

Date of Hearing: August 23, 2016

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 797 (Steinorth) – As Amended August 1, 2016

FOR CONCURRENCE

SUBJECT: MOTOR VEHICLES: RESCUE OR PROVISION OF CARE FOR ANIMAL:
CIVIL AND CRIMINAL LIABILITY

KEY ISSUE: SHOULD A PERSON WHO REASONABLY AND IN GOOD FAITH BELIEVES THAT AN ANIMAL IS IN IMMEDIATE DANGER IF NOT REMOVED FROM A LOCKED VEHICLE BE IMMUNIZED FROM CIVIL AND CRIMINAL LIABILITY IF HE OR SHE FOLLOWS SPECIFIED STEPS TO FORCIBLY GAIN ENTRY TO THE VEHICLE AND RESCUE THE ANIMAL?

SYNOPSIS

Despite existing law that prohibits pet owners from leaving an animal unattended in a vehicle under dangerous conditions, and despite public awareness campaigns warning against this practice, proponents of this bill report that citizens continue to call law enforcement hundreds of times per year to help rescue animals from unattended vehicles because they believe are endangered, usually because of hot temperatures inside. These proponents, including the Humane Society of the United States and the Los Angeles County District Attorney, also contend that many of these callers express the desire to rescue the animals themselves by breaking into the vehicle, but are deterred from taking action due to fear of being sued or possibly arrested. Indeed, while existing law does not prevent law enforcement and emergency responders from forcibly entering a vehicle to rescue an animal, a bystander who takes matters into his or her own hands and breaks into a car to rescue an animal potentially faces civil or criminal liability, depending on the circumstances. The goal of this bill--to encourage people to take action to potentially save the life of an animal left unattended in a vehicle and facing immediate danger—appears to be in line with other measures passed by the Legislature in recent years that provide immunity from liability for lay people who voluntarily do something they are not obligated to do, such as render medical aid in certain emergency situations, in order to prevent death and injury.

Accordingly, in order to encourage bystanders to rescue endangered animals from vehicles and prevent unnecessary suffering and death of animals, this bill seeks to establish qualified immunity from civil and criminal liability for property damage or trespass to a vehicle for any person who reasonably and in good faith takes prescribed steps to rescue an animal facing imminent danger from an unattended motor vehicle. The specific steps outlined by this bill include, among other things: (1) determining the vehicle is locked or that there is otherwise no reasonable manner for the animal to be removed from the vehicle; (2) contacting local law enforcement prior to forcibly entering the vehicle; (3) using no more force than necessary to enter the vehicle; and (4) immediately turning the animal over to law enforcement personnel who respond to the scene. The civil and criminal immunity provided by this bill is contingent upon all of the specified steps being followed, but only extends to property damage or trespass to a vehicle, and not more broadly to rendering aid to the animal itself or any other liability that may arise. The bill is opposed by groups of dog owners, including the American Kennel Club and the California Federation of Dog Clubs, who contend that rescuing animals should strictly be

handled by law enforcement responders, not Good Samaritans, and that the bill could have unintended consequences.

SUMMARY: Exempts a person from civil and criminal liability for property damage or trespass to a motor vehicle if the property damage or trespass occurred while the person was rescuing an animal under specified circumstances. Specifically, **this bill:**

- 1) Provides that a person is not prevented 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.
- 2) Provides that a person who removes an animal from a vehicle in accordance with 1) above is not criminally liable for actions taken reasonably and in good faith if the person does all of the following:
 - a) Determines the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle.
 - b) Has a good faith belief that forcible entry into the vehicle is necessary because the animal is in imminent danger of suffering harm if it is not immediately removed from the vehicle, and, based upon the circumstances known to the person at the time, the belief is a reasonable one.
 - c) Has contacted a local law enforcement agency, the fire department, animal control, or the "911" emergency service prior to forcibly entering the vehicle.
 - d) Remains with the animal in a safe location, out of the elements but reasonably close to the vehicle, until a peace officer, humane officer, animal control officer, or another emergency responder arrives.
 - e) Used no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances.
 - f) Immediately turns the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.
- 3) Provides 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 provisions specified in 2) above. Clarify that this immunity from civil liability for property damage to a motor vehicle does not affect a person's civil liability or immunity from civil liability for rendering aid to an animal.
- 4) Clarifies that firefighters are included among those public officers that are authorized under existing law to follow specified procedures to rescue an animal from a motor vehicle.

