

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 2319 (Berman)
Version: March 2, 2020
Hearing Date: August 18, 2020
Fiscal: No
Urgency: No
AWM

SUBJECT

Tow truck operators: liens: exceptions

DIGEST

This bill harmonizes the means by which a former vehicle owner can avoid liability for unpaid towing and storage fees incurred by a subsequent owner with the means provided for avoiding all other civil and criminal liability as provided for in the Vehicle Code.

EXECUTIVE SUMMARY

As a general matter, the Vehicle Code provides that, when a person sells a vehicle, the former owner can avoid liability for injuries caused by the vehicle when the subsequent owner fails to re-register it by taking one of three steps: delivering the certificate of ownership (the “pink slip”); delivering a notice of transfer of liability to the DMV; or providing the DMV with the information to register the vehicle to the new owner.

In the specific circumstance of a vehicle that has been towed, however, the law allowing the former owner to avoid liability when the subsequent owner failed to re-register the vehicle is narrower. A towing company that tows and stores a vehicle obtains a lien on that vehicle, can sell the vehicle if the relevant fees go unpaid, and, if the sale price does not cover the fees, can seek the remainder through a deficiency claim against the registered owner of the vehicle. In this situation, if a new owner did not re-register the vehicle, the former owner would be liable for the deficiency judgment unless they executed and submitted a notice of transfer of liability to the DMV. As a result, former owners who followed one of the other two steps in the Vehicle Code for avoiding liability can nevertheless be liable for the cost of towing and storing their former vehicles.

This bill, sponsored by Copart, amends the Civil Code provisions relating to towing and storage fees so that a former owner can avoid liability for towing and storage fees

incurred by a subsequent owner using any of the three steps for avoiding liability generally. The bill is supported by the ACLU of California, CLICC, and the Western Center on Law and Poverty. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that, where a person tows a vehicle, stores a vehicle, or performs labor in connection with the recovery or load salvage of a vehicle, at the request of a public agency, authorized property owner, or the lessee, operator, or registered owner of the vehicle, a lien on the vehicle attaches in favor of the person who towed, stored, or performed labor on, the vehicle. (Civ. Code, § 3068.1(a)(1).)
- 2) Sets forth procedures for the lienholder to contact persons with an interest in the vehicle in order to provide notice of the lien and seek payment for the amounts expended in towing, stowing, or recovering the vehicle; for the persons with an interest in the vehicle to challenge the amounts owed; and, in the absence of a successful challenge, for the lienholder to sell the vehicle in a lien sale. (Civ. Code, §§ 3071-3072.)
- 3) Grants a deficiency claim to a tow truck operator who towed a vehicle pursuant to the provisions above, against the registered owner or lessee of the vehicle, for the amount of the towing and storage charges less the amount received from the lien sale of the vehicle. (Civ. Code, §§ 3068.2(a) & (b).)
- 4) Permits a registered owner who has sold or transferred their vehicle prior to the vehicle's removal and who was not responsible for creating the circumstances leading to the removal of the vehicle to avoid liability for the deficiency claim, only where the registered owner executes a notice pursuant to Vehicle Code section 5900 and submits that notice to the Department of Motor Vehicles. The person identified as the transferee in the executed notice shall be liable on the deficiency claim only if that person received notice of the transfer and is either responsible for the event leading to abandonment or requested the removal. (Civ. Code, § 3068.2(d).)
- 5) In circumstances other than a deficiency claim arising from a towed vehicle, permits a registered owner who has sold or transferred a vehicle to avoid civil or criminal liability for the parking, abandonment, or operation of the vehicle by another by making delivery and bona fide sale or transfer of the vehicle and fulfilling one of the following requirements:
 - a) Making proper endorsement and delivery of the certificate of ownership as provided in the Vehicle Code;
 - b) Delivering or mailing to the Department of Motor Vehicles a notice pursuant to Vehicle Code section 5900 or 5901; or

- c) Delivering or mailing to the Department of Motor Vehicles the appropriate documents and fees for registration of the vehicle to the new owner pursuant to the sale or transfer. (Veh. Code, §§ 5602, 17150.)

This bill:

- 1) Broadens the list of methods by which a registered vehicle owner who sold or transferred the vehicle and is not responsible for the conditions requiring the removal of the vehicle becomes exempt from liability for any deficiency judgment following a lien sale, so that the requirements for exemption of liability for a deficiency judgment following the lien sale matches the requirements for exemption of liability in all other circumstances.

