

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2015-2016 Regular Session

AB 797 (Steinorth and Santiago)

Version: June 6, 2016

Hearing Date: June 14, 2016

Fiscal: No

Urgency: No

RD

SUBJECT

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

DESCRIPTION

This bill would provide 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 would also provide, however, 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 would: (1) expand existing provisions applying to the responsibilities of peace officers, humane officers, or animal control officers upon removing an animal from a vehicle to also apply to firefighters or other emergency responders; (2) specify 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) would provide that such a person is not criminally liable for actions taken reasonably and in good faith, as specified.

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, Ch. 431, Stats. 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 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 Los Angeles County District Attorney's Office 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.

CHANGES TO EXISTING LAW

Existing law provides that, besides the personal rights mentioned or recognized in the Government Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations. (Civ. Code Sec. 43.)

Existing law 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. (Civ. Code Sec. 1708.) 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).)

Existing law 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. (Civ. Code Sec. 1714(a).)

Existing law 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. (Civ. Code Sec. 654.) Existing law provides 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. (Civ. Code Sec. 655.) Existing law provides that property is either: (1) real or immovable; or (2) personal or movable. (Civ. Code Sec. 657.) Existing law provides that every kind of property that is not real is personal. (Civ. Code Sec. 663.)

Existing law, Section 597.7 of the Penal Code, provides 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. (Pen. Code Sec. 597.7(a), (b).)

Existing law further provides 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. Existing law 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. Existing law further requires 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. (Pen. Code Sec. 597.7(c).)

Existing law 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. (Pen. Code Sec. 597.7(c)(5).)

This bill would apply the provisions, above, for peace officers, humane officers, and animal control officers to firefighters and other emergency responders, as well.

This bill would provide 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. This bill would further provide 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.

This bill would add 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. This bill would further provide that this immunity from civil liability for property damage to a motor vehicle established does not affect a person's civil liability or immunity from civil liability for rendering aid to an animal.

This bill would make other conforming and technical changes.

COMMENT

1. Stated need for the bill

According to 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.]

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." Accordingly, they write, "AB 797 will provide a legal framework for a Good Samaritan to follow in order to remove an animal from a hot car, without fear of legal repercussions."

2. Civil liability and Good Samaritan laws, generally

Civil liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others, and the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty. Fundamentally, California law provides as a general rule that everyone is responsible, for both 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. (Civ. Code Sec. 1714(a); though the statute recognizes an exception to this rule where the person injured has, willfully or from lack of ordinary care, brought the injury upon him or herself.) California law also provides that the duty of every person to abstain from injuring the person or property of another, or infringing upon any of his or her rights. (Civ. Code Sec. 1708.) Indeed, under case law, it is clear 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 legal rights, the actor must see to it that such injury or violation does not follow, or he must expect to be liable for damages – regardless of his motive or the degree of care with which he performed the act. (*See McKenna v. Pacific E. R. Co.* (1930) 104 Cal.App. 538, 542 (internal citation omitted).)

Although immunity provisions are rarely preferable because they, by their nature, prevent an injured party from seeking a particular type of recovery, the Legislature has, in limited scenarios, approved limited immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Along these lines, this Legislature has, on multiple occasions, enacted legislation that encourages the use of life saving medications or medical interventions (such as automatic external defibrillators (AEDs), epinephrine auto-injectors (epi-pens), and opioid antagonists) in order to avoid preventable deaths by limiting the liability of "Good Samaritans," as long as certain minimal requirements are met. In most of those scenarios, the qualified immunity does not apply in the case of personal injury or wrongful death which results

from the gross negligence or willful or wanton misconduct by the person who renders the care. (See e.g. Civ. Code Sec. 1714.21.)

This bill seeks to now provide Good Samaritans who act reasonably to save the life of an animal whose life is in immediate danger, as specified, with immunity from civil and criminal liability.

3. Bill appears to craft a narrow immunity for the reasonable actions of a Good Samaritan to rescue an animal whose safety is in immediate danger

Currently, California law Section 597.7 of the Penal Code makes it unlawful for a person to leave their animals unattended in a 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. While this law authorizes peace officers, animal control officers, and humane officers to take reasonable steps to save the life of an animal trapped in an unattended vehicle, even if they must break into the car to do so, it is silent on the ability of citizen bystanders to act to save the life of the animal in the same situation. As a practical matter, the only legally-sound options available to a bystander are to attempt to track down the owner or to call for help. Some might argue that a reasonable person in this situation would even go as far as to break into the car to save the animal's life in the circumstances described by proponents, but, ultimately, there is no assurance that a court would agree if the person were to in fact be sued by the animal's owner for the damage caused to their car.

