agency under an agreement between a towing company and the law
84 enforcement agency that exercises primary jurisdiction in the city in which is located the private
85 property from which the vehicle was, or was attempted to be, removed, or if the private property
86 is not located within a city, then the law enforcement agency that exercises primary jurisdiction
87 in the county in which the private property is located.

88 (ii) That which would have been charged for that towing or storage, or both, under the
89 rate approved for that towing operator by the Department of the California Highway Patrol for
90 the jurisdiction in which the private property is located and from which the vehicle was, or was
91 attempted to be, removed.

92 (B) A towing operator shall make available for inspection and copying his or her rate
93 approved by the Department of the California Highway Patrol, if any, within 24 hours of a
94 request without a warrant to law enforcement, the Attorney General, district attorney, or city
95 attorney.

96 (2) If a vehicle is released within 24 hours from the time the vehicle is brought into the
97 storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not
98 more than one day's storage charge may be required for a vehicle released the same day that it is
99 stored.

100 (3) If a request to release a vehicle is made and the appropriate fees are tendered and
101 documentation establishing that the person requesting release is entitled to possession of the
102 vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of
103 storage, and the storage facility fails to comply with the request to release the vehicle or is not
104 open for business during normal business hours, then only one day's storage charge may be
105 required to be paid until after the first business day. A business day is any day in which the
106 lienholder is open for business to the public for at least eight hours. If a request is made more
107 than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar
108 day basis for each day, or part thereof, that the vehicle is in storage.

109 (j) (1) A person who charges a vehicle owner a towing, service, or storage charge at an
110 excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four
111 times the amount charged.

112 (2) A person who knowingly charges a vehicle owner a towing, service, or storage charge
113 at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or
114 her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a
115 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
116 or by imprisonment in a county jail for not more than three months, or by both that fine and
117 imprisonment.

118 (k) (1) A person operating or in charge of a storage facility where vehicles are stored
119 pursuant to this section shall accept a valid bank credit card or cash for payment of towing and
120 storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A
121 credit card shall be in the name of the person presenting the card. "Credit card" means "credit
122 card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes
123 of this section, credit card does not include a credit card issued by a retail seller.

124 (2) A person described in paragraph (1) shall conspicuously display, in that portion of
125 the storage facility office where business is conducted with the public, a notice advising that all
126 valid credit cards and cash are acceptable means of payment.

127 (3) A person operating or in charge of a storage facility who refuses to accept a valid
128 credit card or who fails to post the required notice under paragraph (2) is guilty of a
129 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
130 or by imprisonment in a county jail for not more than three months, or by both that fine and
131 imprisonment.

132 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable
133 to the registered owner of the vehicle or the person who tendered the fees for four times the
134 amount of the towing and storage charges.

135 (5) A person operating or in charge of the storage facility shall have sufficient moneys on
136 the premises of the primary storage facility during normal business hours to accommodate, and
137 make change in, a reasonable monetary transaction.

138 (6) Credit charges for towing and storage services shall comply with Section 1748.1 of
139 the Civil Code. Law enforcement agencies may include the costs of providing for payment by
140 credit when making agreements with towing companies as described in subdivision (i).

141 (7) A person operating or in charge of a storage facility who refuses to or cannot accept a
142 valid credit card shall be entitled to only one-half of the total amount due to release the vehicle if
143 the registered owner, the legal owner, or the owner's agent claiming the vehicle is required to
144 pay with cash to release the vehicle because of the refusal or inability of the person operating or
145 in charge of the storage facility to accept payment by credit card.

146 (I) (1) (A) A towing company shall not remove or commence the removal of a vehicle
147 from private property without first obtaining the written authorization from the property owner
148 or lessee, including an association of a common interest development, or an employee or agent
149 thereof, who shall be present at the time of removal and verify the alleged violation, except that
150 presence and verification is not required if the person authorizing the tow is the property owner,
151 or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer
152 units that does not have an onsite owner, owner's agent or employee, and the tenant has verified
153 the violation, requested the tow from that tenant's assigned parking space, and provided a signed
154 request or electronic mail, or has called and provides a signed request or electronic mail within
155 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the
156 towing company within 48 hours of authorizing the tow. The signed request or electronic mail
157 shall contain the name and address of the tenant, and the date and time the tenant requested the
158 tow. A towing company shall obtain, within 48 hours of receiving the written authorization to
159 tow, a copy of a tenant request required pursuant to this subparagraph. For the purpose of this
160 subparagraph, a person providing the written authorization who is required to be present on the
161 private property at the time of the tow does not have to be physically present at the specified
162 location of where the vehicle to be removed is located on the private property.

163 (B) The written authorization under subparagraph (A) shall include all of the following:

164 (i) The make, model, vehicle identification number, and license plate number of the
165 removed vehicle.

166 (ii) The name, signature, job title, residential or business address, and working telephone
167 number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

168 (iii) The grounds for the removal of the vehicle.

169 (iv) The time when the vehicle was first observed parked at the private property.

170 (v) The time that authorization to tow the vehicle was given.
171 (C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing
172 company prior to payment of a towing or storage charge shall provide a photocopy of the written
173 authorization to the vehicle owner or the agent.
174 (ii) If the vehicle was towed from a residential property, the towing company shall redact
175 the information specified in clause (ii) of subparagraph (B) in the photocopy of the written
176 authorization provided to the vehicle owner or the agent pursuant to clause (i).
177 (iii) The towing company shall also provide to the vehicle owner or the agent a separate
178 notice that provides the telephone number of the appropriate local law enforcement or
179 prosecuting agency by stating "If you believe that you have been wrongfully towed, please
180 contact the local law enforcement or prosecuting agency at [insert appropriate telephone
181 number]." The notice shall be in English and in the most populous language, other than English,
182 that is spoken in the jurisdiction.
183 (D) A towing company shall not remove or commence the removal of a vehicle from
184 private property described in subdivision (a) of Section 22953 unless the towing company has
185 made a good faith inquiry to determine that the owner or the property owner's agent complied
186 with Section 22953.
187 (E) (i) General authorization to remove or commence removal of a vehicle at the towing
188 company's discretion shall not be delegated to a towing company or its affiliates except in the
189 case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a
190 manner which interferes with an entrance to, or exit from, the private property.
191 (ii) In those cases in which general authorization is granted to a towing company or its
192 affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully
193 parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or
194 exit from, private property, the towing company and the property owner, or owner's agent, or
195 person in lawful possession of the private property shall have a written agreement granting that
196 general authorization.
197 (2) If a towing company removes a vehicle under a general authorization described in
198 subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire
199 hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the
200 private property, the towing company shall take, prior to the removal of that vehicle, a
201 photograph of the vehicle that clearly indicates that parking violation. Prior to accepting
202 payment, the towing company shall keep one copy of the photograph taken pursuant to this
203 paragraph, and shall present that photograph and provide, without charge, a photocopy to the
204 owner or an agent of the owner, when that person claims the vehicle.
205 (3) A towing company shall maintain the original written authorization, or the general
206 authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation,
207 required pursuant to this section, and any written requests from a tenant to the property owner or
208 owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and
209 shall make them available for inspection and copying within 24 hours of a request without a
210 warrant to law enforcement, the Attorney General, district attorney, or city attorney.
211 (4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a
212 fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a
213 county jail for not more than three months, or by both that fine and imprisonment.
214 (5) A person who violates this subdivision is civilly liable to the owner of the vehicle or
215 his or her agent for four times the amount of the towing and storage charges.

216 (m) (1) A towing company that removes a vehicle from private property under this
217 section shall notify the local law enforcement agency of that tow after the vehicle is removed
218 from the private property and is in transit.

219 (2) A towing company is guilty of a misdemeanor if the towing company fails to provide
220 the notification required under paragraph (1) within 60 minutes after the vehicle is removed from
221 the private property and is in transit or 15 minutes after arriving at the storage facility, whichever
222 time is less.

223 (3) A towing company that does not provide the notification under paragraph (1) within
224 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable
225 to the registered owner of the vehicle, or the person who tenders the fees, for three times the
226 amount of the towing and storage charges.

227 (4) If notification is impracticable, the times for notification, as required pursuant to
228 paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This
229 paragraph is an affirmative defense.

230 (n) A vehicle removed from private property pursuant to this section shall be stored in a
231 facility that meets all of the following requirements:

232 (1) (A) Is located within a 10-mile radius of the property from where the vehicle was
233 removed.

234 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing
235 company has prior general written approval from the law enforcement agency that exercises
236 primary jurisdiction in the city in which is located the private property from which the vehicle
237 was removed, or if the private property is not located within a city, then the law enforcement
238 agency that exercises primary jurisdiction in the county in which is located the private property.

239 (2) (A) Remains open during normal business hours and releases vehicles after normal
240 business hours.

241 (B) A gate fee may be charged for releasing a vehicle after normal business hours,
242 weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after
243 normal business hours shall be one-half of the hourly tow rate charged for initially towing the
244 vehicle, or less.

245 (C) Notwithstanding any other provision of law and for purposes of this paragraph,
246 “normal business hours” are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive,
247 except state holidays.

248 (3) Has a public pay telephone in the office area that is open and accessible to the public.

249 (o) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle
250 owners or their agents by, among other things, allowing payment by credit cards for towing and
251 storage services, thereby expediting the recovery of towed vehicles and concurrently promoting
252 the safety and welfare of the public.

253 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety
254 of the general public by ensuring that a private property owner or lessee has provided his or her
255 authorization for the removal of a vehicle from his or her property, thereby promoting the safety
256 of those persons involved in ordering the removal of the vehicle as well as those persons
257 removing, towing, and storing the vehicle.

258 (3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the
259 safety of the general public by requiring towing companies to unconditionally release a vehicle
260 that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent
261 confrontation and physical injury to vehicle owners and towing operators, the stranding of

262 vehicle owners and their passengers at a dangerous time and location, and impeding expedited
263 vehicle recovery, without wasting law enforcement's limited resources.

264 (p) The remedies, sanctions, restrictions, and procedures provided in this section are not
265 exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be
266 provided in other provisions of law, including, but not limited to, those that are provided in
267 Sections 12110 and 34660.

268 (q) A vehicle removed and stored pursuant to this section shall be released by the law
269 enforcement agency, impounding agency, or person in possession of the vehicle, or any person
270 acting on behalf of them, to the legal owner or the legal owner's agent upon presentation of the
271 assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions
272 Code; a release from the one responsible governmental agency, only if required by the agency; a
273 government-issued photographic identification card; and any one of the following as determined
274 by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a
275 security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal
276 ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile
277 copies, or may be transmitted electronically. The storage facility shall not require any documents
278 to be notarized. The storage facility may require the agent of the legal owner to produce a
279 photocopy or facsimile copy of its repossession agency license or registration issued pursuant to
280 Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions
281 Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from
282 licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Current law has attempted to address the many issues that Californians face when their car is legally or illegally towed. Storage yards where vehicles are towed often charge exorbitant rates, especially when compared with nearby parking lots. One study found that the rates varied between 2.2 – 12.1 times the cost of nearby lots, and could charge a minimum of \$400-\$600 for a vehicle stored for three days. This is especially consequential for low income individuals, where the cost to retrieve a towed vehicle can be out of reach. This can lead to loss of the vehicle or employment, loss of access to education and medical care, and for some, loss of their shelter. When picking up a vehicle, some tow yards claim their credit card processor is malfunctioning and demand cash to retrieve the vehicle. This can lead to people having to beg, borrow and sell belongings to raise the cash immediately needed to retrieve the vehicle. When cash is not readily available, the amount owed continues to increase daily often creating an impossible burden to pay for a vehicle that may be worth a mere fraction of the amount owed.

