# AB-2392 Vehicles: towing and storage. (2017-2018)



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## Assembly Bill No. 2392

## CHAPTER 434

An act to amend Sections 10652.5, 22524.5, and 22651.07 of the Vehicle Code, relating to towing and storage of vehicles.

[ Approved by Governor September 17, 2018. Filed with Secretary of State September 17, 2018. ]

## LEGISLATIVE COUNSEL'S DIGEST

AB 2392, Santiago. Vehicles: towing and storage.

Under existing law, when a vehicle has been towed and stored, the legal owner may only be charged a storage fee during the first 15 days of possession, and beyond the first 15 days, only for any time after 3 days have lapsed after written notification has been made to the legal owner, as specified.

This bill would require that fees charged under these provisions for towing and storage be reasonable, as defined.

Existing law makes an insurer that is responsible for reasonable towing and storage charges liable to the person providing those services, as specified.

This bill would define reasonable charges for these purposes and would provide a list of fees that are presumptively unreasonable. The bill would also require that fees charged for towing and storage, as specified, be reasonable.

Existing law grants certain consumer rights to those who utilize towing and storage providers, including the right to retrieve personal belongings from a vehicle without charge, the right to pay by cash or credit card, and the right to receive an itemized statement of charges. Existing law also generally requires these businesses to post a prescribed notice outlining these rights in a place visible to the public and to provide a copy of the notice to customers upon request. A person who violates these provisions is civilly liable to the registered or legal owner of the vehicle, or the registered owner's insurer, as specified.

This bill would grant additional consumer protections, including requiring facilities to be open and accessible during normal business hours, authorizing payment of charges to be made by insurer's check, and allowing an owner or insurer to inspect a stored vehicle, as specified. The bill would make conforming changes to the notice required to be posted at specified facilities. The bill would extend application of the consumer protections to any facility that charges for the storage of a vehicle, including among others, a repair garage or service station, but excluding a new motor vehicle dealer.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 10652.5 of the Vehicle Code is amended to read:

**10652.5.** (a) Whenever the name and address of the legal owner of a motor vehicle is known, or may be ascertained from the registration records in the vehicle or from the records of the Department of Motor Vehicles, no fee or service charge may be imposed upon the legal owner for the parking and storage of the motor vehicle except as follows: (1) The first 15 days of possession and (2) following that 15-day period, the period commencing three days after written notice is sent by the person in possession to the legal owner by certified mail, return receipt requested, and continuing for a period not to exceed any applicable time limit set forth in Section 3068 or 3068.1 of the Civil Code.

(b) The costs of notifying the legal owner may be charged as part of the storage fee when the motor vehicle has been stored for an indefinite period of time and notice is given no sooner than the third day of possession. This subdivision also applies if the legal owner refuses to claim possession of the motor vehicle.

(c) In any action brought by, or on behalf of, a legal owner of a motor vehicle to which subdivision (a) applies, to recover a motor vehicle alleged to be withheld by the person in possession of the motor vehicle by demanding storage fees or charges for any number of days in excess of that permitted pursuant to subdivision (a), the prevailing party shall be entitled to reasonable attorney's fees, not to exceed one thousand seven hundred fifty dollars ($1,750). The recovery of those fees is in addition to any other right, remedy, or cause of action of that party.

(d) All storage and towing fees charged to a legal owner of a motor vehicle shall be reasonable. For purposes of this section, fees are presumed to be reasonable if they comply with subdivision (c) of Section 22524.5.

(e) This section is not applicable to any motor vehicle stored by a levying officer acting under the authority of judicial process.

**SEC. 2.** Section 22524.5 of the Vehicle Code is amended to read:

**22524.5.** (a) Any insurer that is responsible for coverage for ordinary and reasonable towing and storage charges under an automobile insurance policy to an insured or on behalf of an insured to a valid claimant, is liable for those charges to the person performing those services when a vehicle is towed and stored as a result of an accident or stolen recovery. The insurer may discharge the obligation by making payment to the person performing the towing and storage services or to the insured or on behalf of the insured to the claimant.

(b) Any insured or claimant who has received payment, which includes towing and storage charges, from an insurer for a loss relating to a vehicle is liable for those charges to the person performing those services.

(c) (1) All towing and storage fees charged when those services are performed as a result of an accident or recovery of a stolen vehicle shall be reasonable.

(2) (A) For purposes of this section, a towing and storage charge shall be deemed reasonable if it does not exceed those fees and rates charged for similar services provided in response to requests initiated by a public agency, including, but not limited to, the Department of the California Highway Patrol or local police department.

(B) A storage rate and fee shall also be deemed reasonable if it is comparable to storage-related rates and fees charged by other facilities in the same locale. This does not preclude a rate or fee that is higher or lower if it is otherwise reasonable.

(3) The following rates and fees are presumptively unreasonable:

(A) Administrative or filing fees, except those incurred related to documentation from the Department of Motor Vehicles and those related to the lien sale of a vehicle.

