

#39.140

3/4/75

Memorandum 75-9

Subject: Study 39.140 - Garagekeeper's Lien

The Commission decided at the November 1974 meeting to study garagekeeper's liens. This memorandum presents several alternative approaches as a basis for beginning the study of this subject. The garagekeeper's lien law, as amended in 1974, is attached hereto as Exhibit I. Adams v. Department of Motor Vehicles, which declared parts of the former statute unconstitutional, is attached as Exhibit II. Forms and an explanatory memorandum of the Department of Motor Vehicles are attached as Exhibit III. A proposal for further amending the existing statute made by the California Tow Truck Association is attached as Exhibit IV.

The attached staff draft of a recommendation relating to garagekeeper's liens contains a discussion of the Adams case and the amendments made in response to the decision and presents a draft bill which would cure some technical deficiencies in the existing law. You should read the introduction to the draft recommendation before considering the following alternatives:

1. Repeal Expiration Date

The existing law expires on December 31, 1976. The Commission could recommend the repeal of the expiration date if it thinks the existing law is constitutional, acceptably efficient, and not too technically defective. The staff thinks that at a minimum the technical defects should be corrected.

2. Correct Technical Defects

The attached staff draft recommendation is an attempt to cure obvious technical defects and make some minor substantive changes in the existing law. The recommendation assumes that the existing law satisfies the constitutional objections in Adams v. Department of Motor Vehicles. It makes some effort to speed up the process of shuffling forms from lienholder to DMV to owner to DMV to lienholder to owner, but retains the structure of existing law which uses the DMV to police the procedure. Contrast this with the Tow Truck Association recommendations.

3. Tow Truck Association Recommendations

The California Tow Truck Association has sent us a copy of their recommended amendments to the existing law. (See Exhibit IV. We have underlined the new matter; omissions are not indicated.) Basically the Tow Truck Association would reduce the part played by the DMV in order to speed up the process of form-shuffling. The Association seems to be concerned primarily with the length of time it takes to obtain clearance to sell a car and the shortage of parking lot space caused by this delay. This is of concern primarily to a garagekeeper who is in the business of towing vehicles from city streets rather than the repair facility which asserts a lien only when a customer refuses to pay. The new law has resulted in a significant increase in the time it takes to process a car. Although in theory under the new law the authorization procedure would take 30 days, the experience of the Association members is that it often takes 65 days or more. (See Exhibit IV, page 2.) The DMV reports that it has received many complaints because of the

additional time required. (See Exhibit III.) It remains to be seen whether the DMV will in time be able to speed their handling of the various forms.

In brief, the Association proposes to allow the lienholder to send the warning notice to the owners, rather than requiring him to apply to the DMV which then sends such notice. Apparently at the same time as the notice is sent, the lienholder would be permitted to initiate sale procedures although the sale may not be held before the expiration of 30 days. Of course, if the claim is contested, the sale would not be held unless a release or judgment is obtained. The DMV would be required to notify the lienholder of a contest within 10 days (after receipt). The authorization to conduct a lien sale is eliminated; if the lienholder hears nothing, he may go ahead and sell.

Depending on how one juggles the constitutional requirements of adequate notice and opportunity for a hearing, this proposal may seem too summary. Delay by the DMV under existing law preserves the rights of the vehicle owner; under the Association's proposal, such delay purports to cut off those rights. An additional defect may be that no official is in a position to look over the lienholder's claim upon which the lien is based. On the other hand it should be noted that, if the DMV is considered to be in the position of passing on the substantive sufficiency of the lienholder's claim, another objection may be made. (See item 4.)

4. Additional Constitutional Protections Required

A Comment in the Pacific Law Journal makes several interesting points. (See Comment, California Garagemen's Liens--Impact And Aftermath of Adams v. Department of Motor Vehicles, 6 Pac. L. J. 98 (1975).) The

writer suggests that, under the law as amended in 1974, permitting the DMV to authorize the sale of the vehicle may be an invalid delegation of judicial power. This is based on the argument that the authorization is equivalent to foreclosure of a lien--historically a judicial function. The writer also suggests that it would be difficult to obtain judicial review of the issuance of the authorization of sale. On the other hand, the writer notes that the DMV has no discretion under the amended law to determine whether the garagekeeper's claim is valid and the owner has an opportunity for a hearing in court. (See id. at 110-116.)

More importantly, the writer points out that there is no provision for a determination of the probable validity of the lienholder's claim by a judicial officer and argues that the notice provision is insufficient. In both Mitchell v. W.T. Grant, Co., 94 S. Ct. 1895 (1974), and North Georgia Finishing, Inc. v. Di-Chem, Inc., 95 S. Ct. 719 (1975), the U.S. Supreme Court affirmed the importance of the requirement that a judicial officer participate in the issuance of a writ which deprives a person of possession or use of his property. The principle should not be different where the state authorizes a person to continue to deprive another person of the possession or use of his property or to sell it. (See id. at 119-120.)

The writer also suggests that the DMV should be required to give notice to owners and interested persons in the manner of service of process in order to afford a sufficient opportunity to take advantage of the right to a hearing on the claim. The writer would allow the person on whom notice is served 30 days to answer. (See id. at 121.)

The staff thinks that these are serious objections, but it is difficult to say with any degree of certainty what sort of scheme is necessary to meet minimum due process requirements.

5. Separate Procedures

A more expeditious procedure might be provided for disposal of abandoned vehicles which are towed from city streets by a licensed tow truck operator based on the premise that the need to remove and dispose of such vehicles constitutes an extraordinary circumstance. In Adams the Court noted that the garagekeeper's lien law was not limited to extraordinary circumstances so that doctrine would not save the challenged statutory provisions. (See Exhibit II, p. 154.) The removal and disposal of abandoned vehicles does not constitute such an extraordinary circumstance that the state could permit the summary disposal of such vehicles with no notice and opportunity for a hearing, but it is arguable that a more expeditious procedure should be available since in this class of cases there is no dispute between the garagekeeper and the owner and usually the owner does not even want the vehicle. On the other hand, it can be argued that it is just this sort of case--the seemingly abandoned vehicle--where the most stringent constitutional protections are required; the owner has not voluntarily relinquished possession and he has not contracted with the garagekeeper so he is unknown without some investigation.

6. Nonpossessory Lien

Generally speaking, in California the garagekeeper loses the lien if he relinquishes possession of the vehicle. A procedure could be provided which would allow the garagekeeper to preserve his lien by a timely filing

with a designated state agency. This alternative creates a multitude of its own problems; we list it here in case the Commission is interested in further investigating this approach. The Ontario Law Revision Commission recommended a nonpossessory lien in a 1972 report; Georgia also has a nonpossessory lien statute. It should be noted that a nonpossessory lien would not solve the problems indicated by the Tow Truck Association in Exhibit IV.

7. Minor Details

Various minor features could be combined with the different alternatives discussed above.

The garagekeeper could be required to give an undertaking which would indemnify the vehicle owner for his expenses in regaining possession should he prevail on the claim as a condition to continuing possession under the lien.

To lessen the burden of the deprivation on the vehicle owner without requiring him to pay the garagekeeper's claim, the owner could be allowed to give an undertaking to release the vehicle or make a cash deposit with the DMV.

A Note in the Boston University Law Review suggests that, similar to summary eviction, a hearing on the garagekeeper's claim could be required to be held within two to four days. Such summary proceedings could be justified by "such factors as the rapid depreciation of car values, the inconvenience and costs of storage, the public interest in preserving a vital industry from unjust and possibly crippling loss, the owner's interest in unrestricted control of the vehicle and his normal lack of 'good defense.'" (54 Boston U.L. Rev. 542, 566 (1974).) The writer goes on to suggest that

such a hearing is appropriate to determine the probable validity of the claim as a prerequisite to continuing the lien or granting a nonpossessory lien rather than as a final determination of the dispute.

The garagekeeper's lien could be restricted to a certain minimum amount in order to avoid assertion of the lien against a valuable vehicle for a relatively minor charge. The minimum amount for which a lien is given could be a dollar amount or a percentage of the value of the vehicle.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

EXHIBIT I

Senate Bill No. 2293

CHAPTER 1262

An act to amend Sections 3052, 3068, 3071, and 3072 of, and to add Section 3071.5 to, the Civil Code and to amend Sections 22705 and 22851 of the Vehicle Code, relating to liens, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1974. Filed with Secretary of State September 23, 1974.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2293, Song. Garagemen's lien.

Revises garagemen's lien laws.

Makes related changes.

Appropriates \$1,127,000 to Department of Motor Vehicles for purpose of administering act and requires that Motor Vehicle Account in the Transportation Fund be reimbursed within three years of the operative date of appropriation from fees collected from applications to the department for the issuance of an authorization to conduct a lien sale.