The Solution: To ensure that credit and debit cards can always be used, Vehicle Code Section 22658 should be amended to provide an immediate penalty to storage yards that refuse or are unable to take payment by a debit or credit card. The current penalties have proven to be insufficient and unlikely to be pursued by vehicle owners when this Section is violated.

CURRENT OR PRIOR RELATED LEGISLATION

None.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Ryan Dean, Umberg Zipser LLP, 1920 Main Street, Suite 750, Irvine, CA 92614. Phone: 949-679-0052. Fax: 949-679-0461; rdean@umbergzipser.com

RESPONSIBLE FLOOR DELEGATE: Ryan Dean

RESOLUTION 11-02-2020

DIGEST

Impounded Vehicles: Towing Storage Charges

Amends Vehicle Code section 22658 to require that daily storage charges for towed vehicles may only accrue on days that the storage facility is open for at least four hours.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 22658 to require that daily storage charges for towed vehicles may only accrue on days that the storage facility is open for at least four hours. This resolution should be approved in principle because vehicle owners should not be charged storage fees for towed vehicles on days when the storage facility is closed and vehicles cannot be reclaimed.

Under existing law, a storage facility can charge a daily rate for storage of a vehicle that has been towed, including for days when the storage facility is not open, such as weekend days or holidays. (Veh. Code, § 22658, subd. (i)(3).)

The resolution would amend Vehicle Code section 22658 by adding subdivision (i)(4) to provide that a vehicle owner may only be charged a daily rate for storage for a towed vehicle on days that the storage facility is open at least four hours.

The resolution should be approved in principle because it would allow vehicle owners to minimize the cost to recover the vehicle by allowing the owner an opportunity to pick up the vehicle as quickly as possible, and avoid charges for days when it is impossible to pick up the vehicle due to the storage facility’s closure.

Therefore, this resolution should be approved in principle.

This resolution is related to Resolutions 11-01-2020 and 11-03-2020.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 22658 to read as follows:

- 1 § 22658
- 2 (a) The owner or person in lawful possession of private property, including an association
- 3 of a common interest development as defined in Sections 4080 and 4100 or Sections 6528 and

4 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage
5 facility that meets the requirements of subdivision (n) under any of the following circumstances:

6 (1) There is displayed, in plain view at all entrances to the property, a sign not less than
7 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public
8 parking and indicating that vehicles will be removed at the owner's expense, and containing the
9 telephone number of the local traffic law enforcement agency and the name and telephone
10 number of each towing company that is a party to a written general towing authorization
11 agreement with the owner or person in lawful possession of the property. The sign may also
12 indicate that a citation may also be issued for the violation.

13 (2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed
14 since the issuance of that notice.

15 (3) The vehicle is on private property and lacks an engine, transmission, wheels, tires,
16 doors, windshield, or any other major part or equipment necessary to operate safely on the
17 highways, the owner or person in lawful possession of the private property has notified the local
18 traffic law enforcement agency, and 24 hours have elapsed since that notification.

19 (4) The lot or parcel upon which the vehicle is parked is improved with a single-family
20 dwelling.

21 (b) The tow truck operator removing the vehicle, if the operator knows or is able to
22 ascertain from the property owner, person in lawful possession of the property, or the registration
23 records of the Department of Motor Vehicles the name and address of the registered and legal
24 owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the
25 registered and legal owner of the fact of the removal, the grounds for the removal, and indicate
26 the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a
27 copy of the notice shall be given to the proprietor of the storage facility. The notice provided for
28 in this section shall include the amount of mileage on the vehicle at the time of removal and the
29 time of the removal from the property. If the tow truck operator does not know and is not able to
30 ascertain the name of the owner or for any other reason is unable to give the notice to the owner
31 as provided in this section, the tow truck operator shall comply with the requirements of
32 subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer
33 removing a vehicle from private property.

34 (c) This section does not limit or affect any right or remedy that the owner or person in
35 lawful possession of private property may have by virtue of other provisions of law authorizing
36 the removal of a vehicle parked upon private property.

37 (d) The owner of a vehicle removed from private property pursuant to subdivision (a)
38 may recover for any damage to the vehicle resulting from any intentional or negligent act of a
39 person causing the removal of, or removing, the vehicle.

40 (e) (1) An owner or person in lawful possession of private property, or an association of a
41 common interest development, causing the removal of a vehicle parked on that property is liable
42 for double the storage or towing charges whenever there has been a failure to comply with
43 paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle
44 if requested by the legal or registered owner of the vehicle as required by subdivision (f).

45 (2) A property owner or owner's agent or lessee who causes the removal of a vehicle
46 parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1)
47 of subdivision (l) and fails to comply with that subdivision is guilty of an infraction, punishable
48 by a fine of one thousand dollars (\$1,000).

49 (f) An owner or person in lawful possession of private property, or an association of a
50 common interest development, causing the removal of a vehicle parked on that property shall
51 notify by telephone or, if impractical, by the most expeditious means available, the local traffic
52 law enforcement agency within one hour after authorizing the tow. An owner or person in lawful
53 possession of private property, an association of a common interest development, causing the
54 removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle,
55 shall state the grounds for the removal of the vehicle if requested by the legal or registered owner
56 of that vehicle. A towing company that removes a vehicle from private property in compliance
57 with subdivision (l) is not responsible in a situation relating to the validity of the removal. A
58 towing company that removes the vehicle under this section shall be responsible for the
59 following:

60 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

61 (2) The removal of a vehicle other than the vehicle specified by the owner or other person
62 in lawful possession of the private property.

63 (g) (1) (A) Possession of a vehicle under this section shall be deemed to arise when a
64 vehicle is removed from private property and is in transit.

65 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing
66 company or its driver shall immediately and unconditionally release a vehicle that is not yet
67 removed from the private property and in transit.

68 (C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

69 (2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph
70 (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful
71 location.

72 (h) A towing company may impose a charge of not more than one-half of the regular
73 towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the
74 person in lawful possession of the private property pursuant to this section if the owner of the
75 vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow
76 truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the
77 ground by means of a conventional trailer, and before it is removed from the private property.
78 The regular towing charge may only be imposed after the vehicle has been removed from the
79 property and is in transit.

80 (i) (1) (A) A charge for towing or storage, or both, of a vehicle under this section is
81 excessive if the charge exceeds the greater of the following:

82 (i) That which would have been charged for that towing or storage, or both, made at the
83 request of a law enforcement agency under an agreement between a towing company and the law
84 enforcement agency that exercises primary jurisdiction in the city in which is located the private
85 property from which the vehicle was, or was attempted to be, removed, or if the private property
86 is not located within a city, then the law enforcement agency that exercises primary jurisdiction
87 in the county in which the private property is located.

88 (ii) That which would have been charged for that towing or storage, or both, under the
89 rate approved for that towing operator by the Department of the California Highway Patrol for
90 the jurisdiction in which the private property is located and from which the vehicle was, or was
91 attempted to be, removed.

92 (B) A towing operator shall make available for inspection and copying his or her rate
93 approved by the Department of the California Highway Patrol, if any, within 24 hours of a

94 request without a warrant to law enforcement, the Attorney General, district attorney, or city
95 attorney.

96 (2) If a vehicle is released within 24 hours from the time the vehicle is brought into the
97 storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not
98 more than one day's storage charge may be required for a vehicle released the same day that it is
99 stored.

100 (3) If a request to release a vehicle is made and the appropriate fees are tendered and
101 documentation establishing that the person requesting release is entitled to possession of the
102 vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of
103 storage, and the storage facility fails to comply with the request to release the vehicle or is not
104 open for business during normal business hours, then only one day's storage charge may be
105 required to be paid until after the first business day. A business day is any day in which the
106 lienholder is open for business to the public for at least eight hours. If a request is made more
107 than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar
108 day basis for each day, or part thereof, that the vehicle is in storage.

109 (4) A vehicle owner shall not be charged for storage of the vehicle for each non-business
110 day that the vehicle is kept at the storage facility and the storage facility is not open for business
111 for at least four hours that day. As an example, if a vehicle is towed to a storage facility on a
112 Friday at noon and release on the following Monday by noon, the daily storage charge would not
113 exceed one day if the storage facility was not open for at least four hours on the intervening
114 Saturday or Sunday.

115 (j) (1) A person who charges a vehicle owner a towing, service, or storage charge at an
116 excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four
117 times the amount charged.

118 (2) A person who knowingly charges a vehicle owner a towing, service, or storage charge
119 at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or
120 her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a
121 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
122 or by imprisonment in a county jail for not more than three months, or by both that fine and
123 imprisonment.

124 (k) (1) A person operating or in charge of a storage facility where vehicles are stored
125 pursuant to this section shall accept a valid bank credit card or cash for payment of towing and
126 storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A
127 credit card shall be in the name of the person presenting the card. "Credit card" means "credit
128 card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes
129 of this section, credit card does not include a credit card issued by a retail seller.

130 (2) A person described in paragraph (1) shall conspicuously display, in that portion of the
131 storage facility office where business is conducted with the public, a notice advising that all valid
132 credit cards and cash are acceptable means of payment.

133 (3) A person operating or in charge of a storage facility who refuses to accept a valid
134 credit card or who fails to post the required notice under paragraph (2) is guilty of a
135 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
136 or by imprisonment in a county jail for not more than three months, or by both that fine and
137 imprisonment.

138 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable
139 to the registered owner of the vehicle or the person who tendered the fees for four times the
140 amount of the towing and storage charges.

141 (5) A person operating or in charge of the storage facility shall have sufficient moneys on
142 the premises of the primary storage facility during normal business hours to accommodate, and
143 make change in, a reasonable monetary transaction.

144 (6) Credit charges for towing and storage services shall comply with Section 1748.1 of
145 the Civil Code. Law enforcement agencies may include the costs of providing for payment by
146 credit when making agreements with towing companies as described in subdivision (i).

147 (l) (1) (A) A towing company shall not remove or commence the removal of a vehicle
148 from private property without first obtaining the written authorization from the property owner
149 or lessee, including an association of a common interest development, or an employee or agent
150 thereof, who shall be present at the time of removal and verify the alleged violation, except that
151 presence and verification is not required if the person authorizing the tow is the property owner,
152 or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer
153 units that does not have an onsite owner, owner's agent or employee, and the tenant has verified
154 the violation, requested the tow from that tenant's assigned parking space, and provided a signed
155 request or electronic mail, or has called and provides a signed request or electronic mail within
156 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the
157 towing company within 48 hours of authorizing the tow. The signed request or electronic mail
158 shall contain the name and address of the tenant, and the date and time the tenant requested the
159 tow. A towing company shall obtain, within 48 hours of receiving the written authorization to
160 tow, a copy of a tenant request required pursuant to this subparagraph. For the purpose of this
161 subparagraph, a person providing the written authorization who is required to be present on the
162 private property at the time of the tow does not have to be physically present at the specified
163 location of where the vehicle to be removed is located on the private property.

164 (B) The written authorization under subparagraph (A) shall include all of the following:

165 (i) The make, model, vehicle identification number, and license plate number of the
166 removed vehicle.

167 (ii) The name, signature, job title, residential or business address, and working telephone
168 number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

169 (iii) The grounds for the removal of the vehicle.

170 (iv) The time when the vehicle was first observed parked at the private property.

171 (v) The time that authorization to tow the vehicle was given.

172 (C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing
173 company prior to payment of a towing or storage charge shall provide a photocopy of the written
174 authorization to the vehicle owner or the agent.

175 (ii) If the vehicle was towed from a residential property, the towing company shall redact
176 the information specified in clause (ii) of subparagraph (B) in the photocopy of the written
177 authorization provided to the vehicle owner or the agent pursuant to clause (i).

