
THIRD READING

Bill No: AB 797
Author: Steinorth (R) and Santiago (D), et al.
Amended: 6/6/16 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-0, 6/14/16
AYES: Jackson, Moorlach, Anderson, Hertzberg, Leno, Monning, Wieckowski

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 6/28/16
AYES: Hancock, Anderson, Glazer, Leno, Liu, Monning, Stone

ASSEMBLY FLOOR: 77-0, 4/30/15 (Consent) - See last page for vote

SUBJECT: Motor vehicles: rescue or provision of care for animal: civil and criminal liability

SOURCE: Humane Society of the United States
Los Angeles County District Attorney

DIGEST: This bill provides a person civil immunity from any property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing an animal in accordance with specified law. This bill also provides that such immunity does not affect a person's civil liability or immunity from civil liability for rendering aid to an animal. Additionally, this bill: (1) applies existing law responsibilities of peace officers, humane officers, or animal control officers who remove an animal from a vehicle to firefighters or other emergency responders as well; (2) specifies that existing law does not prevent a person from taking reasonable steps that are necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety appears to be in immediate danger, as specified; and (3) provides that such a person is not criminally liable for actions taken reasonably and in good faith, as specified.

ANALYSIS:

Existing law:

- 1) Provides, generally, that every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.
- 2) Provides that every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights. Existing case law provides that an act, which in many cases is itself lawful, becomes unlawful when by [the act] damages have accrued to the property of another. (*Colton v. Onderdonk* (1886) 69 Cal. 155, 159.) Existing case law provides that, in general, if a voluntary act, lawful in itself, may naturally result in the injury of another, or in the violation of his legal rights, the actor must at his peril see to it that such injury or violation does not follow, or he must expect to respond in damages therefor, regardless of the motive or degree of care with which the act is performed. (*McKenna v. Pacific E. R. Co.* (1930) 104 Cal.App. 538, 542 (internal citation omitted).)
- 3) Provides that everyone is responsible, not only for the result of his or her willful acts, but also for an injury to another caused by his or her lack of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or from lack of ordinary care, brought the injury upon himself or herself.
- 4) Provides that the ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In the Civil Code, the thing of which there may be ownership is called property. Provides, separately, that there may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of a business, trademarks and signs, and of rights created or granted by statute. Provides that property is either: (a) real or immovable; or (b) personal or movable. Provides that every kind of property that is not real is personal.
- 5) Provides, under Section 597.7 of the Penal Code, that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. A person who violates this law would be subject to specified fines and penalties.

- 6) Provides, under Section 597.7 of the Penal Code, that nothing in this law prevents a peace officer, humane officer, or an animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. Authorizes the officer to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort to locate the owner or other person responsible. Requires, further, the officer to take the animal to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment, and to leave a written notice on the car, as specified, including the address of the location where the animal can be claimed.
- 7) Provides that Section 597.7 does not affect in any way existing liabilities or immunities in current law, or create any new immunities or liabilities.

This bill:

- 1) Applies the provisions of Section 597.7, above, for peace, humane, and animal control officers to firefighters and other emergency responders, as well.
- 2) Provides that Section 597.7 does not prevent a person from taking reasonable steps that are necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. Provides, further, that a person who removes an animal in accordance with that provision is not criminally liable for actions taken reasonably and in good faith, if the person meets certain other requirements. For example, the person must:
 - Determine the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;
 - Contact a local law enforcement agency, the fire department, animal control, or the "911" emergency service prior to forcibly entering the vehicle;
 - Use no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and
 - Immediately turn the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.

- 3) Adds a new civil statute to provide that there shall not be any civil liability on the part of, and no cause of action shall accrue against, a person for property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing an animal in accordance with the standards in the Penal Code provisions, above. Provides that this immunity does not affect a person's civil liability or immunity from civil liability for rendering aid to an animal.
- 4) Makes other conforming and technical changes.