EXISTING LAW:

- 1) Prohibits 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, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. (Penal Code Section 597.7 (a). All further references are to this code unless otherwise stated.)
- 2) Provides that a first conviction for violation of the above rule is punishable by a fine not exceeding one hundred dollars (\$100) per animal, unless the animal suffers great bodily injury, in which case the violation is punishable by a fine not exceeding five hundred dollars (\$500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment. Further provides that any subsequent violation of this section, regardless of injury to the animal, is also punishable by a fine not exceeding five hundred dollars (\$500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment. (Section 597.7 (b).)
- 3) Provides that these provisions do not prevent any peace officer, humane officer, or animal control officer from following specified procedures to rescue an animal from a motor vehicle. (Section 597.7 (c).)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: This bill co-sponsored by the Humane Society of the United States and the Los Angeles County District Attorney, seeks to establish qualified immunity from civil and criminal liability for property damage or trespass to a motor vehicle for any person who reasonably and in good faith takes prescribed steps to rescue an animal facing imminent danger from an unattended motor vehicle. According to the author:

Leaving an animal unattended in a vehicle in harmful conditions is currently against the law. Unfortunately, many pet owners are unaware of how quickly temperatures rise inside of a car, even on a mildly warm day. The statistics are staggering: Even when it is 80 degrees outside, a car can heat up to 99 degrees in just 10 minutes, and can reach 114 degrees in 30 minutes. [citation omitted.]

Citizens call law enforcement hundreds of times per year to report dogs stuck suffering in hot cars. Unfortunately, these cases are not always the top priority of our law enforcement, and they may not arrive in time to save the animal's life – meanwhile, the Good Samaritan citizen is left standing by, watching an animal suffer, scared to act out of a legitimate fear for legal repercussions. AB 797 establishes civil and criminal legal immunity for any person who acts to rescue an animal facing imminent danger while left unattended in a vehicle. . . (The bill) provides legal assurance to Good Samaritan citizens that if they take action to save an animal from a cruel, hot-car death, they cannot be sued for rescue-related vehicle damages.

Background on liability associated with unattended animals in motor vehicles. In 2006, the Legislature enacted SB 1806 (Figueroa), Ch. 431, Stats. 2006, which prohibits any 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, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering,

disability, or death to the animal. Under this statute, Penal Code Section 597.7, a person who violates this law faces criminal penalties from up to \$100 for a first conviction if the animal does not suffer great bodily injury, or up to \$500 and six months' in county jail, or both, if the animal does suffer great bodily injury.

At the same time, SB 1806 created a framework for peace officers, humane officers, and animal control officers to legally remove an animal from a motor vehicle if the animal's safety appears to be in immediate danger, as specified. Under 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. In addition, the officer must take the animal to an animal shelter or other place of safekeeping, or, if deemed necessary, to a veterinary hospital for treatment.

While SB 1806 initially authorized both civil and criminal immunity, the bill was subsequently amended to remove the immunity language. Instead, the bill was amended to say that it does not affect existing liabilities or immunities in current law, or create any new immunities or liabilities. (Section 597.7 (c)(5).) Put another way, the legislation deliberately sought to not affect existing liability or immunity from liability for damaging a car to rescue an animal; for injury to an animal being rescued; or for injury to another person caused by the "rescued" animal after being freed from confinement in the vehicle (e.g. an escaped dog at-large).