To take effect immediately, urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 3052 of the Civil Code is amended to read:
3052. If the person entitled to the lien provided in Section 3051 of this code be not paid the amount due, and for which said lien is given, within ten (10) days after the same shall have become due, then such lienholder may proceed to sell said property, or so much thereof as may be necessary to satisfy said lien and costs of sale at public auction, and by giving at least ten (10) but not more than twenty (20) days' previous notice of such sale by advertising in some newspaper published in the county in which said property is situated; or if there be no newspaper printed in such county, then by posting notice of sale in three (3) of the most public places in the town or place where such property is to be sold, for ten (10) days previous to the date of the sale; provided, however, that prior to the sale of any trailer to satisfy any such lien, twenty (20) days' notice by registered mail shall be given to the legal owner and to the registered owner of such vehicle, if registered in this state as the same appear in the registration certificate, and also to the Division of Motor Vehicles by registered letter; and the Division of Motor Vehicles shall in like manner immediately notify said legal owner and said registered owner of said proposed sale, but failure on the part of said

division to give such notice shall not affect the validity of any such sale; and provided, further, that within twenty (20) days after said sale, the legal owner may redeem any such trailer so sold to satisfy said lien upon the payment of the amount thereof, all costs and expenses of said sale, together with interest on said sum at the rate of 12 percent per annum from the due date thereof or the date when the same were advanced until the repayment. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the legal owner thereof.

SEC. 2. Section 3068 of the Civil Code is amended to read:

3068. (a) Every person has a lien dependent upon possession for the compensation to which he is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair or safekeeping of, and for the rental of trailer parking space for, any vehicle of a type subject to registration under the Vehicle Code, subject to the limitations set forth in this chapter.

(b) That portion of the lien in excess of three hundred dollars (\$300) for any work or services, or in excess of two hundred dollars (\$200) or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 within 30 days after the commencement of the storage or safekeeping, three hundred dollars (\$300) for any storage or safekeeping, rendered or performed at the request of any person other than the holder of the legal title, is invalid, unless prior to commencing any such work or service the person claiming the lien gives actual notice in writing either by personal service or by registered letter addressed to the legal owner named in the registration certificate, and the consent of the holder of the legal title is obtained before any such work or services are performed. If any portion of a lien includes charges for the care, storage or safekeeping of, or for the rental of trailer parking space for, a vehicle for a period in excess of 60 days, the portion of the lien which accrued after the expiration of such period is invalid unless the provisions of Sections 10650 and 10652 of the Vehicle Code have been complied with by the holder of the lien.

SEC. 3. Section 3071 of the Civil Code is amended to read:

3071. (a) If the lienholder is not paid the amount due, and for which the lien is given, within 10 days after the same becomes due, then the lienholder may proceed to sell the property, or so much thereof as may be necessary to satisfy the lien and costs of sale pursuant to Section 3072 or 3073, if (1) an authorization to conduct a lien sale has been issued by the Department of Motor Vehicles pursuant to this section, (2) a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or (3) the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed by Section 3071.5.

(b) A lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application shall be executed under penalty of perjury and shall include all of the following:

(1) A description of the vehicle.

(2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from registration certificates within the vehicle, and the names and addresses of any other persons who the lienholder knows or reasonably should know claim an interest in the vehicle.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(c) Upon receipt of an application which is made pursuant to subdivision (a), the department shall send a notice and a copy of the application and a preaddressed return envelope by certified mail to the registered and legal owners at their addresses of record with the department and any other persons whose names and addresses are listed in the application. The notice shall include all of the following:

(1) A statement that an application has been made with the department for the issuance of an authorization to conduct a lien sale.

(2) A statement that (i) the person has a legal right to a hearing in court, (ii) if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned, and (iii) if the declaration is signed and returned, the lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the registered and legal owners.

(3) A statement that (i) if the declaration is signed and returned, the lienholder must file an action in court, (ii) the registered and legal owners will be notified of the lawsuit, and (iii) the registered and legal owners may then appear to contest the claim of the lienholder.

(4) A statement that the department will issue the authorization to conduct a lien sale unless the person signs and returns, within 20 days after the date on which the notice was mailed, the enclosed declaration stating that the person desires to contest the claim which gives rise to the lien.

(5) A statement that the person shall be liable for costs if the lienholder brings an action and a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.

(6) A declaration which may be executed by the person under penalty of perjury stating that he desires to contest the claim which gives rise to the lien and an address at which the person may be served in any action in court arising out of the lien.

(d) If the department receives a declaration described in paragraph (3) of subdivision (c) which is mailed within 20 days after

the date upon which the notice described in subdivision (c) is mailed, it shall notify the lienholder that he may not conduct a lien sale unless (1) a judgment has been entered in his favor on the claim which gives rise to the lien or (2) the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed by Section 3071.5. In any other case, the department shall issue an authorization to conduct a lien sale. Any lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless the lienholder files an action in court within 20 days after the lienholder receives a notice from the department under this subdivision.

(e) Upon the filing of an application, the department shall charge a fee which shall be established by the department in an amount equal to the actual costs of the department incurred in processing the application. The fee shall be recoverable as a cost by the lienholder if a lien sale is conducted.

(f) Any lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless (1) the lienholder applies for an authorization to conduct a lien sale under subdivision (a) within 10 days after the lien has arisen or (2) if no application is made under subdivision (a), an action in court is filed within 30 days after the lien has arisen. For the purposes of this subdivision, a lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner.

(g) The form of the applications, notices, and declarations described in this section shall be prescribed by the department. The language used in the applications, notices, and declarations should be simple and nontechnical. The notice and declaration described in subdivision (c) shall be printed in both English and Spanish.

(h) The procedure described in subdivisions (b), (c), and (d) shall not be applicable if the vehicle is a mobilehome which is required to be moved under a permit issued pursuant to Section 35790 of the Vehicle Code. A lien sale of the mobilehome may be conducted only if a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien or the registered and legal owners have signed, after the lien has arisen, a release of any interest in the mobilehome in the form prescribed by Section 3071.5.

SEC. 4. Section 3071.5 is added to the Civil Code, to read:

3071.5. (a) A registered or legal owner of a vehicle in the possession of a person holding a lien under this chapter or Section 3051 may release any interest in the vehicle after the lien has arisen. The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.

(b) The release shall be in at least 12-point type and shall contain all of the following information in simple, nontechnical language:

(1) A description of the vehicle, including the year and make, the engine or vehicle identification number, and the license number, if available.

(2) The names and addresses of the registered and legal owners of record with the Department of Motor Vehicles, if available.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the person releasing the interest understands that (i) he has a legal right to a hearing in court prior to any sale of the vehicle to satisfy the lien and (ii) he is giving up the right to appear to contest the claim of the lienholder.

(5) A statement that (i) the person releasing the interest gives up any interest he may have in the vehicle and (ii) he is giving the lienholder permission to sell the vehicle.

(c) The release required by this section shall not be filed with the department in connection with any transfer of interest in a vehicle.

SEC. 5. Section 3072 of the Civil Code is amended to read:

3072. Prior to any such sale the lienholder shall give at least 10 days but not more than 20 days notice of the sale by advertising for one issue in some newspaper of general circulation published in the county in which the property is situated. If there is no newspaper printed in such county, notice shall be given by posting notice of sale in three of the most public places in the town or place where the property is to be sold, for 10 days previous to the date of the sale. Prior to the sale of any vehicle to satisfy any such lien, 20 days notice by registered mail or registered mail, return receipt requested, shall be given to the legal owner and to the registered owner of the vehicle, if registered in this state, as the same appear in the registration certificate, and also to the Department of Motor Vehicles by registered mail or certified mail whether or not the vehicle is registered in this state. All notices required in this chapter shall specify the make, the engine or vehicle identification number, and license number, if available, of the vehicle, and the date, time, and place of the sale. The proceeds of the sale shall be applied to the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, shall be paid to the legal owner, if any, or to the owner if there is no legal owner, or if no legal owner can be located, the remainder shall be deposited with the department for deposit in the Motor Vehicle Fund.

SEC. 6. Section 22705 of the Vehicle Code is amended to read:

22705. If the vehicle is appraised at a value not exceeding two hundred dollars (\$200), the public agency which removed the vehicle shall:

(a) Within 48 hours after appraisal notify the Department of Justice in Sacramento of the removal of such vehicle.

(b) Prepare a certificate which shall describe the vehicle

including the location of any license plates thereon, state the appraised value and that the vehicle will be junked or dismantled, and indicate that:

(1) An authorization to conduct a lien sale has been issued by the department pursuant to Section 3071 of the Civil Code or a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or

(2) The registered and legal owners have signed a release under penalty of perjury disclaiming any interest, which release shall be included with the certificate, or

(3) The vehicle is in such condition that vehicle identification numbers are not available to determine owners of record with the department, in which event the vehicle may be disposed of.

(c) Upon completion of the certificate, execute and deliver a bill of sale free of any lien for fees and penalties due and payable to the department together with a copy of the certificate to either the lienholder who shall endorse the bill of sale to a licensed automobile dismantler, or to the licensed automobile dismantler, or to the public agency for disposal, whichever has the vehicle in possession.

(d) Forward the completed certificate to the Department of Motor Vehicles in Sacramento.

(e) A vehicle which is the subject of a certificate prepared and forwarded pursuant to this section shall not be reconstructed or made operable.

(f) Licensed dismantlers acquiring vehicles which are the subject of certificates prepared and forwarded pursuant to this section shall be excused from any fees and penalties which would otherwise be due to the Department of Motor Vehicles, provided that a copy of the certificate forwarded to the Department of Motor Vehicles pursuant to this section is retained in the licensed dismantlers' business record.

(g) A local agency may authorize by contract or franchise the removal, disposal, or removal and disposal, of such vehicles by other than a licensed automobile dismantler if it has first requested bids for removal, disposal, or removal and disposal, of such vehicles. Such franchise or contract shall be issued to or executed with the lowest responsible bidder. The bill of sale shall then be executed and delivered pursuant to subdivision (c) with the franchisee or contractor.