Background

In 2006, recognizing that animals left unattended inside closed vehicles in the heat, even for short periods of time, can suffer severe injury and death and that even moderately warm temperatures outside can quickly lead to deadly temperatures inside a closed car, California enacted SB 1806 (Figueroa, Chapter 431, Statutes of 2006) to prohibit a person from leaving or confining an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. SB 1806, establishing Section 597.7 of the Penal Code, among other things, established various criminal fines and penalties for anyone who violated that law and expressly stated that the resulting statute does not prevent a peace officer, humane officers, or animal control officers from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger, as specified. In doing so, however, the bill further required that the peace officer, humane officer, or animal control officer take the animal to an animal shelter or other place of safekeeping, or, if the officer deems necessary, to a veterinary hospital for treatment. Pursuant to Section 597.7, an officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, *after* a reasonable effort to locate the owner or other person responsible. While the bill originally provided for both civil and criminal immunity, ultimately, it was amended to remove that language. The resulting statute, in fact, expressly states that it does not affect in any way existing liabilities or immunities in current law, or create any new immunities or liabilities. (*See* Pen. Code Sec. 597.7.)

According to the proponents of this bill, co-sponsored by the Los Angeles County District Attorney's Office (LADA) and the Humane Society of the United States, animals continue to be left in unattended vehicles, despite educational efforts and the fact that owners risk fines and imprisonment. At the same time, bystanders hesitate to take life-saving actions to rescue an animal whose safety is in

immediate danger out of fear of both civil and criminal liability. The LADA cites an example with current law that their office was made aware of: “In this tragic case a bystander noticed a dog that had collapsed on the floor of a locked vehicle on a warm summer day. The bystander called 911 and waited for emergency service personnel to arrive. As the bystander waited other people gathered around the vehicle waiting for emergency services to arrive. As the[y] waited, they watched as the animal continued to suffer and eventually die. The bystanders told law enforcement that they considered making entry to the vehicle but decided against taking action because they were afraid of being arrested or sued.”

Accordingly, this bill now seeks to grant immunity from both civil and criminal liability to any person who takes reasonable steps that are necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal’s safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal, and the person meets certain statutory requirements. Those requirements include, among other things, that the person: (1) contacts a local law enforcement agency, the fire department, animal control, or the “911” emergency service prior to forcibly entering the vehicle; (2) uses no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and (3) immediately turns the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.

Comments

As stated by the author:

California’s existing “Good Samaritan” statute does not protect a person from liability from acting to rescue an animal facing imminent danger from being trapped in a hot car. As a result, well-intentioned people who notice an animal illegally left in an unattended vehicle are unable to act to save the pet from potential heat exhaustion or death in the event that law enforcement or emergency responders are unable to arrive in time to act.

AB 797 establishes immunity from civil liability for any person who acts to rescue an animal facing imminent danger while left unattended in a vehicle. In order to receive such legal immunity, the person must follow specific steps identified in this legislation prior to entering the vehicle. These steps include:

- (1) Determining the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;

- (2) Have a good faith belief that forcible entry into the vehicle is necessary because the animal is in imminent danger of suffering harm if not immediately removed from the vehicle, and based upon the circumstances known to the person at the time, the belief is reasonable;
- (3) Contact local law enforcement prior to forcibly entering the vehicle.

To enter the vehicle, the person is required to use no more force than necessary to enter the vehicle and remove the animal from the vehicle. Following entry into the vehicle to rescue the animal, the person is required to remain with the animal at a safe location, out of the elements but reasonably close to the vehicle, until an emergency responder arrives.

The person rescuing the animal will *only* receive criminal and civil immunity *if each and every one of the above steps are followed*. [Emphasis in original.]