Background on immunity from liability under Good Samaritan laws. Generally speaking, under California law, everyone is responsible for the result of his or her willful acts, and for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person. (Civil Code Section 1714 (a).) Existing law also establishes that every person has a duty to abstain from injuring the person or property of another, or infringing upon any of his or her rights. (Civil Code Section 1708.) Case law provides that an otherwise lawful act can become unlawful when it causes damage to the property of another. (See *Colton v. Onderdonk* (1886) 69 Cal. 155, 159.) In general, if a voluntary act, lawful in itself, may naturally result in the injury of another, or in the violation of his or her legal rights, the actor must see to it that such injury or violation does not follow, or must expect to be liable for damages—regardless of his or her motive or the degree of care with which he or she performed the act. (See *McKenna v. Pacific E. R. Co.* (1930) 104 Cal.App. 538, 542.)

Under existing common law tort rules, a person who voluntarily comes to the aid of another person suffering a medical emergency is immune from liability so long as that person acts in a reasonably prudent manner under the circumstances. In addition, in 2009, California adopted a so-called "Good Samaritan" statute which grants qualified immunity to any person who renders medical or non-medical aid in an emergency, so long as that person acts in good faith and not for compensation, and so long as that person's conduct is not grossly negligent or willful or wanton. (Health & Safety Code Section 1799.102.) Notably, this statute applies to the rendering of "emergency medical or non-medical care," which has never been interpreted to apply to the rescue of an animal, rather than a human being.

In recent years this Committee has heard, and the Legislature has enacted, legislation providing immunity from liability for lay people who voluntarily render medical aid in certain emergency situations, such as administering cardiopulmonary resuscitation (CPR) or applying an automated external defibrillator (AED). In each of those cases, qualified immunity from liability was approved in order to promote the policy goal of encouraging bystanders to intervene in an

emergency situation to render assistance and even save the life of another person. In the same vein, this bill seeks similar qualified immunity to encourage people to take action to potentially save the life of an animal left unattended in a vehicle and facing immediate danger.

Anecdotal evidence indicates continuing need to encourage rescue of animals from unattended vehicles. Despite existing law that prohibits leaving animals unattended in dangerous conditions, and despite education campaigns warning against this practice, proponents of this bill report that animals continue to be left in unattended vehicles in alarming numbers. According to “My Dog Is Cool,” an organized campaign which seeks to educate citizens about the dangers of hot-car animal deaths: (1) the Sacramento, CA region reported receiving 50 calls to 9-1-1 about dogs left in hot cars in June 2014; (2) the British Columbia SPCA reported receiving 228 calls to rescue dogs that had been left in hot cars in June 2014; and (3) the Davis County Animal Care and Control in Salt Lake City, UT reported receiving 150 calls about dogs being left in cars from June to Aug 2013. (See <http://mydogiscool.com/newsroom/hot-car-incidents>.)

According to the Los Angeles County District Attorney’s Office (LACDA), existing law should be updated to remove the fear of liability as a deterrent against rescuing animals in unattended vehicles from dangerous conditions. They state:

One of the most common questions our Animal Cruelty Coordinator gets from members of the public is whether they can legally make entry into a vehicle to save an animal. When our office tells them that the law only allows law enforcement and animal control officers to forcibly remove an animal from a vehicle, most express frustration and say they are often torn about what action, if any, to take when they see an animal in a hot car. As much as people would like to help an animal trapped in a vehicle, they are often deterred from taking action due to fear of being sued and/or arrested.

In (one) 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 they waited, they watched as the animal continued to suffer and eventually die. The bystanders told law enforcement that they considered entering into the vehicle but decided against taking action because they were afraid of being arrested or sued.

Specified steps for receiving qualified immunity for rescuing an animal from an unattended vehicle. In order to further encourage the rescue of animals in such circumstances, this bill would authorize a person to take 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.