SEC. 7. Section 22851 of the Vehicle Code is amended to read:

22851. Whenever a vehicle has been removed to a garage under the provisions of this chapter and the keeper of the garage has received the notice or notices as provided herein, the keeper shall have a lien dependent upon possession for his compensation for towage and for caring for and keeping safe such vehicle for a period not exceeding 60 days or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 of the Civil Code within 30 days after the removal of the vehicle to the garage.

120 days and, if the vehicle is not recovered by the owner within such period or the owner is unknown, the keeper of the garage may satisfy his lien in the manner and after giving the notices required in Sections 3071 and 3072 of the Civil Code. Notwithstanding the provision of this section, if the vehicle is appraised at a value not exceeding two hundred dollars (\$200) by a person authorized to make such appraisal, the keeper of the garage may, if the vehicle is not recovered by the owner within (20) days or the owner is unknown, satisfy his lien as provided in Section 3073 of the Civil Code or Section 22705 of this code.

SEC. 8. The sum of one million one hundred twenty-seven thousand dollars (\$1,127,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for the purpose of administering this act. The Motor Vehicle Account in the Transportation Tax Fund shall be reimbursed within three years of the operative date of this section for the appropriation made under this section from fees collected pursuant to subdivision (e) of Section 3071 of the Civil Code.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

A recent decision of the Supreme Court of California which invalidated the lien sale provisions of existing law with respect to motor vehicles has had the effect of severely restricting the ability of state and local agencies to remove motor vehicles from public and private property. In order to restore this ability to these agencies, it is necessary that this act shall go into immediate effect.

SEC. 10. This act shall be operative on November 1, 1974, and shall not be operative after December 31, 1976.

DEPARTMENT OF MOTOR VEHICLES

DIVISION OF REGISTRATION

P.O. BOX 1319, SACRAMENTO, CALIFORNIA 95806



8 Jan 75

File No. 75A

Mr. Stan G. Ulrich
Legal Counsel
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. Ulrich:

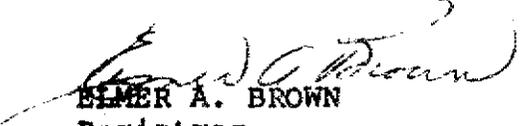
Director Cozens has asked me to respond to your letter of 31 Dec 74 regarding procedures and forms used by the Department of Motor Vehicles in the administration of Senate Bill 2293, California Statutes 1974, Chapter 1262.

I am enclosing a copy of the procedural memo issued by the department and copies of all forms presently in use in our administration of Senate Bill 2293.

Senate Bill 2293 has caused many complaints because of the additional time now required to clear vehicles for lien sale. This is particularly significant to lienholders using space to hold low valued abandoned vehicles for clearance.

Please do not hesitate to write or call if we can assist your staff in their review of garage owners' liens.

Sincerely,


ELMER A. BROWN
Registrar

Enclosures

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
DIVISION OF REGISTRATION

MEMO

25 Oct 74

TO: ALL HOLDERS OF THE MANUAL OF REGISTRATION AND ENFORCEMENT AGENCIES

FROM: ELMER A. BROWN, REGISTRAR

SUBJECT: PROCESSING LIEN SALE APPLICATIONS (Sections 3072 and 3073 Civil Code)

1. When clearing applications for registration of vehicles sold at lien sale beginning 1 Nov. 74, field offices will follow the procedures outlined in Sections 14.109 and 14.117, Manual of Registration Procedures, with the following modifications:

- a. Section 14.109 - Delete item 2. (Reg.94) and item 3. and insert:

- "2. (a) 'Authorization For Lien Sale' (Reg.323),
- or (b) A copy of the judgement entered in the lienholder's favor issued by the court,
- or (c) A 'Release of Interest' (Reg.659) signed after the lien has arisen, from both the registered and legal owners."

NOTE: Whenever items (b) or (c) above are part of the application, send suspense.

- b. Section 14.117 - Delete item 2. (Reg.94) and item 3. and insert:

- "2. (a) 'Authorization For Lien Sale' (Reg.338),
- or (b) A copy of the judgement entered in the lienholder's favor issued by the court.
- or (c) A 'Release of Interest' (Reg.659) signed after the lien has arisen, from both the registered and legal owners."

NOTE: Whenever items (b) or (c) above are part of the application, send suspense.

2. Blanket distribution of the necessary forms will be made to each field office. They will include:
 - a. Application for Lien Sale Authorization and Lienholder's Certification. (Reg.656)
 - b. A supply of envelopes (Reg.654) pre-addressed to:

Department of Motor Vehicles
Lien Sale Section Reg. 46
P.O. Box 2817
Sacramento, California 95812

The envelopes are to be made available to individual lienholder's filing Application for Lien Sale Authorization.
 - c. Release of Interest forms as specified in Civil Code Section 3071.5. (Reg.659)
 - d. Notice of pending lien sale (Reg. 280)
3. If a lienholder wants to deposit fees in a field office, the cashier will accept the money, write a suspense receipt and instruct the applicant to mail the pink copy of the suspense receipt with the Application for Authorization to Conduct a Lien Sale, Reg. 656. Identify the suspense receipt on the "comments" line with the words "Appl. For Lien Sale".

4. Lien sale applications started prior to 1 Nov 74 may be processed under present procedures. Those started on or after 1 Nov 74 must be processed under the new procedures.
5. For your information, a copy of the lien sale instructions being furnished the industry, is enclosed.
6. Enforcement Agencies. Please take special note of paragraph No. 8 of the attached memo, "Disposition of Low Valued Vehicles - #200 or Less", pertaining to V.C. Section 22705.



ELMER A. BROWN
Registrar

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
DIVISION OF REGISTRATION

MEMO

25 OCT 74

TO: ALL DEPARTMENT OF MOTOR VEHICLE OFFICES, AUTOMOBILE CLUBS AND ASSOCIATIONS,
DEALERS, DISMANTLERS, TOW SERVICES AND GARAGES

FROM: ELMER A. BROWN, REGISTRAR

SUBJECT: POSSESSORY LIENS ON VEHICLES

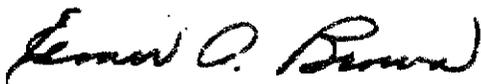
This memoranda cancels and supersedes the memo on possessory liens on vehicles dated 28 May 74.

New legislation, Senate Bill 2293, has been enacted to facilitate the processing of possessory liens while giving the registered and legal owners, or other person, opportunity to declare their opposition to the lien sale.

If no Declaration of Opposition is filed with the department, the department will issue an authorization to the lien holder to conduct a lien sale. If a Declaration of Opposition is filed, the department shall notify the lienholder that he may not conduct a lien sale (Denial to Hold Lien Sale, Reg. 658, Example "C") unless:

- a. He obtains a judgement in his favor issued by the court
- or b. He secures a Release of Interest (Form Reg. 659, see Example "F") in the vehicle from both the registered and the legal owner.

The Warning Notice of Lien Sale, the Declaration of Opposition, and the Release of Interest forms will be printed in both the English and Spanish language.



ELMER A. BROWN
Registrar

Attachments

LIEN SALE

Senate Bill 2293, effective 1 Nov 74, relating to garagemen's liens, amended Sections 3052, 3068, 3071, 3072 of, and added Section 3071.5 to the Civil Code, and amended Vehicle Code Sections 22705 and 22851.

1. Satisfaction of Lien (Civil Code 3071)

Under the new law, if the lienholder is not paid the amount due within 10 days after the lien has arisen, the lienholder may sell the vehicle to satisfy the lien and the costs of the sale if:

- a. An authorization to conduct a lien sale has been issued by the Department of Motor Vehicles,
- or b. A judgement has been entered in favor of the lienholder on the claim which gives rise to the lien,
- or c. The registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle on the prescribed form. (See Civil Code Section 3071.5.)

A lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner. The Department will accept from the lienholder the date he reports as the date on which the lien arose.

2. Application for Lien Sale Authorization (Civil Code 3071)

- a. A lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application must be made on the prescribed form (Reg. 656, Example "A").
- b. A nonrefundable fee of \$10 must accompany each Application for Lien Sale Authorization submitted to the department. (This fee may be added to the amount of the lien.)
- c. The application, with the \$10 fee, must be mailed to the following address:

Department of Motor Vehicles
Lien Sale Section Reg. 46
P.O. Box 2817
Sacramento, California 95812

3. Warning Notice of Lien Sale

Upon receipt of an Application for Authorization to Conduct a Lien Sale, and the \$10 fee, the department shall send a Warning Notice of Lien Sale (Reg. 657, Example "B"), a copy of the Application for Authorization to Conduct a Lien Sale, and a pre-addressed envelope, by certified mail, to the registered and legal owners at their addresses of record, to any other persons whose names and addresses are listed on the application, and to any person shown on a Notice of Sale or Transfer (Reg. 138) on file with the department.

The reverse side of the Warning Notice of Lien Sale is a "Declaration of Opposition".

Any lien which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless:

- (1) The lienholder applies for an authorization to conduct a lien sale within 10 days after the lien has arisen, or
- (2) If no application is made, an action in court is filed within 30 days after the lien has arisen.