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/12/16)

Humane Society of the United States (co-source)
 Los Angeles County District Attorney (co-source)
 ASPCA
 Best Friends Animal Society
 Civil Justice Association of California
 Councilmember David J. Toro, City of Colton
 Humane Society Veterinary Medical Association
 Marin Humane Society
 San Bernardino County Sheriff John McMahon
 San Diego County District Attorney's Office
 San Diego Humane Society
 San Francisco SPCA
 Social Compassion in Legislation
 One individual

OPPOSITION: (Verified 7/18/16)

American Kennel Club
 California Federation of Dog Clubs
 The Animal Council

ARGUMENTS IN SUPPORT: The Los Angeles County District Attorney's Office, co-sponsor of this bill, writes that:

Every year, hundreds of animals suffer, and many die, in Los Angeles County from being left in hot vehicles. Even when temperatures are in the low 70s and a car's windows are left slightly open, a vehicle can heat up more than 40 degrees within an hour. If an animal's safety appears to be in immediate danger, California Penal Code [S]ection 597.7 allows peace officers, human officers, and animal control officers to take any reasonable steps to remove the animal from a vehicle, including, but not limited to, breaking into the vehicle. The section does not, however, allow civilians to physically remove an animal from a vehicle, regardless of how urgent or life-threatening the situation is. Currently, civilians in California who observe an animal in immediate danger are not permitted to do anything, other than attempt to find the animal's owner (which can prove to be difficult, if not impossible, and time-consuming) and/or notify the authorities. By the time a citizen spots an animal trapped in a hot vehicle, the situation is often dire, and requires immediate action. Because a call of this nature is not a priority for law enforcement, peace officers may not respond in time. Due to the very limited resources of animal control agencies across the state, as much as animal control officers would like to respond quickly to a call of an animal in a hot vehicle, it is not always feasible." [. . .]

The co-sponsor, Humane Society of the United States, writes that "[p]lenty of Californians have come across animals in need of rescue from parked cars on hot days, but aren't sure what to do and fear being sued or arrested if they take unauthorized steps to free an animal. [. . .] AB 797 includes thoughtful language that increases protection for animals but also prevents vigilantism. Intervention is carefully defined and kept as a last resort only to be used when all other options have been exhausted and the animal is in visible distress. This bill also spells out steps for after an animal has been removed to ensure that emergency care is provided and pets are returned to their owners appropriately."

ARGUMENTS IN OPPOSITION: The California Federation of Dog Clubs (CFODC) states in opposition:

It would be impossible in most cases to determine if a dog is in "imminent danger from heat, cold, lack of adequate ventilation, lack of food or water, or other [undefined] circumstances that could reasonably be expected to cause suffering, disability, or death to the animal." [. . .] There have already been many cases where well-intended bystanders broke into a vehicle to "rescue" a dog, alarmed because it may be exhibiting normal, non-distressed behavior like panting or barking, or may be safely confined in a crate. A "rescuer" could put himself at risk of being bitten, put the dog at risk of being lost or hit by a car, and put the public at risk due to an escaped dog-at-large. The unfortunate

owner could find himself liable for unwarranted damages to his property, suffering the loss of his pet and would have no recourse for damage to the car or the loss or death of his dog in the course of the “rescue.” He may even find himself sued for a dog bite situation!

This bill is of particular concern to those who participate in dog events and activities involving multiple dogs which may spend time being responsibly housed in a motor home or other vehicle. Dog enthusiasts are highly aware of the dangers of temperature extremes in vehicles, and are rarely guilty of putting their valued animals at-risk in such dangerous situations.

The CFODC believes that “rescue” should be handled by professionals who, in the vast majority of cases, can be on the scene within minutes, and who are better prepared and equipped to deal with assessment and intervention in such situations. [Emphasis omitted.]

ASSEMBLY FLOOR: 77-0, 4/30/15

AYES: Achadjian, Alejo, Travis Allen, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Chang, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gonzalez, Gordon, Gray, Grove, Hadley, Harper, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Perea, Quirk, Rendon, Ridley-Thomas, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Atkins

NO VOTE RECORDED: Campos, Chávez, Gomez

Prepared by: Ronak Daylami / JUD. / (916) 651-4113
7/29/16 10:43:33

**** END ****