COMMENTS

1. Author's statement

According to the author:

When selling or transferring a vehicle, a person must complete the proper paperwork to ensure they are not held liable for the parking, abandoning, or operation of the vehicle after it is sold or transferred. California Vehicle Code section 5602 sets forth three means by which an owner who has made a bona fide sale or transfer of a vehicle can absolve herself of future liability. However, the Civil Code lays out a more rigid requirement for a vehicle owner to be released of liability in the specific case of a deficiency claim by a tow truck operator for outstanding towing and storage debt. Due to this inconsistency between the two code sections, a person who has made a bona fide sale of their vehicle and fulfilled the requirements of Vehicle Code 5602 to be released from civil and criminal liability may still be sued by a tow truck company for a deficiency on a vehicle that they properly sold months or years prior to the tow. Thousands of consumers have been sued for towing debt on cars they no longer own.

Consumers should not have to follow a separate set of requirements to be released of liability just for towing and storage charges if they have already complied with existing requirements to release themselves of all other civil and criminal liability. AB 2319 would fix the discrepancy in current law between the Vehicle Code 5602 and Civil Code 3068.2 on the past owner's liability for towing and storage fees on a vehicle they properly sold. This bill will create consistency in statute so there is a clear and uniform standard on how a person can be released of liability over a vehicle after they sell or transfer it.

2. This bill eliminates a gap in the law that allows prior owners of vehicle to be held liable for towing and storage costs incurred by others.

AB 2319 is a commonsense bill to fill an inexplicable gap in the law. As it stands, the Vehicle Code provides three means by which a former vehicle owner can avoid liability for injuries incurred by a subsequent owner who fails to re-register the vehicle. The Vehicle Code's release-of-liability provisions are apparently absolute: the statute purports to release a former owner from "civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter," without qualification, when the owner takes one of the three provided steps.¹ Consumers thus have no reason to suspect that a completely separate provision of the Civil Code effectively renders two of those three steps insufficient to eliminate liability for towing and storage fees incurred by a subsequent owner.²

The perverse result created by the Civil Code's narrower provisions – wherein a former owner has properly eliminated liability under the Vehicle Code, but then is held liable for a deficiency judgment arising from a subsequent owner's towing fees – is not theoretical. Bill sponsor Copart and supporter ACLU of California both note that thousands of prior owners have been sued for towing and storage costs incurred by subsequent owners. Prior owners have, in litigation, argued that compliance with the broader Vehicle Code provisions should suffice in the context of towing and storage fee liability, but Courts of Appeal have rejected those arguments in light of the Civil Code's more specific requirements.³

No party has stepped forward to defend the existing gap in the law, and it is difficult to imagine any justification for it. While towing companies do bear some risk of nonpayment when they tow and store vehicles, reducing that risk by imposing liability on former owners – who reasonably relied on the Vehicle Code and believed they took the necessary steps to avoid liability – is not a just approach. By eliminating the inconsistency between the Vehicle Code and Civil Code's liability provisions, AB 2319 protects consumers from the bait-and-switch currently baked into the law and ensures they will not be liable for unfair judgments.

SUPPORT

Copart (sponsor)
ACLU California

¹ Veh. Code, § 5602; *see Durbin v. Fletcher* (1985) 165 Cal.App.3d 334, 342 ["When a transferor fails to comply with applicable Vehicle Code transfer provisions, subsequent transferees and their permissive users are considered permissive users of the original transferring owner"].)

² *See* Civ. Code, § 3068.2.

³ *See, e.g., Mares v. Lien Enforcement, Inc.* (2016) 2016 Cal.App.Unpub. LEXIS 7188, *26-27; *Powers v. Lien Enforcement, Inc.* (2017) 2017 Cal.App.Unpub. LEXIS 3315, *19-21.

California Low-Income Consumer Coalition
Western Center on Law and Poverty

OPPOSITION

None known.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 516 (Mullin, Ch. 90, Stats. 2016) added provisions to the Vehicle Code to allow a lessor of a vehicle, upon the transfer or sale of the vehicle to another, to notify the Department of Motor Vehicles of the transfer, which serves to release the lessor from liability arising from the vehicle caused thereafter.

AB 1884 (Lowenthal, 2014) would have modified the procedures by which a tow truck company or other authorized person could locate and contact the owner or lessor of a vehicle in contemplation of a lien sale. The bill was held in the Assembly Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 75, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