4. Declaration of Opposition

A Declaration of Opposition (Reg. 657 - Reverse Side, Example "B") may be executed by the registered or legal owner or other person having an interest, stating that he desires to contest the claim. The person signing must include an address at which he may be served in any action in court arising out of the lien.

If the registered owner, the legal owner, or any person having an interest in the vehicle fails to file a Declaration of Opposition with the department within 20 days, the department shall issue to the lienholder an authorization to conduct a lien sale.

If the department receives a Declaration of Opposition within 20 days, the department shall notify the lienholder that he may not conduct a lien sale unless:

- a. A judgement has been entered in his favor on the claim which gives rise to the lien,
- or b. The registered and legal owners of the vehicle have signed, after the lien has arisen, a Release of Interest (Form Reg. 653, Example "F") as prescribed by Section 3071.5, Civil Code.

NOTE: Any lien that arose because work or services had been performed on the vehicle with the consent of the registered owner shall be extinguished unless the lienholder files an action in court within 20 days after he has been notified by the department that he cannot conduct a lien sale.

NOTE: The procedures described herein are not applicable if the vehicle is a mobilehome in excess of 8 feet wide which is required to be moved under a permit (Section 35790 V.C.). A lien sale of a mobilehome may only be conducted if a judgement has been entered in favor the lienholder or the registered and legal owners have signed, after the lien has arisen, a release of any interest in the mobilehome in the form prescribed by Section 3071.5, Civil Code.

5. Release of Interest (Section 3071.5 Civil Code (Reg. 363))

- a. A registered and legal owner of a vehicle in the possession of a lienholder may release any interest in the vehicle after the lien has arisen. The release shall be dated when signed and a copy given to the person releasing the interest. The release shall be on a "Release of Interest", Form Reg. 659, supplied by the Department of Motor Vehicles. It will be printed in the English and Spanish languages.

If a release has been obtained from the registered or legal owner, the release, or a copy of the release, must be submitted to the department with the application for transfer following the lien sale. (A lien sale is not necessary if the ownership certificate is submitted with proper signatures.)

6. The Lien Sale (Civil Code 3072) (In Excess of \$200 Valuation)

Prior to conducting a lien sale, the lienholder shall:

- a. Give at least 10 days, but not more than 20 days, notice of the sale by advertising for one issue in a newspaper of general circulation, published in the county in which the property is situated. If there is no newspaper printed in such county, notice shall be given by posting notice of sale in three of the most public places in town or place where the property is to be sold, for 10 days previous to the date of the sale.

- b. Prior to the sale, the lienholder must give 20 days notice by registered mail, or registered mail return receipt requested, or certified mail, to the legal owner and to the registered owners of record, if the vehicle is registered in this state. The lienholder shall also notify the Department of Motor Vehicles of the sale by registered mail or certified mail whether or not the vehicle is registered in this state.
- c. All notices shall specify the make, vehicle identification number, and license number of the vehicle, if available, and the date, time and place of the sale. The vehicle shall be at the site of the sale.
- d. The proceeds of the sale shall be applied to the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, shall be paid to the legal owner, if any, or to the owner or other person entitled to the vehicle. If there is no legal owner, or if no legal owner can be located, the remainder shall be deposited with the department for deposit in the Motor Vehicle Fund.

NOTE: The procedure in item 6 above is not a new procedure. It is repeated here for continuity of instructions.

7. The Lien Sale (Civil Code 3073) (\$200 Valuation or Less)

Prior to conducting a lien sale, the lienholder shall:

- a. At least 10 days before the sale, notify the legal owner, the registered owner and the department by registered mail, certified mail, or U.S. Post Office Certificate of Mailing, of the time and place of the sale.
- b. At least 10 days before the sale, the lienholder shall also post a notice of the sale in a conspicuous place on the premises where the vehicle is stored, giving the date of the sale and a description of the vehicle, including the make, model, type, VIN number and license plate number.

(There is no redemption period of vehicles sold under Civil Code Section 3073.)

NOTE: The procedure in item 7, above, is not a new procedure. It is repeated here for continuity of instructions.

8. Disposition of Low Valued Vehicles (\$200 or Less) (V.C. 22705)

Before issuing the Notice of Vehicle to be Dismantled or Junked and the Bill of Sale (Reg. 462), the public agency which removed the vehicle shall prepare a Statement of Facts (Reg. 256) certifying that:

- a. An authorization to conduct a lien sale has been issued by the department pursuant to Section 3071 Civil Code,
- or b. A judgement has been entered in favor of the lienholder,
- or c. The registered and legal owners have signed a release disclaiming any interest, which release shall be included with the certificate,
- or d. The vehicle is in such condition that identification numbers are not available to determine owners of record with the department, in which event the vehicle may be disposed of.

This Statement of facts, the authorization, or the release of interest must be attached to and accompany the completed original of the Reg. 462 form.

NOTE: A dismantler who has a lien on a vehicle, or who acquires a vehicle from anyone who has a lien on it, because of charges due for towing, storage, or repair, may not use the "diligent effort" procedure when reporting the vehicle dismantled.

In such situations, the lien sale procedure must be followed unless the properly endorsed ownership document is obtained and submitted by the dismantler or unless the vehicle is acquired by the lienholder or dismantler through civil action.

9. Lien on Stored Vehicle (V.C. 22851)

- a. Whenever a vehicle has been removed to a garage under the provisions of Section 22851 V.C., and the keeper of the garage has received the notice or notices as provided, the keeper shall have a lien, dependent upon possession, for compensation for towage and storing of such vehicle for a period not exceeding 60 days, or, if an Application for Authorization to Conduct a Lien Sale has been filed pursuant to Section 3071 of the Civil Code within 30 days after removal of the vehicle to the garage, his lien may be for 120 days. If the owner fails to recover the vehicle within such period, or the owner is unknown, the keeper of the garage may satisfy his lien in the manner and after giving notices required in Sections 3071 and 3072, Civil Code.
- b. If the vehicle is appraised at a value not exceeding \$200, the keeper of the garage may, if the vehicle is not recovered within 20 days, or the owner is unknown, satisfy his lien as provided in Section 3073 of the Civil Code or Section 22705 of the Vehicle Code.

10. Notice to Lienholders

Because of the time element involved, it will not be possible for the department to furnish sufficient copies of the necessary forms immediately. If you have an immediate need, it is suggested you reproduce copies from the examples attached.

If you experience problems with the new law or the procedures that cannot be resolved by your local Department of Motor Vehicles office or by a telephone call to the Registrar's office, (916) 445-4511, the Registrar will arrange to have someone from the Division of Registration meet with you or your organization.



STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
LIEN SALE SECTION, REG. 46
P. O. BOX 2817
SACRAMENTO, CA 95812

**Application for Lien Sale Authorization
and Lienholder's Certification**
(Civil Code Sections 3068-3075 inclusive)

**A FILING FEE OF \$10.00 MUST
ACCOMPANY THIS APPLICATION.**

LICENSE NUMBER	
STATE	
STICKER OR TAB NUMBER	
YEAR OF LICENSE	

YR. MODEL	MAKE	MODEL	BODY TYPE
19			
VEHICLE IDENTIFICATION NUMBER		* SIZE OF TRAILER COACH	
		Length:	Width:
ENGINE NUMBER		HAS ENGINE BEEN REMOVED?	
		<input type="checkbox"/> YES	<input type="checkbox"/> NO
List the number of any receipts or windshield sticker on or in the vehicle		Current market value of vehicle:	
		<input type="checkbox"/> Over \$200 (C.C. 3072)	
		<input type="checkbox"/> \$200 or less (C.C. 3073)	

I have a lien against the above vehicle and request authorization to hold a lien sale. The amount and basis for my lien is:

Towing \$ _____ Repairs \$ _____ DMV Filing Fee \$ **10.00**

Storage \$ _____ to date at a rate of \$ _____ per day.

Other \$ _____ for (explain) _____

Date vehicle came into my possession: _____ Date bill submitted to owner: _____

The names and addresses of the registered owner, legal owner and all parties known to me to have an interest in the vehicle are listed on this application.

I hereby certify under penalty of perjury that the statements herein are true and correct and I have no information or belief that there is a valid defense to the claim which gives rise to the lien.

Executed on _____ at _____

BUSINESS NAME OF LIENHOLDER (PRINT)	BUREAU OF AUTOMOTIVE REPAIR REGISTRATION (LICENSE) NUMBER
ADDRESS	APT. NO.
CITY	STATE
ZIP CODE	PHONE NO.

PERSONAL SIGNATURE OF LIENHOLDER	
<input checked="" type="checkbox"/> LIENHOLDER'S AGENT	PHONE NO. AREA CODE
ADDRESS	APT. NO.
CITY	STATE
ZIP CODE	PHONE NO.

*NOTE: This application may *not* be used for mobilehomes in excess of the maximum width of eight feet as described in Section 35790 of the California Civil Code.

SUSPENSE RECEIPT AND VALIDATION AREA
(Please do not write in this space.)

The names and addresses of the Registered and Legal Owners as shown on the registration card are:

REGISTERED OWNER (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	
LEGAL OWNER (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	

The names and addresses of any other parties known to me to have an interest in the vehicle are:

NAME (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	
NAME (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	
NAME (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	
NAME (PRINT)	PHONE NO.
ADDRESS	
CITY	STATE
ZIP CODE	

Fold here for filing purposes.