178 (iii) The towing company shall also provide to the vehicle owner or the agent a separate
179 notice that provides the telephone number of the appropriate local law enforcement or
180 prosecuting agency by stating "If you believe that you have been wrongfully towed, please
181 contact the local law enforcement or prosecuting agency at [insert appropriate telephone
182 number]." The notice shall be in English and in the most populous language, other than English,
183 that is spoken in the jurisdiction.

184 (D) A towing company shall not remove or commence the removal of a vehicle from
185 private property described in subdivision (a) of Section 22953 unless the towing company has
186 made a good faith inquiry to determine that the owner or the property owner's agent complied
187 with Section 22953.

188 (E) (i) General authorization to remove or commence removal of a vehicle at the towing
189 company's discretion shall not be delegated to a towing company or its affiliates except in the
190 case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a
191 manner which interferes with an entrance to, or exit from, the private property.

192 (ii) In those cases in which general authorization is granted to a towing company or its
193 affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully
194 parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or
195 exit from, private property, the towing company and the property owner, or owner's agent, or
196 person in lawful possession of the private property shall have a written agreement granting that
197 general authorization.

198 (2) If a towing company removes a vehicle under a general authorization described in
199 subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire
200 hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the
201 private property, the towing company shall take, prior to the removal of that vehicle, a
202 photograph of the vehicle that clearly indicates that parking violation. Prior to accepting
203 payment, the towing company shall keep one copy of the photograph taken pursuant to this
204 paragraph, and shall present that photograph and provide, without charge, a photocopy to the
205 owner or an agent of the owner, when that person claims the vehicle.

206 (3) A towing company shall maintain the original written authorization, or the general
207 authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation,
208 required pursuant to this section, and any written requests from a tenant to the property owner or
209 owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and
210 shall make them available for inspection and copying within 24 hours of a request without a
211 warrant to law enforcement, the Attorney General, district attorney, or city attorney.

212 (4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of
213 not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail
214 for not more than three months, or by both that fine and imprisonment.

215 (5) A person who violates this subdivision is civilly liable to the owner of the vehicle or
216 his or her agent for four times the amount of the towing and storage charges.

217 (m) (1) A towing company that removes a vehicle from private property under this section shall
218 notify the local law enforcement agency of that tow after the vehicle is removed from the private
219 property and is in transit.

220 (2) A towing company is guilty of a misdemeanor if the towing company fails to provide
221 the notification required under paragraph (1) within 60 minutes after the vehicle is removed from
222 the private property and is in transit or 15 minutes after arriving at the storage facility, whichever
223 time is less.

224 (3) A towing company that does not provide the notification under paragraph (1) within
225 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable
226 to the registered owner of the vehicle, or the person who tenders the fees, for three times the
227 amount of the towing and storage charges.

228 (4) If notification is impracticable, the times for notification, as required pursuant to
229 paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This
230 paragraph is an affirmative defense.

231 (n) A vehicle removed from private property pursuant to this section shall be stored in a
232 facility that meets all of the following requirements:

233 (1) (A) Is located within a 10-mile radius of the property from where the vehicle was
234 removed.

235 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing
236 company has prior general written approval from the law enforcement agency that exercises
237 primary jurisdiction in the city in which is located the private property from which the vehicle
238 was removed, or if the private property is not located within a city, then the law enforcement
239 agency that exercises primary jurisdiction in the county in which is located the private property.

240 (2) (A) Remains open during normal business hours and releases vehicles after normal
241 business hours.

242 (B) A gate fee may be charged for releasing a vehicle after normal business hours,
243 weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after
244 normal business hours shall be one-half of the hourly tow rate charged for initially towing the
245 vehicle, or less.

246 (C) Notwithstanding any other provision of law and for purposes of this paragraph,
247 "normal business hours" are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive,
248 except state holidays.

249 (3) Has a public pay telephone in the office area that is open and accessible to the public.

250 (o) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle
251 owners or their agents by, among other things, allowing payment by credit cards for towing and
252 storage services, thereby expediting the recovery of towed vehicles and concurrently promoting
253 the safety and welfare of the public.

254 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety
255 of the general public by ensuring that a private property owner or lessee has provided his or her
256 authorization for the removal of a vehicle from his or her property, thereby promoting the safety
257 of those persons involved in ordering the removal of the vehicle as well as those persons
258 removing, towing, and storing the vehicle.

259 (3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the
260 safety of the general public by requiring towing companies to unconditionally release a vehicle
261 that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent
262 confrontation and physical injury to vehicle owners and towing operators, the stranding of
263 vehicle owners and their passengers at a dangerous time and location, and impeding expedited
264 vehicle recovery, without wasting law enforcement's limited resources.

265 (p) The remedies, sanctions, restrictions, and procedures provided in this section are not
266 exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be
267 provided in other provisions of law, including, but not limited to, those that are provided in
268 Sections 12110 and 34660.

269 (q) A vehicle removed and stored pursuant to this section shall be released by the law
270 enforcement agency, impounding agency, or person in possession of the vehicle, or any person
271 acting on behalf of them, to the legal owner or the legal owner's agent upon presentation of the
272 assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions
273 Code; a release from the one responsible governmental agency, only if required by the agency; a

274 government-issued photographic identification card; and any one of the following as determined
275 by the legal owner or the legal owner’s agent: a certificate of repossession for the vehicle, a
276 security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal
277 ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile
278 copies, or may be transmitted electronically. The storage facility shall not require any documents
279 to be notarized. The storage facility may require the agent of the legal owner to produce a
280 photocopy or facsimile copy of its repossession agency license or registration issued pursuant to
281 Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions
282 Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from
283 licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Current law has attempted to address the many issues that Californians face when their car is legally or illegally towed. Storage yards where vehicles are towed often charge exorbitant rates, especially when compared with nearby parking lots. One study found that the rates varied between 2.2 – 12.1 times the cost of nearby lots, and could charge a minimum of \$400-\$600 for a vehicle stored for three days. This is especially consequential for low income individuals, where the cost to retrieve a towed vehicle can be out of reach. This can lead to loss of the vehicle or employment, loss of access to education and medical care, and for some, loss of their shelter. When picking up a vehicle, some tow yards claim their credit card processor is malfunctioning and demand cash to retrieve the vehicle. This can lead to people having to beg, borrow and sell belongings to raise the cash immediately needed to retrieve the vehicle. When cash is not readily available, the amount owed continues to increase daily often creating an impossible burden to pay for a vehicle that may be worth a mere fraction of the amount owed.

The Solution: To lessen the penalty for those who have a car towed, Vehicle Code Section 22658 Subsection i should be amended to further limit the daily charge of a storage yard by permitting charges to accumulate only on those days that the storage yard is open for business for at least four hours. In this manner, a vehicle towed and stored over the weekend will only incur daily charges for those days that storage yard is open to retrieve the vehicle.

CURRENT OR PRIOR RELATED LEGISLATION

None.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Ryan Dean, Umberg Zipser LLP, 1920 Main Street, Suite 750, Irvine, CA 92614. Phone: 949-679-0052. Fax: 949-679-0461; rdean@umbergzipser.com

RESPONSIBLE FLOOR DELEGATE: Ryan Dean

RESOLUTION 11-03-2020

DIGEST

Tow Truck Storage Fees: Availability of Rates and Limits on Auto Storage Fees

Amends Vehicle Code section 22658 to broaden availability of tow truck storage rate information and places limitation on storage fees when storage facilities are not open.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 22658 to broaden availability of tow truck storage rate information and places limitation on storage fees when storage facilities are not open. This resolution should be approved in principle because it adds important consumer protections that allow greater access to towing operator rates and provides additional safeguards to ensure rates charged as storage fees are reasonable.

Presently, under Vehicle Code section 22651.07, towing companies must provide customers with a written “Towing Fees and Access Notice” by requiring posting of the company’s rates at the storage facility with information directing the consumer to confirm the rates through the local law enforcement agency ordering the vehicle towed. However, Vehicle Code section 22658 only requires rates approved by the Department of the California Highway Patrol be provided in specified instances upon request, and does not require tow companies to provide the rates approved by local law enforcement agencies that may order vehicles towed. Rates and other statistics related to towing are not always easily available to vehicle owners from towing companies contracting with local law enforcement agencies. Under current law, Vehicle Code section 22524.5 generally provides that all storage rates for vehicles held at towing companies must be reasonable, and “a storage rate and fee shall also be deemed reasonable if it is comparable to storage-related rates and charges by other facilities in the same locale.” However, current law does not prohibit the charging of storage fees on days when a storage facility is closed and the vehicle owner cannot obtain the release of his or her vehicle.

This resolution seeks to solve two interrelated issues when vehicles are ordered towed by local law enforcement agencies. It seeks to address inadequate access to information that would allow vehicle owners to confirm that the rates being charged are the rates approved by the local law enforcement agency ordering the vehicle towed, by requiring tow companies to provide that information within 24 hours of a request. It seeks to address unfairness of charging storage fees on days when tow company storage yards are closed and vehicle owners cannot pay to recover their vehicles.

In their 2019 publication, “Towed into Debt: How Towing Practices in California Punish Poor People,” the Western Center on Law and Poverty chronicles difficulties in obtaining information on what many local towing companies charge and other data related to towing practices.

<https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>.) In January, 2019, the Court of Appeal agreed that the Los Angeles Police Department did not have to disclose official police garage data for the practices of towing companies contracted for services with the LAPD. (*Anderson-Barker v. Superior Court* (2019) 31 Cal.App.5th 528.) Accordingly, broadening statutory access by the public to rates of towing operators approved by all government entities will mean that all towing companies must readily make their rates available to the public for inspection or copying upon request. That way consumers can easily confirm that the rates being charged match the approved rates.

Last year the average daily storage fee in California was \$53.00, and with the additional fees levied by cities or counties initiating towing, the average tow in California costs \$499.00 after three days of storage. (Western Center of Law, “Towed into Debt”, *supra*, at p. 7.) Tow companies are able to charge the storage fee seven days per week whether or not the company is open to the public for retrieval. This can exacerbate the cost to vehicle owners who simply cannot retrieve their vehicle because the storage yard is closed. Limiting storage charges to only those days the storage facility is open for business at least four hours per day, as proposed, further protects the public by ensuring storage charges are fair.

Therefore, this resolution should be approved in principle.

Related to Resolutions 11-01-2020 and 11-02-2020.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 22658 to read as follows:

1 § 22658

2 (a) The owner or person in lawful possession of private property, including an association
3 of a common interest development as defined in Sections 4080 and 4100 or Sections 6528 and
4 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage
5 facility that meets the requirements of subdivision (n) under any of the following circumstances:

6 (1) There is displayed, in plain view at all entrances to the property, a sign not less than
7 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public
8 parking and indicating that vehicles will be removed at the owner’s expense, and containing the
9 telephone number of the local traffic law enforcement agency and the name and telephone
10 number of each towing company that is a party to a written general towing authorization
11 agreement with the owner or person in lawful possession of the property. The sign may also
12 indicate that a citation may also be issued for the violation.

13 (2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed
14 since the issuance of that notice.

15 (3) The vehicle is on private property and lacks an engine, transmission, wheels, tires,
16 doors, windshield, or any other major part or equipment necessary to operate safely on the
17 highways, the owner or person in lawful possession of the private property has notified the local
18 traffic law enforcement agency, and 24 hours have elapsed since that notification.

19 (4) The lot or parcel upon which the vehicle is parked is improved with a single-family
20 dwelling.

21 (b) The tow truck operator removing the vehicle, if the operator knows or is able to
22 ascertain from the property owner, person in lawful possession of the property, or the registration
23 records of the Department of Motor Vehicles the name and address of the registered and legal
24 owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the
25 registered and legal owner of the fact of the removal, the grounds for the removal, and indicate
26 the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a
27 copy of the notice shall be given to the proprietor of the storage facility. The notice provided for
28 in this section shall include the amount of mileage on the vehicle at the time of removal and the
29 time of the removal from the property. If the tow truck operator does not know and is not able to
30 ascertain the name of the owner or for any other reason is unable to give the notice to the owner
31 as provided in this section, the tow truck operator shall comply with the requirements of
32 subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer
33 removing a vehicle from private property.

