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AB-2876 Vehicles: removal and impound authority. (2017-2018)

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Assembly Bill No. 2876

CHAPTER 592

An act to amend Section 22650 of the Vehicle Code, relating to vehicle removal and impound.

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2876, Jones-Sawyer. Vehicles: removal and impound authority.

Existing law authorizes a peace officer to order the removal and storage of a vehicle under various circumstances including when the driver is incapacitated or has been arrested, the vehicle is unregistered, reported stolen, or has been used in a crime, or the vehicle is parked in a manner obstructing traffic or blocking access to a fire hydrant.

Judicial precedent deems the warrantless removal of a vehicle a seizure subject to the protections of the Fourth Amendment of the Constitution of the United States that is permissible only pursuant to a recognized exception to the warrant requirement. Case law permits removal of a vehicle by a peace officer in furtherance of an officer's criminal investigation function, such as removing a vehicle used in a crime for the collection or preservation of evidence, or pursuant to an officer's community caretaking function, such as removing a vehicle to safeguard the vehicle's contents, to ensure the safe flow of traffic, or to remove an illegally parked vehicle or a public nuisance. Case law has held that those statutory authorities that permit the removal of a vehicle when the driver is arrested are based on community caretaking and therefore may only reasonably be relied upon when the removal is reasonably necessary for a community caretaking reason such as safeguarding the vehicle or ensuring the flow of traffic.

This bill would clarify that the removal of a vehicle as authorized by California statute is also required to be constitutionally reasonable based on the specific situation.

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

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

SECTION 1. Section 22650 of the Vehicle Code is amended to read:

22650. (a) It is unlawful for a peace officer or an unauthorized person to remove an unattended vehicle from a highway to a garage or to any other place, except as provided in this code.

(b) Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.

(c) Those law enforcement and other agencies identified in this chapter as having the authority to remove vehicles shall also have the authority to provide hearings in compliance with the provisions of Section 22852. During these hearings the storing agency shall have the burden of establishing the authority for, and the validity of, the removal.

(d) This section does not prevent a review or other action as may be permitted by the laws of this state by a court of competent jurisdiction.