-8-

EXAMPLE "A"

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES



WARNING NOTICE

OF LIEN SALE
(Civil Code Section 3071)

VEHICLE IDENTIFICATION NUMBER

ENGINE NUMBER

DATE OF NOTICE (FECHA DE NOTIFICACION)		LICENSE NUMBER	
STATE	YR. OF LIC.	YR. MODEL	MAKE
BODY TYPE MODEL			

TO WHOM IT MAY CONCERN:

This is to notify you that an application for authorization to hold a lien sale on this vehicle has been filed by the lienholder named on the enclosed copy of the Application for Lien Sale Authorization.

We are required by law to issue this authorization unless you wish to exercise your right to a court hearing to contest this action. To do so you must sign the Declaration of Opposition on the reverse of this form and return it in the enclosed envelope within 25 days from the date of this notice. **TO PROTECT YOUR INTEREST, REPLY IMMEDIATELY.**

If you do this, the lienholder will be allowed to sell the vehicle only if he:

1. Obtains a release from the registered and legal owner,

OR

2. Files an action in court and obtains a judgment in his favor. If such action is filed, you will be notified and may appear to contest the lienholder's claim. Should the court rule in favor of the lienholder, **YOU MUST PAY THE COURT COSTS.**

LIEN SALE SECTION, REG. 46
P. O. Box 2817
Sacramento, CA 95812

DECLARATION OF OPPOSITION

IMPORTANT NOTICE! RETURN THIS FORM IN THE ENCLOSED ENVELOPE WITHIN 20 DAYS FROM THE DATE OF THIS NOTICE TO PROTECT YOUR INTEREST IN THIS VEHICLE.

NOTICIA IMPORTANTE! DEVUELVAYA ESTE FORMATO EN EL SOBRO ADJUNTO DENTRO DE 20 DIAS DESDE LA FECHA DE NOTIFICACION PARA PROTEGER SUS INTERESES EN ESTE VEHICULO.

TO: Department of Motor Vehicles
AL: Departamento de Vehiculos Motoristas

I desire to contest the claim of the lienholder named on the Application for Lien Sale Authorization. I understand the lienholder may file an action in court and if a judgment is given in his favor, I **MUST PAY THE COURT COSTS.**

Yo deseo disputar el reclamo del embargador nombrado en la Aplicacion de Autorizacion para Venta de Embargo. Entiendo que el embargador puede poner una accion en corte y si el juicio es dado en su favor, **YO DEBO PAGAR LOS GASTOS DE CORTE.**

The address at which I may be served or notified in person of any court action is La direccion en donde Yo podre ser encontrado o notificado en persona si es que hay alguna accion en la corte es.

STREET (CALLE) _____

CITY (CIUDAD) _____ STATE (ESTADO) _____

I certify (or declare) under penalty of perjury that the foregoing is true and correct. Yo certifico (o declaro) bajo pena de perjurio que lo siguiente es verdad y correcto.

Executed on _____ at _____ STATE (ESTADO) _____
DATE CITY (CIUDAD)

SIGNATURE (FIRMA) _____
X
PRINTED NAME (NOMBRE EN LETRA DE MOJEO) _____

ADDRESS (DIRECCION DOMICILIO) _____

CITY (CIUDAD) _____ STATE (ESTADO) _____ ZIP _____

TELEPHONE NO. (TELEFONO) _____ AREA CODE (AREA CODIGO) _____

EXAMPLE "B"
-9-



STATE OF CALIFORNIA
 DEPARTMENT OF MOTOR VEHICLES
 LIEN SALE SECTION, REG. 46
 P. O. BOX 2817
 SACRAMENTO, CA 95812

DENIAL TO HOLD LIEN SALE
 (Civil Code Section 3971)

VEHICLE IDENTIFICATION NUMBER		LICENSE NUMBER	
ENGINE NUMBER		STATE	YR. OF LIC.
		YR. MODEL	MAKE
		BODY TYPE MODEL	

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Your request for Lien Sale Authorization has been denied because we have received a Declaration of Opposition from:

sisting he desires to contest your claim.

No lien sale may be conducted unless you have obtained:

1. A court judgment in your favor.*
- OR**
2. The release of the registered and legal owners on a Release of Interest, Reg. 659, as required by Section 3971.5 of the Civil Code.

*NOTE: If the work or service you performed was done with the consent of the Registered Owner, your lien shall be extinguished unless you file court action within 90 days from the date of this notice.

LIEN SALE SECTION
 REGISTRATION 46

REG. 658 (NEW 10/74)

EXAMPLE "C"



STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES
**AUTHORIZATION FOR LIEN SALE OF A
VEHICLE VALUED OVER \$200**
(Civil Code Sections 3071 and 3072)

VEHICLE IDENTIFICATION NUMBER			LICENSE NUMBER	
ENGINE NUMBER			STATE	PR. OFFICE
YR. MODEL			MAKE	
BODY TYPE				
VEH. CLASS	MOTIVE POWER	WEIGHT	WT. CODE	AXLES
L I E N H O L D E R				
A G E E Y				

As required by Civil Code Section 3071, this Department hereby grants authorization to the above lienholder to conduct a lien sale of this vehicle in accordance with Civil Code Section 3072. Please see the reverse side of this letter for the legal steps to complete the lien sale.

The Department's records show:

Registered Owner:

Legal Owner:

LIEN SALE INSTRUCTIONS

1. At least 20 days before the sale the lienholder shall notify by registered or certified mail each of the following: the legal owner, if any, the registered owner, and the Department of Motor Vehicles at Sacramento. These notices shall contain the date, time, and place of the sale, make of the vehicle, identification number, engine number, if any, and license number, if any. (In computing the 20 day period of notice, do not include the day the notice was mailed.)
 2. At least 10 days but not more than 20 days before the sale the lienholder shall give notice by advertising for ONE issue in some newspaper of general circulation in the county in which the vehicle is located. The advertisement shall specify the date, time and place of sale, make of the vehicle, model, body type, identification number, engine number, if any, and license number, if any. (In computing the 10 day period of notice, do not include the first day the notice appears in the newspaper.)
- NOTE: After the vehicle is sold, a redemption period of 20 days (do not count the day of sale) must be allowed before the purchaser can take possession of the vehicle and submit an application to record transfer of ownership.
3. This letter and the attached form, CERTIFICATE OF MAILING, APPLICATION FOR LIEN SALE AUTHORIZATION AND LIENHOLDER'S CERTIFICATION, CERTIFICATE OF SALE, and AFFIDAVIT OF PUBLICATION, are to be completed, signed by you, and delivered to buyer, if other than yourself.
 4. The attached APPLICATION FOR REGISTRATION OF VEHICLE SOLD AT LIEN SALE is to be completed and signed by the buyer.
 5. If there is no record of California registration, the vehicle must be verified by an authorized employee of the Department of Motor Vehicles before it can be registered or dismantled.
 6. If this vehicle is to be transferred or registered, evidence of compliance with motor vehicle pollution control laws may be required. Any authorized motor vehicle pollution control installation and inspection station will be able to advise the buyer of control devices that may be required on this vehicle.
 7. Instruct the buyer the best way to complete his application is to take this letter and all of the forms indicated in paragraphs 3 and 4 above to the nearest office of the Department of Motor Vehicles.

EXAMPLE "D"

11-



STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES

**AUTHORIZATION FOR LIEN SALE OF A
VEHICLE VALUED AT \$200 OR LESS**
(Civil Code Sections 3071 and 3073)

LICENSE NUMBER				
STATE		YR. OF LIC.		
VEHICLE IDENTIFICATION NUMBER		YR. MODEL	MAKE	
ENGINE NUMBER		BODY TYPE		
VLF CLASS	MOTIVE POWER	WEIGHT	WT. CODE	AXLES

12 MONTHS
 24 MONTHS

As required by Civil Code Section 3071, this Department hereby grants authorization to the above Lienholder to conduct a lien sale of the vehicle in accordance with Civil Code Section 3073. Please see the reverse side of this letter for the legal steps to complete the lien sale.

The Department's records show:

Registered Owner:

Legal Owner:

LIEN SALE INSTRUCTIONS

1. At least 10 days before the sale, the lienholder shall notify by registered or certified mail each of the following: the legal owner, if any, the registered owner, and the Department of Motor Vehicles at Sacramento. These notices shall contain the date, time and place of the sale, the make of the vehicle, identification number, engine number, if any, and license number, if any. (In computing the 10 day period of notice, do not include the day the notice was mailed.)
2. At least 10 days before the sale, a notice is to be posted on the premises where the vehicle is stored containing the date, time and place of sale, make of the vehicle, model, body type, identification number, engine number, if any, and license number, if any. (In computing the 10 day period of notice, do not include the first day the notice is posted.)
3. The attached forms, CERTIFICATE OF MAILING AND POSTING, APPLICATION FOR LIEN SALE AUTHORIZATION AND LIENHOLDER'S CERTIFICATION, CERTIFICATE OF SALE, and POSTED NOTICE OF SALE, are to be completed, signed by you, and delivered to buyer, if other than yourself.
4. The attached APPLICATION FOR REGISTRATION OF VEHICLE SOLD AT LIEN SALE is to be completed and signed by the buyer.
5. If there is no record of California registration, the vehicle must be verified by an authorized employee of the Department of Motor Vehicles before it can be registered or dismantled.
6. If this vehicle is to be transferred or registered, evidence of compliance with motor vehicle pollution control laws may be required. Any authorized motor vehicle pollution control installation and inspection station will be able to advise the buyer of control devices that may be required on this vehicle.
7. Instruct the buyer the best way to complete his application is to take this letter and all of the forms indicated in paragraphs 3 and 4 above to the nearest office of the Department of Motor Vehicles.