34 (c) This section does not limit or affect any right or remedy that the owner or person in
35 lawful possession of private property may have by virtue of other provisions of law authorizing
36 the removal of a vehicle parked upon private property.

37 (d) The owner of a vehicle removed from private property pursuant to subdivision (a)
38 may recover for any damage to the vehicle resulting from any intentional or negligent act of a
39 person causing the removal of, or removing, the vehicle.

40 (e) (1) An owner or person in lawful possession of private property, or an association of a
41 common interest development, causing the removal of a vehicle parked on that property is liable
42 for double the storage or towing charges whenever there has been a failure to comply with
43 paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle
44 if requested by the legal or registered owner of the vehicle as required by subdivision (f).

45 (2) A property owner or owner's agent or lessee who causes the removal of a vehicle
46 parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1)
47 of subdivision (1) and fails to comply with that subdivision is guilty of an infraction, punishable
48 by a fine of one thousand dollars (\$1,000).

49 (f) An owner or person in lawful possession of private property, or an association of a
50 common interest development, causing the removal of a vehicle parked on that property shall
51 notify by telephone or, if impractical, by the most expeditious means available, the local traffic
52 law enforcement agency within one hour after authorizing the tow. An owner or person in lawful
53 possession of private property, an association of a common interest development, causing the
54 removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle,
55 shall state the grounds for the removal of the vehicle if requested by the legal or registered owner
56 of that vehicle. A towing company that removes a vehicle from private property in compliance
57 with subdivision (1) is not responsible in a situation relating to the validity of the removal. A
58 towing company that removes the vehicle under this section shall be responsible for the
59 following:

60 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

61 (2) The removal of a vehicle other than the vehicle specified by the owner or other person
62 in lawful possession of the private property.

63 (g) (1) (A) Possession of a vehicle under this section shall be deemed to arise when a
64 vehicle is removed from private property and is in transit.

65 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing
66 company or its driver shall immediately and unconditionally release a vehicle that is not yet
67 removed from the private property and in transit.

68 (C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

69 (2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph
70 (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful
71 location.

72 (h) A towing company may impose a charge of not more than one-half of the regular
73 towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the
74 person in lawful possession of the private property pursuant to this section if the owner of the
75 vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow
76 truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the
77 ground by means of a conventional trailer, and before it is removed from the private property.
78 The regular towing charge may only be imposed after the vehicle has been removed from the
79 property and is in transit.

80 (i) (1) (A) A charge for towing or storage, or both, of a vehicle under this section is
81 excessive if the charge exceeds the greater of the following:

82 (i) That which would have been charged for that towing or storage, or both, made at the
83 request of a law enforcement agency under an agreement between a towing company and the law
84 enforcement agency that exercises primary jurisdiction in the city in which is located the private
85 property from which the vehicle was, or was attempted to be, removed, or if the private property
86 is not located within a city, then the law enforcement agency that exercises primary jurisdiction
87 in the county in which the private property is located.

88 (ii) That which would have been charged for that towing or storage, or both, under the
89 rate approved for that towing operator by the Department of the California Highway Patrol for
90 the jurisdiction in which the private property is located and from which the vehicle was, or was
91 attempted to be, removed.

92 (B) A towing operator shall make available for inspection and copying his or her rate
93 approved by the Department of the California Highway Patrol or the local law enforcement
94 agency referred to in Subsection (i)(1)(A)(i), if any, within 24 hours of a request by any party
95 without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

96 (2) If a vehicle is released within 24 hours from the time the vehicle is brought into the
97 storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not
98 more than one day's storage charge may be required for a vehicle released the same day that it is
99 stored.

100 (3) If a request to release a vehicle is made and the appropriate fees are tendered and
101 documentation establishing that the person requesting release is entitled to possession of the
102 vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of
103 storage, and the storage facility fails to comply with the request to release the vehicle or is not
104 open for business during normal business hours, then only one day's storage charge may be
105 required to be paid until after the first business day. A business day is any day in which the
106 lienholder is open for business to the public for at least eight hours. If a request is made more
107 than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar
108 day basis for each day, or part thereof, that the vehicle is in storage.

109 (4) A vehicle owner shall not be charged for storage of the vehicle for each non-business
110 day that the vehicle is kept at the storage facility and the storage facility is not open for business

111 for at least four hours that day. As an example, if a vehicle is towed to a storage facility on a
112 Friday at noon and release on the following Monday by noon, the daily storage charge would not
113 exceed one day if the storage facility was not open for at least four hours on the intervening
114 Saturday or Sunday.

115 (j) (1) A person who charges a vehicle owner a towing, service, or storage charge at an
116 excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four
117 times the amount charged.

118 (2) A person who knowingly charges a vehicle owner a towing, service, or storage charge
119 at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or
120 her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a
121 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
122 or by imprisonment in a county jail for not more than three months, or by both that fine and
123 imprisonment.

124 (k) (1) A person operating or in charge of a storage facility where vehicles are stored
125 pursuant to this section shall accept a valid bank credit card or cash for payment of towing and
126 storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A
127 credit card shall be in the name of the person presenting the card. "Credit card" means "credit
128 card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes
129 of this section, credit card does not include a credit card issued by a retail seller.

130 (2) A person described in paragraph (1) shall conspicuously display, in that portion of the
131 storage facility office where business is conducted with the public, a notice advising that all valid
132 credit cards and cash are acceptable means of payment.

133 (3) A person operating or in charge of a storage facility who refuses to accept a valid
134 credit card or who fails to post the required notice under paragraph (2) is guilty of a
135 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
136 or by imprisonment in a county jail for not more than three months, or by both that fine and
137 imprisonment.

138 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable
139 to the registered owner of the vehicle or the person who tendered the fees for four times the
140 amount of the towing and storage charges.

141 (5) A person operating or in charge of the storage facility shall have sufficient moneys on
142 the premises of the primary storage facility during normal business hours to accommodate, and
143 make change in, a reasonable monetary transaction.

144 (6) Credit charges for towing and storage services shall comply with Section 1748.1 of
145 the Civil Code. Law enforcement agencies may include the costs of providing for payment by
146 credit when making agreements with towing companies as described in subdivision (i).

147 (l) (1) (A) A towing company shall not remove or commence the removal of a vehicle
148 from private property without first obtaining the written authorization from the property owner
149 or lessee, including an association of a common interest development, or an employee or agent
150 thereof, who shall be present at the time of removal and verify the alleged violation, except that
151 presence and verification is not required if the person authorizing the tow is the property owner,
152 or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer
153 units that does not have an onsite owner, owner's agent or employee, and the tenant has verified
154 the violation, requested the tow from that tenant's assigned parking space, and provided a signed
155 request or electronic mail, or has called and provides a signed request or electronic mail within
156 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the

157 towing company within 48 hours of authorizing the tow. The signed request or electronic mail
158 shall contain the name and address of the tenant, and the date and time the tenant requested the
159 tow. A towing company shall obtain, within 48 hours of receiving the written authorization to
160 tow, a copy of a tenant request required pursuant to this subparagraph. For the purpose of this
161 subparagraph, a person providing the written authorization who is required to be present on the
162 private property at the time of the tow does not have to be physically present at the specified
163 location of where the vehicle to be removed is located on the private property.

164 (B) The written authorization under subparagraph (A) shall include all of the following:

165 (i) The make, model, vehicle identification number, and license plate number of the
166 removed vehicle.

167 (ii) The name, signature, job title, residential or business address, and working telephone
168 number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

169 (iii) The grounds for the removal of the vehicle.

170 (iv) The time when the vehicle was first observed parked at the private property.

171 (v) The time that authorization to tow the vehicle was given.

172 (C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing
173 company prior to payment of a towing or storage charge shall provide a photocopy of the written
174 authorization to the vehicle owner or the agent.

175 (ii) If the vehicle was towed from a residential property, the towing company shall redact
176 the information specified in clause (ii) of subparagraph (B) in the photocopy of the written
177 authorization provided to the vehicle owner or the agent pursuant to clause (i).

178 (iii) The towing company shall also provide to the vehicle owner or the agent a separate
179 notice that provides the telephone number of the appropriate local law enforcement or
180 prosecuting agency by stating "If you believe that you have been wrongfully towed, please
181 contact the local law enforcement or prosecuting agency at [insert appropriate telephone
182 number]." The notice shall be in English and in the most populous language, other than English,
183 that is spoken in the jurisdiction.

184 (D) A towing company shall not remove or commence the removal of a vehicle from
185 private property described in subdivision (a) of Section 22953 unless the towing company has
186 made a good faith inquiry to determine that the owner or the property owner's agent complied
187 with Section 22953.

188 (E) (i) General authorization to remove or commence removal of a vehicle at the towing
189 company's discretion shall not be delegated to a towing company or its affiliates except in the
190 case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a
191 manner which interferes with an entrance to, or exit from, the private property.

192 (ii) In those cases in which general authorization is granted to a towing company or its
193 affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully
194 parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or
195 exit from, private property, the towing company and the property owner, or owner's agent, or
196 person in lawful possession of the private property shall have a written agreement granting that
197 general authorization.

198 (2) If a towing company removes a vehicle under a general authorization described in
199 subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire
200 hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the
201 private property, the towing company shall take, prior to the removal of that vehicle, a
202 photograph of the vehicle that clearly indicates that parking violation. Prior to accepting

203 payment, the towing company shall keep one copy of the photograph taken pursuant to this
204 paragraph, and shall present that photograph and provide, without charge, a photocopy to the
205 owner or an agent of the owner, when that person claims the vehicle.

206 (3) A towing company shall maintain the original written authorization, or the general
207 authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation,
208 required pursuant to this section, and any written requests from a tenant to the property owner or
209 owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and
210 shall make them available for inspection and copying within 24 hours of a request without a
211 warrant to law enforcement, the Attorney General, district attorney, or city attorney.

212 (4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of
213 not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail
214 for not more than three months, or by both that fine and imprisonment.

215 (5) A person who violates this subdivision is civilly liable to the owner of the vehicle or
216 his or her agent for four times the amount of the towing and storage charges.

217 (m) (1) A towing company that removes a vehicle from private property under this section shall
218 notify the local law enforcement agency of that tow after the vehicle is removed from the private
219 property and is in transit.

220 (2) A towing company is guilty of a misdemeanor if the towing company fails to provide
221 the notification required under paragraph (1) within 60 minutes after the vehicle is removed from
222 the private property and is in transit or 15 minutes after arriving at the storage facility, whichever
223 time is less.

224 (3) A towing company that does not provide the notification under paragraph (1) within
225 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable
226 to the registered owner of the vehicle, or the person who tenders the fees, for three times the
227 amount of the towing and storage charges.

228 (4) If notification is impracticable, the times for notification, as required pursuant to
229 paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This
230 paragraph is an affirmative defense.

231 (n) A vehicle removed from private property pursuant to this section shall be stored in a
232 facility that meets all of the following requirements:

233 (1) (A) Is located within a 10-mile radius of the property from where the vehicle was
234 removed.

235 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing
236 company has prior general written approval from the law enforcement agency that exercises
237 primary jurisdiction in the city in which is located the private property from which the vehicle
238 was removed, or if the private property is not located within a city, then the law enforcement
239 agency that exercises primary jurisdiction in the county in which is located the private property.

240 (2) (A) Remains open during normal business hours and releases vehicles after normal
241 business hours.

242 (B) A gate fee may be charged for releasing a vehicle after normal business hours,
243 weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after
244 normal business hours shall be one-half of the hourly tow rate charged for initially towing the
245 vehicle, or less.