(B) Security fees.

(C) Dolly fees.

(D) Load and unload fees.

(E) Pull-out fees.

(F) Gate fees, except when the owner or insurer of the vehicle requests that the vehicle be released outside of regular business hours.

(d) Notwithstanding this section, an insurer shall comply with all of its obligations under Section 2695.8 of Chapter 5 of Title 10 of the California Code of Regulations.

(e) Nothing in paragraph (3) of subdivision (c) prohibits any fees authorized in an agreement between a law enforcement agency and a towing company, if the tow was initiated by the law enforcement agency.

**SEC. 3.** Section 22651.07 of the Vehicle Code is amended to read:

**22651.07.** (a) A person, including a law enforcement agency, city, county, city and county, the state, a tow yard, storage facility, or an impounding yard, that charges for towing or storage, or both, shall do all of the following:

(1) (A) Except as provided in subparagraph (B), post in the office area of the storage facility, in plain view of the public, the Towing and Storage Fees and Access Notice and have copies readily available to the public.

(B) An automotive repair dealer, registered pursuant to Article 3 (commencing with Section 9884) of Chapter 20.3 of Division 3 of the Business and Professions Code, that does not provide towing services is exempt from the requirements to post the Towing and Storage Fees and Access Notice in the office area.

(2) Provide, upon request, a copy of the Towing and Storage Fees and Access Notice to any owner or operator of a towed or stored vehicle.

(3) Provide a distinct notice on an itemized invoice for any towing or storage, or both, charges stating: "Upon request, you are entitled to receive a copy of the Towing and Storage Fees and Access Notice." This notice shall be contained within a bordered text box, printed in no less than 10-point type.

(b) Prior to receiving payment for any towing, recovery, or storage-related fees, a facility that charges for towing or storage, or both, shall provide an itemized invoice of actual charges to the vehicle owner or his or her agent. If an automotive repair dealer, registered pursuant to Article 3 (commencing with Section 9884) of Chapter 20.3 of Division 3 of the Business and Professions Code, did not provide the tow, and passes along, from the tower to the consumer, any of the information required on the itemized invoice, pursuant to subdivision (g) the automotive repair dealer shall not be responsible for the accuracy of those items of information that remain unaltered.

(c) Prior to paying any towing, recovery, or storage-related fees, a vehicle owner or his or her agent or a licensed repossessor shall, at any facility where the vehicle is being stored, have the right to all of the following:

(1) Receive his or her personal property, at no charge, during normal business hours. Normal business hours for releasing collateral and personal property are Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays.

(2) Retrieve his or her vehicle during the first 72 hours of storage and not pay a lien fee.

(3) (A) Inspect the vehicle without paying a fee.

(B) Have his or her insurer inspect the vehicle at the storage facility, at no charge, during normal business hours. However, the storage facility may limit the inspection to increments of 45 consecutive minutes in order to provide service to any other waiting customer, after which the insurer may resume the inspection for additional increments of 45 consecutive minutes, as necessary.

(4) Request a copy of the Towing and Storage Fees and Access Notice.

(5) Be permitted to pay by cash, insurer's check, or a valid bank credit card. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when agreeing with a towing or storage provider on rates.

(d) A storage facility shall be open and accessible during normal business hours, as defined in subdivision (c). Outside of normal business hours, the facility shall provide a telephone number that permits the caller to leave a message. Calls to this number shall be returned no later than six business hours after a message has been left.

(e) The Towing and Storage Fees and Access Notice shall be a standardized document plainly printed in no less that 10-point type. A person may distribute the form using its own letterhead, but the language of the Towing and Storage Fees and Access Notice shall read as follows:

Towing and Storage Fees and Access Notice

Note: The following information is intended to serve as a general summary of some of the laws that provide vehicle owners certain rights when their vehicle is towed. It is not intended to summarize all of the laws that may be applicable nor is it intended to fully and completely state the entire law in any area listed. Please review the applicable California code for a definitive statement of the law in your particular situation.

How much can a towing company charge?

Rates for public tows and storage are generally established by an agreement between the law enforcement agency requesting the tow and the towing company (to confirm the approved rates, you may contact the law enforcement agency that initiated the tow; additionally, these rates are required to be posted at the storage facility).

Rates for private property tows and storage cannot exceed the approved rates for the law enforcement agency that has primary jurisdiction for the property from which the vehicle was removed or the towing company's approved CHP rate.

Rates for owner's request tows and storage are generally established by mutual agreement between the requestor and the towing company, but may be dictated by agreements established between the requestor's motor club and motor club service provider.

Where can you complain about a towing company?

For public tows: Contact the law enforcement agency initiating the tow.

Your rights if your vehicle is towed:

Generally, prior to paying any towing and storage-related fees you have the right to:

● Receive an itemized invoice of actual charges.

● Receive your personal property, at no charge, during normal business hours.

● Retrieve your vehicle during the first 72 hours of storage and not pay a lien fee.

● Request a copy of the Towing and Storage Fees and Access Notice.