EXAMPLE "E"

-12-

STATE OF CALIFORNIA
DEPARTMENT OF MOTOR VEHICLES



RELEASE OF INTEREST

(California Civil Code Section 3071.5)

Year Model	Make	Body Type	Vehicle Identification No.	Engine No.	License No.
------------	------	-----------	----------------------------	------------	-------------

Registered Owner:

Name _____
Address _____
City _____ State _____ Zip _____

Legal Owner:

Name _____
Address _____
City _____ State _____ Zip _____

Amount of the lien \$ _____

Facts concerning the claim including the reason and basis for the lien:

I understand I have a legal right to a hearing in court prior to any sale of the vehicle to satisfy the lien and that by signing this Release of Interest I am giving up my right to appear to contest the claim of the lienholder.

I, hereby, give up all legal and equitable interest I may have in the vehicle and, hereby, give my permission to the lienholder to sell it.

Signature _____ Date _____

Printed Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Area _____



STATE OF CALIFORNIA
 DEPARTMENT OF MOTOR VEHICLES
 LIEN SALE SECTION, REG. 46
 P. O. BOX 2617
 SACRAMENTO, CA 95812

NOTICE OF PENDING LIEN SALE

COMPLETE IN FULL

VEHICLE IDENTIFICATION NUMBER		LICENSE NUMBER	
ENG. NUMBER		STATE	YR. OF LIC.
		YR. MODEL	MAKE
		BODY TYPE	

REGISTERED	
LEGAL	

This vehicle will be sold under the Civil Code Section as indicated.

3072 because the market value is over \$200.

3073 because the market value is \$200 or less.

My authority to hold the lien sale is based on one of the following:

A letter of authorization from the Department of Motor Vehicles.

A judgment rendered by _____ Court.

A Release of Interest, Reg. 659, signed by the Registered and Legal Owners.

DATE OF SALE _____ TIME OF SALE _____

LOCATION OF SALE IS STREET ADDRESS: _____

CITY _____ STATE _____

NOTE: THE VEHICLE SHALL BE AT THE SITE OF THE SALE.

I hereby certify under penalty of perjury that the statements hereon are true and correct.

BUSINESS NAME OF LIENHOLDER (PRINT) _____

STREET ADDRESS _____ APT. NO. _____

CITY _____ STATE _____ ZIP _____ TELEPHONE NO. _____

SIGNATURE OF LIENHOLDER _____ DATE _____

REV. 100, REV. 10/74

Memorandum 75-9

EXHIBIT IV

CALIFORNIA TOW TRUCK ASSOCIATION

DEDICATED TO THE SAFETY AND WELFARE OF THE STATE OF CALIFORNIA
9940 SANTA MONICA BLVD. • BEVERLY HILLS, CA 90212
Phone (213) 553-1435

January 21, 1974

John H. De Mouly
Executive Director
California Law Revision Commission
Stanford Law School
Stanford, California

Dear Mr. De Mouly:

We have enclosed a copy of our proposed amendments to the new Lien Law with an analysis of the existing problem under the new procedures for your perusal.

We would be most pleased to attend your next meeting on February 6th and 7th to present the situation in further detail and answer any questions that you may have.

Thank you for your interest in this matter.

Very truly yours,



Richard Chappel

RC:clc
enclosure

CALIFORNIA TOW TRUCK ASSOCIATION

DEDICATED TO THE SAFETY AND WELFARE OF THE STATE OF CALIFORNIA
3940 SANTA MONICA BLVD. • BEVERLY HILLS, CA 90212
Phone (213) 553-1435

January 15, 1975

LIEN SALE PROBLEM:

On April 10, 1974 the California Supreme Court invalidated the Lien Sale provisions of existing laws pertaining to motor vehicles under Civil Code Sections 3071, 3072 and 3073. This ruling removed any method for the disposal of old, derelict and unwanted vehicles with the exception of abandoned vehicles which could be disposed of through Section 22705 of the Vehicle Code.

The Department of Motor Vehicles, realizing the adverse effect on the automotive industry in general and specifically those involved in the towing and storing of vehicles for law enforcement agencies, adopted an interim procedure for disposal of these vehicles until new emergency legislation could be adopted. This temporary procedure worked well with the exception that any vehicle having a legal owner was excluded and could not be disposed of unless a Lien Satisfied or a Release of Interest was obtained from them.

The new Urgency Statute SB2293 (Song) and now Chapter 1262 which amended Civil Code Sections 3052, 3068, 3071, 3072 and added Civil Code Section 3071.5 and also included Vehicle Code Sections 22705, 22851 was passed by the Legislature and signed by the Governor on September 23, 1974 and became effective November 1, 1974. Although this new legislation, which complied with the Court's requirements, was supported by the California Tow Truck Association, the Official Police Garages of Los Angeles, the California Auto Body Association, the Auto Dismantler Association, and the Automotive Services Council and was approved by the opponents of the Lien Sale Law, it is not a workable or practical solution to the need for disposing of old vehicles within a reasonable period of time.

The new Lien Sale Law now effects the disposal of all vehicles (including abandoned vehicles) and requires the Department of Motor Vehicles to issue an Authorization To Conduct A Lien Sale to the lienholder. Additionally, the lienholder must, upon application for Authorization To Conduct A Lien Sale, pay a \$5.00 filing fee to the Department of Motor Vehicles.

Upon receiving an application, the Department of Motor Vehicles must notify all owners of record and any other person who may have an interest in the vehicle by registered or certified mail and must give them 20 days to respond with a declaration of opposition to the pending Lien Sale. If no objection is filed, the Department will issue to the lienholder an Authorization To Conduct A Lien Sale.

Lien Sale Problem

January 15, 1975

Page 2

The Department of Motor Vehicles anticipated this authorization procedure to be approximately 30 days. To date, the time has exceeded 65 days. Then after a lienholder has received an authorization he must conduct a Lien Sale, notifying all persons having any interest in the vehicle (again by registered or certified mail) which are the same persons just notified by the Department of Motor Vehicles. This procedure now takes in excess of 90 days (10 days preparation, 65 days DMV, 15 days Lien Sale) to dispose of vehicles under Civil Code Section 3073 (vehicles valued under \$200.00) and approximately 75 days under Vehicle Code Section 22705 (abandoned vehicles). Under the old Lien Sale procedures the time factor was 30 days under Civil Code Section 3073 and 21 days under Vehicle Code Section 22705.

With this increase in time to dispose of vehicles, a storage problem now exists (Survey enclosed). Many garages are filled to capacity and have had to make arrangements for increased storage, if available or if able to afford the additional space. Full storage capacity creates the hazard of possible damage to cars stored and an increase in labor by constantly moving cars for those that are released. Also, the cash flow from the disposal of these old cars has decreased (plus the filing fee for an authorization) and has created an additional financial burden.

On January 14, 1975 at a meeting of our Association, it was asked how many requests for Authorization To Conduct a Lien Sale had been requested since November, 1974 and what amount had been received back from the Department of Motor Vehicles. As a result, the total number requested was 2,214 and the total received back was 206. To date, we are only aware of four (4) signed declarations of opposition. After contacting the contestor who signed the declaration of opposition, it was determined that all misunderstood and consequently either signed a release of interest or turned over their ownership certificate.

It must be realized that these low valued and abandoned vehicles are unwanted by their owners and normally worth less than the towing and storage charges incurred. It should also be noted that there has been virtually no litigation involving garages in the disposal of vehicles through lien sale. The case involved in the voiding of the lien law (Adams vs Department of Motor Vehicles) was brought about by a repair shop attempting to collect their repair by using the lien law.

As stated, a critical condition now exists and new legislation under emergency statute is necessary. The time delay in disposing of these old vehicles must be corrected. To alleviate this situation and have a more viable procedure, we are proposing that the attached amendments be adopted to existing law. We sincerely feel this will not only be more advantageous to the towing industry, but as well to the Department of Motor Vehicles, the California Highway Patrol, local law enforcement agencies and the motoring public.

In May 1974 the following statistical survey was taken to determine what effect the invalidation of the Lien Law would have on the Official Police Garages of Los Angeles.

"Facts Regarding Disposition of Cars for all 15 Official Police Garages of the Los Angeles Police Department in 1973.

Total Cars Towed ----- 74,330

Cars Sold at Lien Sale

Civil Code 3071-72-73 -----	8,380
Cars Sold 22705 (Abandoned) -----	<u>9,398</u>
Total Cars Sold -----	17,778

Approximately 24% of all cars handled were sold.

- A. Approximately 11.3% at Lien Sale
- B. Approximately 12.7% under 22705 (abandoned)

Storage capacity of all OPG Garages -----	4,675
Currently stored April 1, 1974 -----	<u>3,029</u>
Current space available -----	1,656

Average increase per month with no Lien Sales ----- 698

With no Lien Sales or Disposal method of old cars OPG Garages will be filled to capacity in 2.37 months.

With Diligent Effort (Letters and Phone Calls) Approximately 4 months."