246 (C) Notwithstanding any other provision of law and for purposes of this paragraph,
247 "normal business hours" are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive,
248 except state holidays.

249 (3) Has a public pay telephone in the office area that is open and accessible to the public.
250 (o) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle
251 owners or their agents by, among other things, allowing payment by credit cards for towing and
252 storage services, thereby expediting the recovery of towed vehicles and concurrently promoting
253 the safety and welfare of the public.

254 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety
255 of the general public by ensuring that a private property owner or lessee has provided his or her
256 authorization for the removal of a vehicle from his or her property, thereby promoting the safety
257 of those persons involved in ordering the removal of the vehicle as well as those persons
258 removing, towing, and storing the vehicle.

259 (3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the
260 safety of the general public by requiring towing companies to unconditionally release a vehicle
261 that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent
262 confrontation and physical injury to vehicle owners and towing operators, the stranding of
263 vehicle owners and their passengers at a dangerous time and location, and impeding expedited
264 vehicle recovery, without wasting law enforcement's limited resources.

265 (p) The remedies, sanctions, restrictions, and procedures provided in this section are not
266 exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be
267 provided in other provisions of law, including, but not limited to, those that are provided in
268 Sections 12110 and 34660.

269 (q) A vehicle removed and stored pursuant to this section shall be released by the law
270 enforcement agency, impounding agency, or person in possession of the vehicle, or any person
271 acting on behalf of them, to the legal owner or the legal owner's agent upon presentation of the
272 assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions
273 Code; a release from the one responsible governmental agency, only if required by the agency; a
274 government-issued photographic identification card; and any one of the following as determined
275 by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a
276 security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal
277 ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile
278 copies, or may be transmitted electronically. The storage facility shall not require any documents
279 to be notarized. The storage facility may require the agent of the legal owner to produce a
280 photocopy or facsimile copy of its repossession agency license or registration issued pursuant to
281 Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions
282 Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from
283 licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Current law has attempted to address the many issues that Californians face when their car is legally or illegally towed. Storage yards where vehicles are towed often charge exorbitant rates, especially when compared with nearby parking lots. One study found that the rates varied between 2.2 – 12.1 times the cost of nearby lots, and could charge a minimum of

\$400-\$600 for a vehicle stored for three days. This is especially consequential for low income individuals, where the cost to retrieve a towed vehicle can be out of reach. This can lead to loss of the vehicle or employment, loss of access to education and medical care, and for some, loss of their shelter. When picking up a vehicle, some tow yards claim their credit card processor is malfunctioning and demand cash to retrieve the vehicle. This can lead to people having to beg, borrow and sell belongings to raise the cash immediately needed to retrieve the vehicle. When cash is not readily available, the amount owed continues to increase daily often creating an impossible burden to pay for a vehicle that may be worth a mere fraction of the amount owed.

The Solution: To permit people or organizations to understand the prevalent rate for towing operators in a city, Vehicle Code Section 22658 Subsection i should be amended to permit any party to request the rate of a towing operator.

CURRENT OR PRIOR RELATED LEGISLATION

None.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Ryan Dean, Umberg Zipser LLP, 1920 Main Street, Suite 750, Irvine, CA 92614. Phone: 949-679-0052. Fax: 949-679-0461; rdean@umbergzipser.com

RESPONSIBLE FLOOR DELEGATE: Ryan Dean

RESOLUTION 11-04-2020

DIGEST

Parking: Towing a Vehicle from a Private Lot

This resolution amends Vehicle Code section 22658 to require a sign prohibiting public parking on a private lot to have been displayed for at least seven days before any vehicle can be towed.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Vehicle Code section 22658 to require a sign prohibiting public parking on a private lot to have been displayed for at least seven days before any vehicle can be towed. This resolution should be disapproved because it prevents the removal of vehicles that are parked in disregard of signage that provides sufficient notice that towing will result.

Under current law, taking another person's vehicle without their express or implied consent can result in criminal prosecution and civil liability. (See Veh. Code, § 10851, subd. (a).) Thus, before an owner or person in lawful possession of private property can cause a vehicle to be towed, there must be "displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property." (Veh. Code, § 22658, subd. (a)(1).)

The resolution suggests that a property owner could paint the curb red or post a sign just before having a parked vehicle towed, even if no sign prohibiting parking existed previously. However, towing a vehicle under contrived circumstances that provide no notice whatsoever would likely result in a civil lawsuit or criminal prosecution for vehicle theft.

If the problem is simply ensuring that the public is aware that an improperly parked vehicle may be towed, displaying a sign that meets current law should be sufficient. But requiring a seven-day waiting period before towing will not deter those who are already engaged in improper towing. It would simply limit the ability of a property owner who has recently posted a sign prohibiting public parking from being able to remove a vehicle parked by someone who has chosen to ignore the warning.

Therefore, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Vehicle Code section 22658 to read as follows:

1 § 22658

2 (a) The owner or person in lawful possession of private property, including an association
3 of a common interest development as defined in Sections 4080 and 4100 or Sections 6528 and
4 6534 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage
5 facility that meets the requirements of subdivision (n) under any of the following circumstances:

6 (1) There is displayed and has been displayed for at least seven days, in plain view at all
7 entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not
8 less than one inch in height, prohibiting public parking and indicating that vehicles will be
9 removed at the owner's expense, and containing the telephone number of the local traffic law
10 enforcement agency and the name and telephone number of each towing company that is a party
11 to a written general towing authorization agreement with the owner or person in lawful
12 possession of the property. The sign may also indicate that a citation may also be issued for the
13 violation.

14 (2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed
15 since the issuance of that notice.

16 (3) The vehicle is on private property and lacks an engine, transmission, wheels, tires,
17 doors, windshield, or any other major part or equipment necessary to operate safely on the
18 highways, the owner or person in lawful possession of the private property has notified the local
19 traffic law enforcement agency, and 24 hours have elapsed since that notification.

20 (4) The lot or parcel upon which the vehicle is parked is improved with a single-family
21 dwelling.

22 (b) The tow truck operator removing the vehicle, if the operator knows or is able to
23 ascertain from the property owner, person in lawful possession of the property, or the registration
24 records of the Department of Motor Vehicles the name and address of the registered and legal
25 owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the
26 registered and legal owner of the fact of the removal, the grounds for the removal, and indicate
27 the place to which the vehicle has been removed. If the vehicle is stored in a storage facility, a
28 copy of the notice shall be given to the proprietor of the storage facility. The notice provided for
29 in this section shall include the amount of mileage on the vehicle at the time of removal and the
30 time of the removal from the property. If the tow truck operator does not know and is not able to
31 ascertain the name of the owner or for any other reason is unable to give the notice to the owner
32 as provided in this section, the tow truck operator shall comply with the requirements of
33 subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer
34 removing a vehicle from private property.

35 (c) This section does not limit or affect any right or remedy that the owner or person in
36 lawful possession of private property may have by virtue of other provisions of law authorizing
37 the removal of a vehicle parked upon private property.

38 (d) The owner of a vehicle removed from private property pursuant to subdivision (a)
39 may recover for any damage to the vehicle resulting from any intentional or negligent act of a
40 person causing the removal of, or removing, the vehicle.

41 (e) (1) An owner or person in lawful possession of private property, or an association of a
42 common interest development, causing the removal of a vehicle parked on that property is liable
43 for double the storage or towing charges whenever there has been a failure to comply with
44 paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle
45 if requested by the legal or registered owner of the vehicle as required by subdivision (f).

46 (2) A property owner or owner's agent or lessee who causes the removal of a vehicle
47 parked on that property pursuant to the exemption set forth in subparagraph (A) of paragraph (1)
48 of subdivision (1) and fails to comply with that subdivision is guilty of an infraction, punishable
49 by a fine of one thousand dollars (\$1,000).

50 (f) An owner or person in lawful possession of private property, or an association of a
51 common interest development, causing the removal of a vehicle parked on that property shall
52 notify by telephone or, if impractical, by the most expeditious means available, the local traffic
53 law enforcement agency within one hour after authorizing the tow. An owner or person in lawful
54 possession of private property, an association of a common interest development, causing the
55 removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle,
56 shall state the grounds for the removal of the vehicle if requested by the legal or registered owner
57 of that vehicle. A towing company that removes a vehicle from private property in compliance
58 with subdivision (1) is not responsible in a situation relating to the validity of the removal. A
59 towing company that removes the vehicle under this section shall be responsible for the
60 following:

61 (1) Damage to the vehicle in the transit and subsequent storage of the vehicle.

62 (2) The removal of a vehicle other than the vehicle specified by the owner or other person
63 in lawful possession of the private property.

64 (g) (1) (A) Possession of a vehicle under this section shall be deemed to arise when a
65 vehicle is removed from private property and is in transit.

66 (B) Upon the request of the owner of the vehicle or that owner's agent, the towing
67 company or its driver shall immediately and unconditionally release a vehicle that is not yet
68 removed from the private property and in transit.

69 (C) A person failing to comply with subparagraph (B) is guilty of a misdemeanor.

70 (2) If a vehicle is released to a person in compliance with subparagraph (B) of paragraph
71 (1), the vehicle owner or authorized agent shall immediately move that vehicle to a lawful
72 location.

73 (h) A towing company may impose a charge of not more than one-half of the regular
74 towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the
75 person in lawful possession of the private property pursuant to this section if the owner of the
76 vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow
77 truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the
78 ground by means of a conventional trailer, and before it is removed from the private property.
79 The regular towing charge may only be imposed after the vehicle has been removed from the
80 property and is in transit.

81 (i) (1) (A) A charge for towing or storage, or both, of a vehicle under this section is
82 excessive if the charge exceeds the greater of the following:

83 (i) That which would have been charged for that towing or storage, or both, made at the
84 request of a law enforcement agency under an agreement between a towing company and the law
85 enforcement agency that exercises primary jurisdiction in the city in which is located the private
86 property from which the vehicle was, or was attempted to be, removed, or if the private property

87 is not located within a city, then the law enforcement agency that exercises primary jurisdiction
88 in the county in which the private property is located.

89 (ii) That which would have been charged for that towing or storage, or both, under the
90 rate approved for that towing operator by the Department of the California Highway Patrol for
91 the jurisdiction in which the private property is located and from which the vehicle was, or was
92 attempted to be, removed.

93 (B) A towing operator shall make available for inspection and copying his or her rate
94 approved by the Department of the California Highway, if any, within 24 hours of a without a
95 warrant to law enforcement, the Attorney General, district attorney, or city attorney.

96 (2) If a vehicle is released within 24 hours from the time the vehicle is brought into the
97 storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not
98 more than one day's storage charge may be required for a vehicle released the same day that it is
99 stored.

100 (3) If a request to release a vehicle is made and the appropriate fees are tendered and
101 documentation establishing that the person requesting release is entitled to possession of the
102 vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of
103 storage, and the storage facility fails to comply with the request to release the vehicle or is not
104 open for business during normal business hours, then only one day's storage charge may be
105 required to be paid until after the first business day. A business day is any day in which the
106 lienholder is open for business to the public for at least eight hours. If a request is made more
107 than 24 hours after the vehicle is placed in storage, charges may be imposed on a full calendar
108 day basis for each day, or part thereof, that the vehicle is in storage.

109 (j) (1) A person who charges a vehicle owner a towing, service, or storage charge at an
110 excessive rate, as described in subdivision (h) or (i), is civilly liable to the vehicle owner for four
111 times the amount charged.

112 (2) A person who knowingly charges a vehicle owner a towing, service, or storage charge
113 at an excessive rate, as described in subdivision (h) or (i), or who fails to make available his or
114 her rate as required in subparagraph (B) of paragraph (1) of subdivision (i), is guilty of a
115 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
116 or by imprisonment in a county jail for not more than three months, or by both that fine and
117 imprisonment.