Accordingly, this bill would create a new civil immunity provision to encourage Good Samaritans to act when it becomes clear that the animal's life is in immediate danger. At the same time, however, the bill appears to base that immunity narrowly on the reasonableness of the person's actions, the person's reasonable and good faith belief that the animal's safety was in immediate danger, and the person's compliance with certain enumerated requirements.

Specifically, this bill would provide that a person is not civilly liable for property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing an animal in accordance with certain provisions in the Penal Code. By making the immunity contingent upon acting in accordance with the proposed Penal Code provisions, the bill ensures that the person has to take the same actions that are necessary for the person to avoid criminal liability in order to enjoy civil immunity for the damages they cause to the motor vehicle in rescuing an animal whose safety is in immediate danger. Those Penal Code provisions at the outset require that the person held 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 that the person took reasonable steps that are necessary to remove the animal from the

motor vehicle. Even then, the person would only be immune for those actions taken reasonably and in good faith, if he or she:

- determines the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;
- 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;
- has contacted a local law enforcement agency, the fire department, animal control, or the “911” emergency service prior to forcibly entering the vehicle;
- 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;
- used no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and
- immediately turns the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.

At the same time, this bill would also ensure that by creating civil immunity for property damage to the motor vehicle when saving an animal in accordance with the requirements above, it does not in any way affect either the liability or immunity that a person might hold under existing law in rendering aid to the animal. In support, co-sponsor Humane Society of the United States writes:

Plenty 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. [. . .] First responders on the scene to rescue animals left in hot cars have given firsthand accounts of the suffering that a dog left in a hot car endures. They have described the claw marks left on the door with nail particles still stuck in them made by trapped animals, the contorted body shapes of those desperately trying to get out, and what it looks like when they do not. They have described the look of horror on a person's face when they find out this happened to their dog, because of their mistake, and how the guilt, the sadness and the remorse can eat away at them over time, and how the emotions, public shaming and legal prosecution can destroy their lives. And they have stressed how utterly unnecessary it all is.

A number of states, such as Tennessee, Wisconsin, Michigan, and Florida, recently enacted similar legislation with bipartisan support. And a similar bill is on the Ohio governor's desk now. Good Samaritan bills addressing children left in hot cars have a long history and it makes sense to apply the same concept to the common problem of pets being left in hot cars. 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.

4. Definition of "animal"

The authors may wish to amend this bill to apply to only domesticated or household animals, so as to avoid any unintended consequences or confusion as to damage caused to a motor vehicle hauling, for example, livestock, horses, or other agricultural animals.

5. Support if amended letter

The State Humane Association of California's Board of Directors writes a support if amended letter requesting that the bill be amended to ensure that all people - including bystanders, officers, and employees - and the agencies, organizations and companies that employ them are immune from civil and criminal liability when acting in good faith to rescue an animal or child from a car. Staff notes that under the Government Tort Claims Act (Gov. Code Sec. 810 et seq.), public entities and employees are generally not liable for an injury, except as otherwise provided by statute, and that ultimately, the problems described with respect to inaction on the part of Good Samaritans do not appear to exist in the context of professionals who respond to these scenes in their professional capacities.

6. Bill should be sent back to Senate Rules for consideration of request from Senate Committee on Public Safety

In addition to establishing a specified civil immunity for persons who rescue an animal pursuant to a reasonable belief that the animal's safety is in immediate danger, this bill would provide for a criminal immunity as well under the Penal Code. That immunity, like the civil immunity, is contingent upon the person meeting certain requirements. Additionally, as with the civil immunity provision, as a threshold matter, the person is only permitted to take "reasonable steps necessary" to rescue the animal if he or she "holds a reasonable belief" that animal's safety is in immediate danger.

If approved by this Committee, the Senate Rules Committee has directed that AB 797 be sent back to Rules Committee for consideration of the Senate Committee on Public Safety's re-referral request.

Support: ASPCA; Best Friends Animal Society; Council Member David J. Toro - City of Colton; Civil Justice Association of California; Humane Society Veterinary Medical Association; Marin Humane Society; Office of the San Diego County District Attorney's Office; San Bernardino County Sheriff John McMahon; San Diego Humane Society; San

Francisco SPCA; Social Compassion in Legislation; State Humane Association of California (support if amended); one individual

Opposition: None Known

HISTORY

Source: Humane Society of the United States; Los Angeles District Attorney

Related Pending Legislation: None Known

Prior Legislation: SB 1806 (Figueroa, Ch. 431, Stats. 2006) *See* Background. Earlier versions of the bill also provided for civil and criminal immunity, but that language was ultimately removed coming out of the Senate Public Safety Committee, and was therefore not heard in this Committee.

Prior Vote:

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 17, Noes 0)

Assembly Accountability and Administrative Review Committee (Ayes 9, Noes 0)