● Pay by cash, valid bank credit card, or a check issued by your insurer.

● Inspect your vehicle.

● Have your insurer inspect your vehicle at the storage facility, at no charge, during normal business hours. However, the storage facility may limit the inspection to increments of 45 consecutive minutes in order to provide service to any other waiting customer, after which the insurer may resume the inspection for additional increments of 45 consecutive minutes, as necessary.

You and your insurance company or the insurance company representative have the right to have the vehicle released immediately upon (1) payment of all towing and storage-related fees, (2) presentation of a valid photo identification, (3) presentation of reliable documentation showing that you are the owner, insured, or insurer of the vehicle or that the owner has authorized you to take possession of the vehicle, and (4), if applicable, in the case of a fatality or crime, presentation of any required police or law enforcement release documents.

Prior to your vehicle being repaired:

● You have the right to choose the repair facility and to have no repairs made to your vehicle unless you authorize them in writing.

● Any authorization you sign for towing and any authorization you sign for repair must be on separate forms.

What if I do not pay the towing and storage-related fees or abandon my vehicle at the towing company?

Pursuant to Sections 3068.1 to 3074, inclusive, of the Civil Code, a towing company may sell your vehicle and any moneys received will be applied to towing and storage-related fees that have accumulated against your vehicle.

You are responsible for paying the towing company any outstanding balance due on any of these fees once the sale is complete.

Who is liable if my vehicle was damaged during towing or storage?

Generally the owner of a vehicle may recover for any damage to the vehicle resulting from any intentional or negligent act of a person causing the removal of, or removing, the vehicle.

What happens if a towing company violates the law?

If a tow company does not satisfactorily meet certain requirements detailed in this notice, you may bring a lawsuit in court, generally in small claims court. The tower may be civilly liable for damages up to two times the amount charged, not to exceed $500, and possibly more for certain violations.

(f) “Insurer,” as used in this section, means either a first-party insurer or third-party insurer.

(g) “Itemized invoice,” as used in this section, means a written document that contains the following information. Any document that substantially complies with this subdivision shall be deemed an “itemized invoice” for purposes of this section:

(1) The name, address, telephone number, and carrier identification number as required by subdivision (a) of Section 34507.5 of the person that is charging for towing and storage.

(2) If ascertainable, the registered owner or operator’s name, address, and telephone number.

(3) The date service was initiated.

(4) The location of the vehicle at the time service was initiated, including either the address or nearest intersecting roadways.

(5) A vehicle description that includes, if ascertainable, the vehicle year, make, model, odometer reading, license plate number, or if a license plate number is unavailable, the vehicle identification number (VIN).

(6) The service dispatch time, the service arrival time of the tow truck, and the service completion time.

(7) A clear, itemized, and detailed explanation of any additional services that caused the total towing-related service time to exceed one hour between service dispatch time and service completion time.

(8) The hourly rate or per item rate used to calculate the total towing and recovery-related fees. These fees shall be listed as separate line items.

(9) If subject to storage fees, the daily storage rate and the total number of days stored. The storage fees shall be listed as a separate line item. Storage rates shall comply with the requirements of subdivision (c) of Section 22524.5.

(10) If subject to a gate fee, the date and time the vehicle was released after normal business hours. Normal business hours are Monday through Friday from 8:00 a.m. to 5:00 p.m., inclusive, except state holidays. A gate fee shall be listed as a separate line item. A gate fee shall comply with the requirements in subdivision (c) of Section 22524.5.

(11) A description of the method of towing.

(12) If the tow was not requested by the vehicle’s owner or driver, the identity of the person or governmental agency that directed the tow. This paragraph shall not apply to information otherwise required to be redacted under Section 22658.

(13) A clear, itemized, and detailed explanation of any additional services or fees.

(h) “Person,” as used in this section, includes those entities described in subdivision (a) and has the same meaning as described in Section 470.

(i) An insurer, insurer’s agent, or tow hauler, shall be permitted to pay for towing and storage charges by a valid bank credit card, insurer’s check, or bank draft.

(j) Except as otherwise exempted in this section, the requirements of this section apply to any facility that charges for the storage of a vehicle, including, but not limited to, a vehicle repair garage or service station, but not including a new motor vehicle dealer.

(k) A person who violates this section is civilly liable to a registered or legal owner of the vehicle, or a registered owner’s insurer, for up to two times the amount charged. Liability in any action brought under this section shall not exceed five hundred dollars ($500) per vehicle.

(l) A suspected violation of this section may be reported by any person, including, without limitation, the legal or registered owner of a vehicle or his or her insurer.

(m) This section shall not apply to the towing or storage of a repossessed vehicle by any person subject to, or exempt from, the Collateral Recovery Act (Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code).

(n) This section does not relieve a person from the obligation to comply with any other law.

(o) Notwithstanding this section, an insurer shall comply with all of its obligations under Section 2695.8 of Chapter 5 of Title 10 of the California Code of Regulations.