118 (k) (1) A person operating or in charge of a storage facility where vehicles are stored
119 pursuant to this section shall accept a valid bank credit card or cash for payment of towing and
120 storage by a registered owner, the legal owner, or the owner's agent claiming the vehicle. A
121 credit card shall be in the name of the person presenting the card. "Credit card" means "credit
122 card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except, for the purposes
123 of this section, credit card does not include a credit card issued by a retail seller.

124 (2) A person described in paragraph (1) shall conspicuously display, in that portion of the
125 storage facility office where business is conducted with the public, a notice advising that all valid
126 credit cards and cash are acceptable means of payment.

127 (3) A person operating or in charge of a storage facility who refuses to accept a valid
128 credit card or who fails to post the required notice under paragraph (2) is guilty of a
129 misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500),
130 or by imprisonment in a county jail for not more than three months, or by both that fine and
131 imprisonment.

132 (4) A person described in paragraph (1) who violates paragraph (1) or (2) is civilly liable
133 to the registered owner of the vehicle or the person who tendered the fees for four times the
134 amount of the towing and storage charges.

135 (5) A person operating or in charge of the storage facility shall have sufficient moneys on
136 the premises of the primary storage facility during normal business hours to accommodate, and
137 make change in, a reasonable monetary transaction.

138 (6) Credit charges for towing and storage services shall comply with Section 1748.1 of
139 the Civil Code. Law enforcement agencies may include the costs of providing for payment by
140 credit when making agreements with towing companies as described in subdivision (i).

141 (l) (1) (A) A towing company shall not remove or commence the removal of a vehicle
142 from private property without first obtaining the written authorization from the property owner
143 or lessee, including an association of a common interest development, or an employee or agent
144 thereof, who shall be present at the time of removal and verify the alleged violation, except that
145 presence and verification is not required if the person authorizing the tow is the property owner,
146 or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer
147 units that does not have an onsite owner, owner's agent or employee, and the tenant has verified
148 the violation, requested the tow from that tenant's assigned parking space, and provided a signed
149 request or electronic mail, or has called and provides a signed request or electronic mail within
150 24 hours, to the property owner or owner's agent, which the owner or agent shall provide to the
151 towing company within 48 hours of authorizing the tow. The signed request or electronic mail
152 shall contain the name and address of the tenant, and the date and time the tenant requested the
153 tow. A towing company shall obtain, within 48 hours of receiving the written authorization to
154 tow, a copy of a tenant request required pursuant to this subparagraph. For the purpose of this
155 subparagraph, a person providing the written authorization who is required to be present on the
156 private property at the time of the tow does not have to be physically present at the specified
157 location of where the vehicle to be removed is located on the private property.

158 (B) The written authorization under subparagraph (A) shall include all of the following:

159 (i) The make, model, vehicle identification number, and license plate number of the
160 removed vehicle.

161 (ii) The name, signature, job title, residential or business address, and working telephone
162 number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

163 (iii) The grounds for the removal of the vehicle.

164 (iv) The time when the vehicle was first observed parked at the private property.

165 (v) The time that authorization to tow the vehicle was given.

166 (C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing
167 company prior to payment of a towing or storage charge shall provide a photocopy of the written
168 authorization to the vehicle owner or the agent.

169 (ii) If the vehicle was towed from a residential property, the towing company shall redact
170 the information specified in clause (ii) of subparagraph (B) in the photocopy of the written
171 authorization provided to the vehicle owner or the agent pursuant to clause (i).

172 (iii) The towing company shall also provide to the vehicle owner or the agent a separate
173 notice that provides the telephone number of the appropriate local law enforcement or
174 prosecuting agency by stating "If you believe that you have been wrongfully towed, please
175 contact the local law enforcement or prosecuting agency at [insert appropriate telephone
176 number]." The notice shall be in English and in the most populous language, other than English,
177 that is spoken in the jurisdiction.

178 (D) A towing company shall not remove or commence the removal of a vehicle from
179 private property described in subdivision (a) of Section 22953 unless the towing company has
180 made a good faith inquiry to determine that the owner or the property owner's agent complied
181 with Section 22953.

182 (E) (i) General authorization to remove or commence removal of a vehicle at the towing
183 company's discretion shall not be delegated to a towing company or its affiliates except in the
184 case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a
185 manner which interferes with an entrance to, or exit from, the private property.

186 (ii) In those cases in which general authorization is granted to a towing company or its
187 affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully
188 parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or
189 exit from, private property, the towing company and the property owner, or owner's agent, or
190 person in lawful possession of the private property shall have a written agreement granting that
191 general authorization.

192 (2) If a towing company removes a vehicle under a general authorization described in
193 subparagraph (E) of paragraph (1) and that vehicle is unlawfully parked within 15 feet of a fire
194 hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the
195 private property, the towing company shall take, prior to the removal of that vehicle, a
196 photograph of the vehicle that clearly indicates that parking violation. Prior to accepting
197 payment, the towing company shall keep one copy of the photograph taken pursuant to this
198 paragraph, and shall present that photograph and provide, without charge, a photocopy to the
199 owner or an agent of the owner, when that person claims the vehicle.

200 (3) A towing company shall maintain the original written authorization, or the general
201 authorization described in subparagraph (E) of paragraph (1) and the photograph of the violation,
202 required pursuant to this section, and any written requests from a tenant to the property owner or
203 owner's agent required by subparagraph (A) of paragraph (1), for a period of three years and
204 shall make them available for inspection and copying within 24 hours of a request without a
205 warrant to law enforcement, the Attorney General, district attorney, or city attorney.

206 (4) A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of
207 not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail
208 for not more than three months, or by both that fine and imprisonment.

209 (5) A person who violates this subdivision is civilly liable to the owner of the vehicle or
210 his or her agent for four times the amount of the towing and storage charges.

211 (m) (1) A towing company that removes a vehicle from private property under this section shall
212 notify the local law enforcement agency of that tow after the vehicle is removed from the private
213 property and is in transit.

214 (2) A towing company is guilty of a misdemeanor if the towing company fails to provide
215 the notification required under paragraph (1) within 60 minutes after the vehicle is removed from
216 the private property and is in transit or 15 minutes after arriving at the storage facility, whichever
217 time is less.

218 (3) A towing company that does not provide the notification under paragraph (1) within
219 30 minutes after the vehicle is removed from the private property and is in transit is civilly liable
220 to the registered owner of the vehicle, or the person who tenders the fees, for three times the
221 amount of the towing and storage charges.

222 (4) If notification is impracticable, the times for notification, as required pursuant to
223 paragraphs (2) and (3), shall be tolled for the time period that notification is impracticable. This
224 paragraph is an affirmative defense.

225 (n) A vehicle removed from private property pursuant to this section shall be stored in a
226 facility that meets all of the following requirements:

227 (1) (A) Is located within a 10-mile radius of the property from where the vehicle was
228 removed.

229 (B) The 10-mile radius requirement of subparagraph (A) does not apply if a towing
230 company has prior general written approval from the law enforcement agency that exercises
231 primary jurisdiction in the city in which is located the private property from which the vehicle
232 was removed, or if the private property is not located within a city, then the law enforcement
233 agency that exercises primary jurisdiction in the county in which is located the private property.

234 (2) (A) Remains open during normal business hours and releases vehicles after normal
235 business hours.

236 (B) A gate fee may be charged for releasing a vehicle after normal business hours,
237 weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after
238 normal business hours shall be one-half of the hourly tow rate charged for initially towing the
239 vehicle, or less.

240 (C) Notwithstanding any other provision of law and for purposes of this paragraph,
241 “normal business hours” are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive,
242 except state holidays.

243 (3) Has a public pay telephone in the office area that is open and accessible to the public.

244 (o) (1) It is the intent of the Legislature in the adoption of subdivision (k) to assist vehicle
245 owners or their agents by, among other things, allowing payment by credit cards for towing and
246 storage services, thereby expediting the recovery of towed vehicles and concurrently promoting
247 the safety and welfare of the public.

248 (2) It is the intent of the Legislature in the adoption of subdivision (l) to further the safety
249 of the general public by ensuring that a private property owner or lessee has provided his or her
250 authorization for the removal of a vehicle from his or her property, thereby promoting the safety
251 of those persons involved in ordering the removal of the vehicle as well as those persons
252 removing, towing, and storing the vehicle.

253 (3) It is the intent of the Legislature in the adoption of subdivision (g) to promote the
254 safety of the general public by requiring towing companies to unconditionally release a vehicle
255 that is not lawfully in their possession, thereby avoiding the likelihood of dangerous and violent
256 confrontation and physical injury to vehicle owners and towing operators, the stranding of
257 vehicle owners and their passengers at a dangerous time and location, and impeding expedited
258 vehicle recovery, without wasting law enforcement’s limited resources.

259 (p) The remedies, sanctions, restrictions, and procedures provided in this section are not
260 exclusive and are in addition to other remedies, sanctions, restrictions, or procedures that may be
261 provided in other provisions of law, including, but not limited to, those that are provided in
262 Sections 12110 and 34660.

263 (q) A vehicle removed and stored pursuant to this section shall be released by the law
264 enforcement agency, impounding agency, or person in possession of the vehicle, or any person
265 acting on behalf of them, to the legal owner or the legal owner’s agent upon presentation of the
266 assignment, as defined in subdivision (b) of Section 7500.1 of the Business and Professions
267 Code; a release from the one responsible governmental agency, only if required by the agency; a

268 government-issued photographic identification card; and any one of the following as determined
269 by the legal owner or the legal owner’s agent: a certificate of repossession for the vehicle, a
270 security agreement for the vehicle, or title, whether paper or electronic, showing proof of legal
271 ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile
272 copies, or may be transmitted electronically. The storage facility shall not require any documents
273 to be notarized. The storage facility may require the agent of the legal owner to produce a
274 photocopy or facsimile copy of its repossession agency license or registration issued pursuant to
275 Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions
276 Code, or to demonstrate, to the satisfaction of the storage facility, that the agent is exempt from
277 licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Current law has attempted to address the many issues that Californians face when their car is legally or illegally towed. One problem is that curbs can be painted red by landlords without approval from the city, and cars can then be towed on that basis. Similarly, signs can be placed even after a car is parked, which can lead to cars being towed unnecessarily. Storage yards where vehicles are towed often charge exorbitant rates, especially when compared with nearby parking lots. One study found that the rates varied between 2.2 – 12.1 times the cost of nearby lots, and could charge a minimum of \$400-\$600 for a vehicle stored for three days. This is especially consequential for low income individuals, where the cost to retrieve a towed vehicle can be out of reach. This can lead to loss of the vehicle or employment, loss of access to education and medical care, and for some, loss of their shelter.

The Solution: To help avoid cars being towed improperly, Vehicle Code Section 22658 should be amended to ensure sufficient notice has been given to drivers who park their cars before their cars are towed.

CURRENT OR PRIOR RELATED LEGISLATION

None.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

AUTHOR AND/OR PERMANENT CONTACT: Ryan Dean, Umberg Zipser LLP, 1920 Main Street, Suite 750, Irvine, CA 92614. Phone: 949-679-0052. Fax: 949-679-0461; rdean@umbergzipser.com

RESPONSIBLE FLOOR DELEGATE: Ryan Dean

RESOLUTION 11-05-2020

DIGEST

New Vehicle Registration: Only Register New Zero Emission Vehicles Starting in 2033

Adds Vehicle Code section 4150.8 to require that new vehicle registrations with the DMV must be zero emission vehicles starting in 2033, with specified exceptions.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Vehicle Code section 4150.8 to require that new vehicle registrations with the DMV must be zero emission vehicles starting in 2033, with specified exceptions. This resolution should be disapproved because there does not appear to be any evidence showing that zero emission vehicle (ZEV) technology will advance sufficiently and that there will be sufficient levels of charging stations in California by 2033 to make ZEVs practical for all new car buyers by the proposed implementation date.