The interim procedure for disposal of vehicles was cancelled when the new Lien Sale Law became effective November 1, 1974 and for the past two months no cars have been disposed of through the new procedures because of the time delay in obtaining an authorization to conduct a Lien Sale.

A new statistical survey of the Official Police Garages was taken as of December 31, 1974. This survey found the total number of cars in storage had increased to a record of 4,320 cars versus a normal capacity shown on the May, 1974 survey of 3,029. The maximum capacity of the Official Police Garages is 4,675 cars.

ANALYSIS:

Turnaround time on Lien Sale Authorization from DMV to Viertel's Auto.

January 21, 1975

<u>No. Veh.</u>	<u>Date Mailed To DMV</u>	<u>Dates Returned From DMV</u>	<u>No. Veh.</u>	<u>Comments</u>	<u>Turnaround Days Involved</u>
90	11-5-74	12-6-74	3	NRCR	30
		1-2-75	33		58
		1-3-75	8		59
		1-4-75	1		60
		1-6-75	8		62
		1-7-75	1		63
		1-13-75	14		69
		1-14-75	1		70
		1-15-75	2		71
		1-20-75	5		76
Total Returned From DMV -----			76		
Total Not Returned from DMV -----				14	
30	11-14-74	12-20-74	1	NRCR	36
		1-2-75	2	NRCR	49
		1-4-75	1		51
		1-13-75	3		60
		1-17-75	3		64
		1-20-75	8		67
		1-21-75	1		68
Total Returned From DMV -----			19		
Total Not Returned From DMV -----				9	
Released -----				1	
Denials (Received Release Of Interest) -----				1	
18	11-26-74	12-14-74	1	NRCR	18
		1-8-75	1	NRCR	43
Denials (Received Title) -----				1	
Total Returned From DMV -----			2		
Total Not Returned From DMV -----				15	
36	12-6-74	12-16-74	1	NRCR	10
		12-26-74	1	NRCR	20
Total Returned From DMV -----			2		
Total Not Returned From DMV -----				34	
51	12-20-74	1-8-75	1	NRCR	19
		1-14-75	4	NRCR	25
		1-15-75	1	NRCR	26
		1-16-75	1	NRCR	27
Released -----				1	
Total Returned From DMV -----			7		
Total Not Returned From DMV -----				43	
25	12-26-75	<u>None Returned</u>			
40	1-8-75	<u>None Returned</u>			
27	1-17-75	<u>None Returned</u>			
Average Number of Days { out of state cars } -----					64
Average Number of Days { no record of Cal. reg. } -----					28.4
Average Number of Days { record of Cal. reg. } -----					65

NRCR - No Record of California Registration

PROPOSED LIEN LAW AMENDMENTS

An Act to amend Sections 3071 and 3072 of the Civil Code and to amend Sections 22705 of the Vehicle Code relating to liens, and declaring the urgency thereof, to take effect immediately.

3071. (a) If the lienholder is not paid the amount due, and for which the lien is given, within 10 days after the same becomes due, then the lienholder may proceed to sell the property, or so much thereof as may be necessary to satisfy the lien and costs of sale pursuant to Sections 3072 or 3073 (1) if the registered or legal owners, or other persons having an interest in the vehicle do not sign and return within 20 days to the Department of Motor Vehicles a declaration of opposition stating a desire to contest the claim. (2) a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or (3) the registered and legal owners of the vehicle have signed, after the lien has arisen a release of any interest in the form prescribed by Section 3071.5

(b) A lienholder shall send by registered or certified mail a certification of pending lien sale, and a notification that a lien sale will be conducted, if un-contested, after 30 days from the date of notice to the registered and legal owner at their addresses of record with the Department of Motor Vehicles and any other persons who may claim an interest in the vehicle. A copy shall be concurrently sent by registered or certified mail to the department. This certification and notification shall be executed under penalty of perjury and shall include all the following:

(1) A description of the vehicle.

(2) The names and addresses of the registered and legal owners of the vehicle obtained from departmental records and, if ascertainable, from the registration certificates within the vehicle, and the names and addresses of any other persons who the lienholder knows or reasonably should know claim an interest in the vehicle.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(c) The notification that a lien sale will be conducted, if un-contested, shall include the date, time, and place of the sale and the make of the vehicle, identification number, engine number, if any, and license number, if any.

(d) A lienholder shall send concurrently with the certification and notification a declaration of opposition and a preaddressed return envelope containing the department's address to the registered and legal owner and any other person who may have a claim of interest in the vehicle. This declaration shall include all the following:

(1) A statement that (i) the person has a legal right to a hearing in court, (ii) if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned, and (iii) if the declaration is signed and

returned, the lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the registered and legal owners.

(2) A statement that (i) if the declaration is signed and returned to the department, the lienholder must file an action in court, (ii) the person who contests the validity of the lien will be notified of the lawsuit, and (iii) the contestor must then appear to contest the claim of the lienholder.

(3) A statement that the lienholder will conduct a lien sale, after 30 days, unless the person signs and returns, within 20 days after the date on which the notice was mailed, the enclosed declaration stating that the person desires to contest the claim which gives rise to the lien.

(4) A statement that the person shall be liable for costs if the lienholder brings an action and a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.

(5) A declaration which may be executed by the person under penalty of perjury stating that he desires to contest the claim which gives rise to the lien and an address at which the person may be served in any action in court arising out of the lien.

(e) If the department receives a declaration described in paragraph (3) of subdivision (c) which is mailed within 20 days after the date upon which the notice described in subdivision (c) is mailed, it shall notify the lienholder, within 10 days, that he may not conduct a lien sale unless (i) a judgment has been entered in his favor on the claim which gives rise to the lien and (ii) the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed by Section 3071.5. In any other case, the lienholder may conduct a lien sale pursuant to Civil Code Sections 3072 and 3073.

(f) The form of the notices, certifications, and declarations described in this section shall be prescribed by the department. The language used in the applications, notices, and declarations should be simple and nontechnical. The notice and declaration described in subdivision (c) shall be printed in both English and Spanish.

(g) The procedure described in subdivisions (b), (c), and (d) shall not be applicable if the vehicle is a mobilehome which is required to be moved under a permit issued pursuant to Section 35790 of the Vehicle Code. A lien sale of the mobilehome may be conducted only if a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien of the registered and legal owners have signed, after the lien has arisen, a release of any interest in the mobilehome in the form prescribed by Section 3071.5.

3071.5 (a) A registered or legal owner of a vehicle in the possession of a person holding a lien under this chapter or Section 3051 may release any interest in the vehicle after the lien has arisen. The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.

(b) The release shall be in at least 12-point type and shall contain all of the following information in simple, nontechnical language:

(1) A description of the vehicle, including the year and make, the engine or vehicle identification number, and the license number, if available.

(2) The names and addresses of the registered and legal owners of record with the Department of Motor Vehicles, if available.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the person releasing the interest understands that (i) he has a legal right to a hearing in court prior to any sale of the vehicle to satisfy the lien and (ii) he is giving up the right to appear to contest the claim of the lienholder.

(5) A statement that (i) the person releasing the interest gives up any interest he may have in the vehicle and (ii) he is giving the lienholder permission to sell the vehicle.

(c) The release required by this section shall not be filed with the department in connection with any transfer of interest in a vehicle.

3072. Prior to any such sale the lienholder shall give at least 20 days but not more than 35 days notice of the sale by advertising for one issue in some newspaper of general circulation published in the county in which the property is situated. If there is no newspaper printed in such county, notice shall be given by posting notice of sale in three of the most public places in the town or place where the property is to be sold, for 10 days previous to the date of the sale. Prior to the sale of any vehicle to satisfy any such lien, 20 days notice by registered mail or registered mail, return receipt requested, shall be given to the legal owner and to the registered owner of the vehicle, if registered in this state, as the same appear in the registration certificate, and also to the Department of Motor Vehicles by registered mail or certified mail whether or not the vehicle is registered in this state. All notices required in this chapter shall specify the make, the engine or vehicle identification number, and license number, if available, of the vehicle, and the date, time, and place of the sale. The proceeds of the sale be applied to the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, shall be paid to the legal owner, if any, or to the owner if there is no legal owner, or if no legal owner can be located, the remainder shall be deposited with the department for deposit in the Motor Vehicle Fund.

22705. If the vehicle is appraised at a value not exceeding two hundred dollars (\$200), the public agency which removes the vehicle shall:

(a) Within 48 hours after appraisal notify the Department of Justice in Sacramento of removal of such vehicle.

(b) Prepare a certificate which shall describe the vehicle including the location of any license plates thereon, state the appraised value and that the vehicle will be junked or dismantled, and indicate that:

(1) The registered or legal owner, or other persons having an interest in the vehicle did not sign and return within 20 days to the Department of Motor Vehicles a declaration of opposition stating a desire to contest the claim which gives rise to the lien, or

(2) The registered and legal owners have signed a release under penalty of perjury disclaiming any interest, which release shall be included with the certificate, or

(3) The vehicle is in such condition that vehicle identification numbers are not available to determine owners of record with the department in which event the vehicle may be disposed of.

(c) Upon completion of the certificate, execute and deliver a bill of sale free of any lien for fees and penalties due and payable to the department together with a copy of the certificate to either the lienholder who shall endorse the bill of sale to a licensed automobile dismantler, or to the licensed automobile dismantler, or to the public agency for disposal, whichever has the vehicle in possession.