In order to receive immunity from criminal and civil liability under this bill, a person seeking to rescue an animal must strictly follow specific steps identified by this bill prior to entering the vehicle, including: 1) determine the vehicle is locked or that 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; and 3) contact local law enforcement prior to forcibly entering the vehicle. In addition, the person is required: 4) to use no more force than necessary to enter the vehicle and remove the animal from the vehicle; 5) to remain with the animal at a safe location after gaining entry into the vehicle, reasonably close to the vehicle, until an emergency responder arrives; and 6) immediately turn the animal over to law enforcement or other emergency responder who responds to the scene.

If all of these steps are followed, the bill provides the rescuing person immunity from civil liability *for property damage or trespass to the vehicle*. Importantly, however, the bill is crafted to ensure that this qualified immunity does not affect a person's civil liability for rendering aid to the animal itself. Thus, a person still has a duty to act reasonably in rendering aid to the animal itself, or potentially be held liable for any injury or harm arising from rendering such aid (as the bill only provides immunity for damage to the vehicle.)

The bill also provides immunity from criminal liability for actions taken reasonably and in good faith if the person follows the above specified steps in removing an animal from an unattended vehicle. According to the LACDA, a rescuer acting reasonably and in good faith would lack the specific intent which is an element of most crimes that could be charged against a person for breaking into a vehicle. However, there may be some general intent crimes that could conceivably be charged. While it is unlikely that a person acting in good faith to rescue an animal would be charged with a crime or sued in any case, this bill will remove the possibility by immunizing the rescuer as long as he or she follows the steps set forth in the bill.

Other clarifying amendments. The bill also makes clarifying amendments to existing law outlining the responsibilities of law enforcement and other public officers in removing animals from a motor vehicle. First, the bill clarifies that firefighters and other emergency responders are included among those public officers that are authorized under existing law to follow specified procedures to rescue an animal from a motor vehicle. Second, the bill clarifies that certain responsibilities apply not only when the official directly removes an animal from a vehicle, but also when the official indirectly takes possession of or receives an animal that has been removed from a vehicle by another person. Finally, the bill clarifies that the owner of an animal removed from a vehicle may be required to pay for charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal after an emergency responder has taken the animal to a shelter or veterinary hospital pursuant to this bill.

ARGUMENTS IN SUPPORT: The bill is supported by a number of animal welfare and advocacy groups, including the ASPCA, the Humane Society Veterinary Medical Association, and the Humane Society of the United States. HSUS writes in support:

(This bill) 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.

Every year, thousands of our companion animals succumb to heatstroke in hot, unattended vehicles. Many times concerned citizens and law enforcement can locate the car's owner in time to take the necessary steps to keep the animal safe. However, there are situations when concerned citizens are unable to find the owner or law enforcement or animal control is tending to other priorities and can't arrive in time to rescue the animal.

And minutes do matter when an animal is trapped in a hot car. Protecting animals from an agonizing death is a problem we can all agree to prevent. AB 797 is an important, bi-partisan step toward achieving a more humane California, and a chance to avoid unnecessary animal suffering.

ARGUMENTS IN OPPOSITION: The bill is opposed by the American Kennel Club (AKC), the Animal Council, and the California Federation of Dog Clubs (CFODC), who contend that the bill could result in unintended consequences. CFODC states:

When was the last time you left your dog supplied with food and water in the car while you made a quick stop at the market on a cool day? There have already been many cases where well-intended bystanders broke into a vehicle to "rescue" a dog, alarmed simply because it may be exhibiting normal, non-distressed behavior like panting or parking, 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 loss or death of his dog in the course of the "rescue."

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.

REGISTERED SUPPORT / OPPOSITION:

Support

Humane Society of the United States (co-sponsor)
 Los Angeles County District Attorney (co-sponsor)
 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

Opposition

American Kennel Club
 California Federation of Dog Clubs
 The Animal Council

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