Currently, there are no restrictions on the registration of new vehicles based on the type of power plant, be it gasoline powered, diesel powered, natural gas powered, propane gas powered, hybrid powered, hydrogen fuel cell powered, or electric powered. (See Veh. Code, § 4150 et seq.) Instead, the state offers various tax rebates and incentives to encourage ZEV purchases. (See <https://www.electricforall.org/rebates-incentives> for a list of California and federal tax rebates and incentives available by zip code.) These incentives are intended to encourage the purchase of ZEVs as a means of California meeting its adopted target goals for statewide greenhouse gas emission reductions. (See Health & Saf. Code, § 38500 et seq. [California Global Warming Solutions Act of 2006].) Specifically, as part of achieving greenhouse gas emission reduction levels, California currently has a goal of reaching five million ZEVs on California roads by 2030 and 250,000 electric vehicle charging stations by 2025. (<https://www.cpuc.ca.gov/zev/> [at Fast Facts].)

This resolution would restrict new vehicle registration in California to allow registration only of ZEVs starting in 2033. Commercial vehicles with a gross vehicle weight rating of 10,001 pounds or more would be exempted from this limitation. Original registration of a foreign vehicle would also be exempted if the registered owner is the same person on the foreign certificate of title. Finally, implementation would have to be in compliance with federal law.

While the resolution identifies several countries that have adopted proposed bans on the sale of fossil-fuel vehicles, with implementation dates between 2025 and 2040, there is no evidence showing that California is in a position to make only new ZEV car sales practical by the proposed target date of 2033. There are several key factors currently limiting the feasibility of ZEVs for most Californians – cost, round-trip mileage per charge, and availability of charging stations. (See [https://opr.ca.gov/docs/Governors_Office_ZEV_Action_Plan_\(02-13\).pdf](https://opr.ca.gov/docs/Governors_Office_ZEV_Action_Plan_(02-13).pdf) at p. 6.)

No evidence suggests that those core factors can be adequately addressed by the proposed implementation date.

This resolution also fails to account for the fact that all-electric ZEVs may not be practical for commuters with long distance travel, or those who work in sales and are required to travel long distances, even with some of the more expensive ZEV models purporting to have 300-360 mile per charge range estimates. California has some of the longest commute time and distances in the nation. (See, e.g., <https://www.cnbc.com/2019/02/06/commutes-in-this-california-city-are-the-longest-in-the-us.html> [estimating nationwide 1:36 commuters is a super commuter travelling more than 90 minutes one way to work].)

This resolution is similar to Assembly Bill 1745 (2017-2018 Reg. Sess.) proposed by Assembly Member Phil Ting in 2018, which had a proposed implementation date of 2040. Assembly Bill 1745 was withdrawn by the author before the first committee hearing. This suggests that a proposed legislative change with an even earlier implementation date would surely fail in the Legislature.

Therefore, this resolution should be disapproved.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Vehicle Code section 4150.8 to read as follows:

1 § 4150.8

2 (a) On and after January 1, 2033, the Department of Motor Vehicles shall not accept an
3 application for original registration of a motor vehicle unless the vehicle is a zero emissions
4 vehicle.

5 (b) For purposes of this section, “zero emissions vehicle” means a vehicle that produces
6 zero exhaust emissions of any criteria pollutant or precursor pollutant, or greenhouse gas,
7 excluding emissions from air conditioning systems, under any possible operating modes or
8 conditions.

9 (c) This section does not apply to a commercial motor vehicle with a gross vehicle weight
10 rating of 10,001 pounds or more.

11 (d) This section does not apply to an original registration pursuant to Article 3
12 (commencing with Section 4300) if the registered owner is the same person on the foreign
13 certificate of title.

14 (e) This section shall be implemented in compliance with federal law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Among scientists, there is no serious dispute. Climate change is the existential threat of our time. Once upon a time, the chief carbon polluters were power plants. Now it is the transportation sector, by difference of over a hundred million tons of carbon annually. Within the transportation sector, the “light-duty vehicles” we drive every day - cars, light-trucks, and SUVs - are by far the largest category of polluters, producing nearly 60% of all vehicular greenhouse emissions.

The Solution: Some countries have taken the threat seriously and are marching quickly toward a solution. Sweden and Denmark, for example, have banned the sale of all fossil-fuel based cars by 2030. Norway is doing one better, phasing them out by 2025. In fact, thirteen countries and over a dozen cities around the world have set bans on the sale of gasoline burning passenger cars, including the United Kingdom (2035), the Netherlands (2030), Iceland (2030), Ireland (2030), Slovenia (2030), France (2040), Sri Lanka (2040), and China (no hard date set). In California we have made strides of our own. Governor Brown committed the state to putting 5 million zero emission vehicles (principally, electric vehicles) on the roads by 2030. Governor Newsom banned any state purchases of gasoline powered cars starting in 2020. The beauty of transitioning to EVs is that these vehicles will emit less and less greenhouse gas over time as the source of their locomotion—the California power grid—transitions toward zero carbon. *See* Cal. Pub. Util. Code §§ 399.11, 454.53 (mandating 50% of power to be generated by zero-carbon renewables by 2026, 60% by 2030, and 100% by 2045). Finally, even setting aside the environmental argument, there is a simple business reason for making this transition to zero emission vehicles. The shift in technology is coming. The early adopters stand to generate enormous wealth as the rest of the world catches up. This has always been California’s legacy, to be on the vanguard of paradigm shifting technologies, and then incubate and exploit those industries before anyone else. As in other high technologies, California is poised to lead the way and generate fortunes in the doing.

CURRENT OR PRIOR RELATED LEGISLATION

This resolution was proposed by Assembly Member Phil Ting in 2017 as AB 1745.

IMPACT STATEMENT

This resolution may require related amendments to the California Code of Regulations.

AUTHOR AND/OR PERMANENT CONTACT: B. Douglas Robbins, TONG ROBBINS LLP, 1650 Borel Pl., Suite 123, San Mateo, CA 94402; tel: 650.240.2404 x101; [drobbins@tongrobbins.com](mailto:d Robbins@tongrobbins.com).

RESPONSIBLE FLOOR DELEGATE: B. Douglas Robbins

RESOLUTION 11-06-2020

DIGEST

Clean Air: Incentives to Convert High-Emission Vehicles to Zero-Emission Vehicles

Amends Health and Safety Code sections 44124.5 and 44125 to provide a program that offers financial incentives to residents who convert high-polluter vehicles into zero-emission vehicles

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Health and Safety Code sections 44124.5 and 44125 to provide a program that offers financial incentives to residents who convert high-polluter vehicles into zero-emission vehicles. This resolution should be approved in principle because the resolution expands existing legislation to repurpose high-polluter vehicles by converting them to zero emission vehicles, which will further the goal of the original legislation.

Existing law instructs the California Air Resources Board (CARB) to create a program that provides compensation for residents who retire high-polluter passenger vehicles. (Health & Saf. Code, § 44125.) California also allows owners to register and drive vehicles converted to zero-emission vehicles within the state. (Dept. Consumer Affairs, Bureau of Automotive Repair, *Smog Check Reference Guide 2019* (October 23, 2019), p.45, appen. D.) However, existing law does not provide any compensation for converting high-polluter vehicles into zero-emission vehicles, rather than simply scrapping them.

This resolution seeks to amend Vehicle Code section 44125 to instruct CARB to expand its existing program to also provide incentives for those who convert or have converted a high-polluter passenger vehicle into a zero-emission vehicle. The resolution makes necessary conforming changes to Vehicle Code section 44124.5.

This resolution should be approved in principle because the amendments offer another avenue for reducing air pollution in California, while also recycling or repurposing older vehicles having internal combustion engines. In addition to high-polluter vehicles, this resolution would expand those vehicles that can be converted to also include high-emission vehicles, such as diesel vehicles and vehicles having an EPA fuel economy lower than twenty miles per gallon. The amendments may also help to spur demand for batteries and other components required for zero-emission vehicles, with the goal of increasing supply of those components while reducing their cost. Although there is concern for potential abuse of the program, the likelihood for abuse is curtailed by the requirement that converted vehicles must first be certified by a Bureau of Automotive Repair Referee before receiving an incentive. (Health & Saf. Code, § 44125, subd. (e)(2)(E).)

This resolution aligns with the state’s goals of reducing vehicle emissions, and aligns with the goals of CARB which recently adopted a new rule requiring every new commercial truck sold in California to be zero-emission by 2045. (CARB, *California Takes Bold Step to Reduce Truck Pollution* (June 25, 2020) <<https://ww2.arb.ca.gov/news/california-takes-bold-step-reduce-truck-pollution>> [as of June 29, 2020].)

This resolution will likely require additional funding for the Clean Cars 4 All and Enhanced Fleet Modernization Program, as the number of qualifying vehicles will likely be increased over time from what would otherwise be available.

This resolution is similar to Assembly Bill 2766 (Gray) (2019-2020 Reg. Sess.), which seeks to increase compensation incentives by 50% if the recipient is a super commuter and replaced a vehicle with a zero-emission vehicle. (Assem. Bill No. 2766 (2019-2020 Reg. Sess.) as introduced Feb. 20, 2020.) Super commuter is defined as a person who drives an eligible vehicle at least 50 miles one way to the person’s worksite at least four times per week, or who drove an eligible vehicle at least 25,000 miles per year for at least the last two years. (*Id.*) Assembly Bill No. 2766 was referred to the Committee on Transportation on March 2, 2020 to await further action.

Therefore, this resolution should be approved in principle.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend at Health & Safety Code sections 44124.5 and 44125, to read as follows:

1 § 44124.5

2 (a) The Clean Cars 4 All Program is hereby established and is to be administered by the
3 state board to focus on achieving reductions in the emissions of greenhouse gases, improvements
4 in air quality, and benefits to low-income state residents through the scrapping of high-polluter
5 motor vehicles (the “scrap only program”), through the replacement of high-polluter motor
6 vehicles with new or used zero-emission vehicles (the “scrap and replace program”), through the
7 conversion of fossil fuel burning vehicles to zero-emission vehicles (the “conversion vehicle
8 program”), or through a mobility option.

9 (b) Beginning in the 2018-19 fiscal year, and every fiscal year thereafter, the state board
10 shall set specific, measurable goals for the replacement of passenger vehicles and light- and
11 medium-duty trucks that are high polluters.

12 (c) The state board shall take steps to meet the goals set forth pursuant to subdivision (b).
13 The steps shall include, but need not be limited to, updating the guidelines for Clean Cars 4 All
14 and the Enhanced Fleet Modernization Program no later than January 1, 2022.

15 (d) The regulation implementing this section shall ensure all of the following:

16 (1) Where applicable, there is improved coordination, integration, and partnerships with
17 other programs that target disadvantaged communities and receive moneys from the Greenhouse
18 Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

19 (2) The replacement or a mobility option is consistent with paragraph (6) of subdivision
20 (d) of Section 44125.

21 (3) Provisions enhance the prescreening of applicants to Clean Cars 4 All, if determined
22 by the state board to be appropriate.

23
24 § 44125

25 (a)(1) No later than July 1, 2009, the state board, in consultation with the bureau, shall
26 adopt a program to commence on January 1, 2010, that allows for the voluntary retirement of
27 passenger vehicles and light-duty and medium-duty trucks that are high polluters. The program
28 shall be administered by the bureau pursuant to guidelines adopted by the state board.

29 (2) No later than July 1, 2019, the state board shall update the guidelines for the program
30 established pursuant to this subdivision to make applicable to light-duty pickup trucks the same
31 standard for miles per gallon that is applicable to minivans. This subdivision shall apply to only
32 purchasers who are retiring a light-duty pickup truck.

33 (3) No later than January 1, 2022, the state board shall update the guidelines for the
34 program to include a conversion vehicle program as authorized by subsection (e), below.

35 (b) Beginning in the 2018-19 fiscal year, and every fiscal year thereafter, the state board,
36 in consultation with the bureau, shall set specific, measurable goals for the ~~retirement~~ scrapping
37 or conversion of passenger vehicles and light- and medium-duty trucks that are high polluters.

38 (c)(1) The state board, in consultation with the bureau, shall take steps to meet the goals
39 set forth pursuant to subdivision (b). The steps shall include, but need not be limited to, updating
40 the guidelines for both the program and Clean Cars 4 All no later than January 1, 2022.

41 (2) The program shall continue to be administered by the bureau pursuant to guidelines
42 adopted by the state board.

43 (d) The guidelines for the scrap only program, for the scrap and replace program, and the
44 mobility option (referred to collectively as the “scrap programs”) shall ensure all of the
45 following:

46 (1) Vehicles retired pursuant to the scrap programs are permanently removed from
47 operation and retired at a dismantler under contract with the bureau.

48 (2) Districts retain their authority to administer vehicle retirement programs otherwise
49 authorized by law.

50 (3) The scrap programs are available for high-polluter passenger vehicles and light-duty
51 and medium-duty trucks that have been continuously registered in California for two years prior
52 to acceptance into the scrap programs or otherwise proven to have been driven primarily in
53 California for the last two years and have not been registered in another state or country in the
54 last two years. The guidelines may require a vehicle to take, complete, or pass a smog check
55 inspection.

56 (4) The scrap programs are focused where the greatest air quality impact can be
57 identified.

58 (5) The scrap programs are focused on achieving improvements to air quality and
59 benefits to low-income state residents through the retirement of high-polluter passenger motor
60 vehicles owned by low-income state residents.

61 (6)(A) Compensation for scrapped vehicles is at least ~~one~~ two thousand five hundred
62 dollars (\$2,500) for a low-income motor vehicle owner and not more than one thousand dollars
63 (\$1,000) for all other motor vehicle owners.

64 (B) Replacement or a mobility option may be an option for all motor vehicle owners and
65 may be in addition to compensation for vehicles scrapped pursuant to subparagraph (A). For
66 low-income motor vehicle owners, compensation toward a replacement vehicle or mobility

67 option shall be no less than two thousand five hundred dollars (\$2,500). Compensation toward a
68 replacement vehicle for all other motor vehicle owners shall not exceed compensation for low-
69 income motor vehicle owners.

70 (C) Compensation for either scrapped or replacement vehicles or a mobility option for
71 low-income motor vehicle owners may be increased as necessary to maximize the air quality
72 benefits of the scrap programs while also ensuring participation by low-income motor vehicle
73 owners. Increases in compensation amounts may be based on factors, including, but not limited
74 to, the age of the retired or replaced vehicle, the emissions benefits of the retired or replaced
75 vehicle, the emissions impact of any replacement vehicle, participation by low-income motor
76 vehicle owners, and the location of the vehicle in an area of the state with the poorest air quality.

77 (7) Cost-effectiveness and impacts on disadvantaged and low-income populations are
78 considered. Scrap program eligibility may be limited on the basis of income to ensure the scrap
79 programs adequately serves persons of low or moderate income.

80 (8) Provisions coordinate the vehicle retirement and replacement and mobility option
81 components of the scrap programs with the vehicle retirement component of the bureau's
82 Consumer Assistance Program, established pursuant to other provisions of this chapter, and
83 Clean Cars 4 All to ensure vehicle owners participate in the appropriate scrap program to
84 maximize participation and emissions reductions.

85 (9) Where applicable, there is improved coordination, integration, and partnerships with
86 other programs that target disadvantaged communities and receive moneys from the Greenhouse
87 Gas Reduction Fund, created pursuant to Section 16428.8 of the Government Code.

88 (10) Provisions enhance the prescreening of applicants to the scrap programs, if
89 determined by the state board to be appropriate.

90 (11) Specific steps ensure the vehicle replacement and mobility option component of the
91 scrap programs is are available in areas designated as federal extreme nonattainment.

92 (12) A requirement that vehicles eligible for retirement have sufficient remaining life.
93 Demonstration of sufficient remaining life may include proof of current registration, completing
94 a recent smog check inspection, or completing another test similar to a smog check inspection.

95 (e) The guidelines for the implementation of the conversion vehicle program shall ensure
96 all of the following:

97 (1) A vehicle shall qualify for the conversion vehicle program if and only if, prior to
98 conversion, the vehicle meets all of the following criteria:

99 (A) A high-polluting vehicle, or a diesel vehicle, or a vehicle that fails to meet or exceed
100 a USEPA combined fuel economy rating of twenty (20) miles per gallon; and

101 (B) A functional vehicle that has sufficient remaining useful life; and

102 (C) A vehicle with a gross vehicle weight rating of 10,000 pounds or less; and

103 (D) A passenger vehicle, truck, sport utility vehicle, or van; and

104 (E) A vehicle that either (1) meets the DMV requirements as specified in sections
105 3394.4(b)(6)(C) and 3394.4(b)(6)(D) of Title 16 of Division 33, Article 11 of the California
106 Code of Regulations or (2) has been operated in California for the last two years, regardless of
107 registration status, regardless of whether operation occurred on road or off road, regardless of
108 whether operation occurred on private or public roads, and not registered in any other state or
109 country in the last two years; and

110 (F) A vehicle propelled by a fossil fuel burning internal combustion engine;

111 (G) A vehicle not classified as an ineligible vehicle under sections 2625 of Title 13 of
112 Division 3, Article 2, and 2636 of Title 13 of Division 3, Article 3 of the California Code of

113 Regulations. But regardless of the ineligible vehicle classifications, no vehicle shall be ineligible
114 simply on the basis that it is owned and/or registered to a non-profit organization or business.

115 (2) A vehicle shall qualify for the conversion vehicle program if and only if, after
116 conversion, the vehicle meets all of the following criteria:

117 (A) The vehicle is classified as a “Zero-Emission Vehicle” under section 2621 of Title 13
118 of Division 3, Article 2 of the California Code of Regulations; and

119 (B) The conversion work was performed in the state of California; and

120 (C) The conversion work was performed by, or supervised by, a mechanic or technician
121 licensed to perform said automotive work in California; and

122 (D) The vehicle’s previously installed fossil fuel engine, exhaust, fuel system, and
123 evaporative system has been removed from the vehicle and surrendered to an authorized Bureau
124 of Automotive Repair dismantler for destruction—and not for rebuild nor resale; and

125 (E) The converted zero emission vehicle passes engine change inspection by a Bureau of
126 Automotive Repair Referee, receiving and displaying a BAR Referee Label inside its engine bay.

127 (3) A participant shall be eligible to receive compensation under the conversion vehicle
128 program if and only if the participant meets all of the following criteria:

129 (A) The participant purchases or leases a conversion vehicle from a party having
130 performed the conversion by a licensed mechanic in state; and

131 (B) The participant’s household income equals 400% of the federal poverty level or less.

132 (4) Upon having satisfied the criteria set-out in this sub-section for the conversion of a
133 qualifying fossil fuel powered vehicle into a qualifying zero emission vehicle, purchased or
134 leased by an eligible participant, compensation shall be as follows:

135 (A) Minimum payment of \$9500 to eligible participants with household income less than
136 or equal to 225% of the federal poverty level.

137 (B) Minimum payment of \$7500 to eligible participants with household income greater
138 than 225% of the federal poverty level and less than or equal to 300% of the federal poverty
139 level.

140 (C) Minimum payment of \$5500 to eligible participants with household income greater
141 than 300% of the federal poverty level and less than or equal to 400% of the federal poverty
142 level.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Among scientists, there is no serious dispute. Climate change is the existential threat of our time. While brand new electric vehicles (“EVs”) help to mitigate climate change, the solution they offer is less than optimal.

First, brand new EVs release all kinds of pollution into the atmosphere, dumping some 8.8 tons of CO2 through their manufacture alone.

Second, EV implementation by new car sales is far too slow. Even if by magical fiat we could mandate that starting tomorrow, every new car sold in America was powered by battery electricity, it would still take some eighteen years before HALF of the cars on the road stopped spewing carbon from the tailpipe.

And this exposes the dirty little secret of new electric vehicles. Electrics are wonderful. They prevent the climate change problem from getting worse. But they do not make the problem better. This is because putting an additional new EV on the road does not necessarily take a gas burner off the road.

The Solution: In many ways, retrofitting a gas powered vehicle with an electric motor is a superior option to purchasing new. Conversion vehicles are less expensive to build, produce less carbon as compared to new manufacture, and can permanently decommission a commensurate number of carbon-spewing engines.

In the status quo, the conversion industry focuses on expensive retrofits for classic Volkswagens (www.evwest.com), Porsches (zelectricmotors.com), Fiats (roadstersalon.com/), and exotic vehicles in need of powerful zero-emission drivetrains (electricgt.com/). But we can jumpstart this industry for the *entire* market by offering state incentives that encourages these and other garages to set up laboratories focusing on inexpensive conversions for low-income consumers.

Here's how the program would work:

First, a licensed shop retrofits a high polluting vehicle. The hundreds of thousands of VW Golf 2.0 TDIs, sequestered due to the dieseldgate scandal might be good start. The gas engine is destroyed as part of the conversion.

Second the conversion passes a motor replacement inspection by a BAR Referee.

Third, an eligible participant earning 400% or less of the federal poverty level, purchases or leases the converted EV, receiving a rebate from \$5500 to \$9500—offsetting the market distorting effects of the federal tax refunds and state CVRP rebates that BMW and Audi consumers receive when purchasing their new luxury EVs.

Through trial and error, these conversion shops will discover efficiencies by focusing their retrofits on limited makes and models, utilizing bulk-purchased powertrains, and enjoying ever-declining battery costs. Unlike the used car market which only offers silly looking EVs for tree-hugging liberals—*e.g.*, the bug-eyed Nissan Leaf, the tiny Fiat 500e, and the absurdist Mitsubishi i-MiEV—conversion vehicles can offer real Americans the vehicles they really need, namely mini-vans and trucks. Minivans and trucks are virtually non-existent on the used EV market.

Once the conversion industry has cracked these market efficiencies, it can unleash conversion technology for the benefit of all Californians, deleting the most egregious polluters, and generating in-state wealth—and jobs—for a brand new industry serving the entire country.

IMPACT STATEMENT

This resolution may require related amendments to the California Code of Regulations. Like the two other programs controlled by these statutes, the Scrap Only Program and the Scrap and Replace Program, the Conversion Program offered here provides a basic outline from which the appropriate agencies, principally the California Air Resources Board, is instructed to develop further regulations. Like the Scrap Only and the Scrap and Replace Programs, the Conversion Program shall be offered and ultimately administered by the state's various regional air quality boards. Although no party has conducted an impact assessment of the Conversion Vehicle Program, assessments have been conducted by the California Air Resources Board for the Scrap only and the Scrap and Replace programs. See State of California, Air Resources Board, Staff

Report: Initial Statement Of Reasons (June 5, 2018), https://www.arb.ca.gov/regact/2018/cc4a18/isor.pdf?_ga=2.127895183.302002278.1581552460-339850345.1574356417.

CURRENT OR PRIOR RELATED LEGISLATION

Much of the technical language in this resolution has been adopted from regulations implemented by the California Air Resources Board (“CARB”). See Cal. Code Regs. tit. 13, §§ 2620 – 2629.5 (setting out regulations for the Enhanced Fleet Modernization Program); Cal. Code Regs. tit. 13, §§ 2630 – 2639.5 (setting out regulations for the Clean Cars 4 All Program).

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