(d) Forward the completed certificate to the Department of Motor Vehicles in Sacramento.

(e) A vehicle which is the subject of a certificate prepared and forwarded pursuant to this section shall not be reconstructed or made operable.

(f) Licensed dismantlers acquiring vehicles which are the subject of certificates prepared and forwarded pursuant to this section shall be excused from any fees and penalties which would otherwise be due to the Department of Motor Vehicles pursuant to this section is retained in the licensed dismantlers' business record.

(g) A local agency may authorize by contract or franchise the removal, disposal, or removal and disposal, of such vehicles by other than a licensed automobile dismantler if it has first requested bids for removal, disposal, or removal and disposal, of such vehicles. Such franchise or contract shall be issued to or executed with the lowest responsible bidder. The bill of sale shall then be executed and delivered pursuant to subdivision (c) with the franchisee or contractor.

Staff Draft

TENTATIVE RECOMMENDATION

relating to

GARAGEKEEPER'S LIENS

In 1974, the California Supreme Court held in Adams v. Department of Motor Vehicles¹ that the sale provisions of the garagekeeper's lien law violated the constitutional due process requirement because it deprived the owner of his property without an opportunity for a hearing.² In response to Adams, the Legislature amended the garagekeeper's lien law to provide a procedure which would satisfy the constitutional objections.³ This legislation was given an expiration date of December 31, 1976,⁴ so that the Law Revision Commission would have time to study the garagekeeper's lien and make its recommendations to the Legislature.

The garagekeeper's lien law, as amended, provides that the lienholder may sell the vehicle that is subject to the lien if: (1) a judgment has been entered on the claim giving rise to the lien, (2) the registered and legal owners have signed a release after the lien arose, or (3) the Department of Motor Vehicles has issued to the lienholder an authorization to conduct a lien sale.⁵ The statute provides a detailed procedure for obtaining the authorization to conduct a lien sale⁶ and specifies the form of release.⁷ At various stages of this procedure,

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1. 11 Cal.3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).
 2. Specifically, the court held unconstitutional Civil Code Sections 3071, 3072, 3073, and 3074.
 3. Cal. Stats. 1974, Ch. 1262.
 4. Cal. Stats. 1974, Ch. 1262, § 10.
 5. Civil Code § 3071(a).
 6. Civil Code § 3071(b)-(h).
 7. Civil Code § 3071.5.

the garagekeeper must take certain actions in order to preserve the lien. For example, the lien expires unless, within 10 days after the lien arises, the lienholder applies for an authorization to conduct a lien sale or unless within 30 days after such time the lienholder files an action.⁸ The provisions creating the lien,⁹ specifying the manner of sale,¹⁰ and providing for redemption within 20 days¹¹ remain largely unchanged.

The Commission believes that the statutory provisions as amended satisfy the constitutional objections to the garagekeeper's lien spelled out in Adams. Although the court struck down the provisions for sale and transfer of title without an opportunity for a hearing, it made clear that it has no objection to the possessory lien in favor of garagekeepers¹² and that interim retention without a hearing is acceptable under the standards of Sniadach v. Family Finance Corporation.¹³ However, the Commission recommends that the interim legislation be amended as indicated below to clarify ambiguities and make other substantive and technical changes:

1. The description of the activities for which the garagekeeper's lien is given should be made uniform. The lien under existing law is created by two provisions, Civil Code Sections 3051 and 3058. Section 3051 creates a lien for "keepers of garages for automobiles" for "caring for and safekeeping, and for making repairs and performing any labor upon or furnishing supplies or materials" and, in addition, a lien for

8. Civil Code § 3071(f). The meaning of this provision is unclear. See the discussion in the third recommendation infra.

9. Civil Code §§ 3051, 3068.

10. Civil Code §§ 3072, 3073.

11. Civil Code § 3074.

12. 11 Cal.3d at 157.

13. 11 Cal.3d at 154. See Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). See also Mitchell v. W.T. Grant Co., ___ U.S. ___ (1974), and North Georgia Finishing, Inc. v. Di-Chem, Inc., ___ U.S. ___ (1975), decided after the California Supreme Court's decision in Adams.

"keepers of trailer parks," for rental of "parking space for trailers," and for "such other services as are furnished." Subdivision (a) of Section 3068 provides a lien for "every person" for "making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair or safekeeping of, and for the rental of trailer parking space for, any vehicle of a type subject to registration under the Vehicle Code" Subdivision (b) of Section 3068, however, refers to "work or services" and to "care." The Commission recommends that these inconsistent and duplicative terms be consolidated in one section providing a lien to a person who performs labor upon, furnishes materials or parking space for, or provides for storage or safekeeping of, any vehicle of a type subject to registration under the Vehicle Code.

2. The 10-day grace period provided by subdivision (a) of Section 3071 after which the "lienholder may proceed to sell the property" should be eliminated since it is meaningless. Before the law was amended, the grace period was needed so the owner of the vehicle would have time to pay for the repairs before the vehicle was sold. After the 1974 amendments, the lienholder may not sell unless he has obtained a release, received an authorization to conduct a lien sale, or obtained a judgment. Both the judgment and the authorization alternatives take much longer than 10 days. Where the lienholder obtains releases from persons claiming an interest, no grace period is necessary.

3. The time when the lien expires and the actions which must be taken by the lienholder to preserve the lien should be clarified. Subdivision (d) of Section 3071 provides that "[a]ny lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished" unless, within 20 days after the lienholder receives notice from the Department of Motor Vehicles that he may not sell the vehicle, he files an action. Subdivision (f) of Section 3071 provides:

(f) Any lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless (1) the lienholder applies for an authorization to conduct a lien sale under subdivision (a) within 10 days after the lien has arisen or (2) if no application is made under subdivision (a), an action in

court is filed within 30 days after the lien has arisen. For the purposes of this subdivision, a lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner.

These provisions are deficient in several respects. Provisions governing the expiration of the lien should not be applicable only to a lien for "work or services" which, it may be inferred from Section 3068, does not include storage, safekeeping, and parking space. Nor should expiration provisions apply only to liens for work performed "with the consent of the registered owner"; liens for work performed at the request of the legal owner or some other person should not run forever. It is misleading to provide in subdivision (f) that the lien is extinguished if the lienholder does not file an application for an authorization to conduct a lien sale within 10 days because, if such an application is not filed within 10 days, the lienholder may still preserve the lien by filing an action within the next 20 days. The existing law also fails to provide for the preservation of the lien where the lienholder obtains releases from all necessary persons as provided in Section 3071.5. The Commission recommends that any lien under Chapter 6.5 expire unless--within 15 days after the person requesting the labor, materials, storage, safekeeping, or parking space is given oral or written notice of the charges due--(1) the lienholder obtains a release of all known interests, (2) files an action, or (3) applies for an authorization to conduct a lien sale. Where the lienholder has applied for an authorization and received notice that he may not conduct a lien sale, it should be provided that the lien expires within 15 days after receipt of the notice unless he first obtains a release of all known interests or files an action.

4. Subdivision (d) of Section 3071 provides that, if the Department of Motor Vehicles has sent a notice of a lienholder's application for sale to the interested persons and thereafter the department receives a declaration stating that a person claiming an interest in the vehicle desires a hearing, which declaration was "mailed within 20 days after the date" on which the department sent notice, the department

shall notify the lienholder that he may not conduct a lien sale unless he has obtained a release or a judgment. If the department does not receive a declaration which was mailed within 20 days, it sends an authorization to conduct a lien sale to the lienholder. Under this procedure, the department is unable to know at the end of 20 days whether or not to send an authorization to the lienholder since a declaration mailed within 20 days may still be in the mail. The Commission recommends that this procedure be changed so that the notice sent by the department to the registered and legal owners and other persons claiming an interest in the vehicle specifies the date on or before which the department must receive the declaration to prevent issuance of an authorization to conduct a lien sale. The date specified should be 20 days after the department sends notice. Under the recommended provision, the department would be able to send the authorization on the 21st day after notice was sent if no declaration has been received.

5. Subdivision (b) of Section 3071 requires the garagekeeper to list, in addition to the registered and legal owners, "the names and addresses of any other persons who the lienholder knows or reasonably should know claim an interest in the vehicle." The Department of Motor Vehicles then sends notice to all persons listed in the application. Although a person claiming an interest who is not the registered or legal owner may prevent the issuance of an authorization to conduct a lien sale by sending a declaration of opposition to the department, such persons are not required by Section 3071.5 to release their interests before a sale pursuant to a release may be held nor are they entitled to a notice of sale under Sections 3072 and 3073. The Commission recommends that persons known to claim an interest be required to release their interest before a sale may take place and be entitled to notice of sale.

6. Section 3074 provides for redemption by the legal owner within 20 days after sale. The Commission recommends that this provision be repealed. Under the new procedure, the legal owner receives notice and has an adequate opportunity to protect his interests. This provision is not needed as it was when the lienholder could sell the vehicle on 20 days' notice after a 10-day grace period.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 3051, 3051a, 3052, 3069, 3070, 3072, and 3073 of, to amend and renumber Section 3071.5 of, to add Sections 3068, 3068.5, 3071, 3071.1, 3071.2, 3071.3, 3071.4, 3071.5, 3071.6, 3071.7, and 3071.8 to, and to repeal Sections 3068, 3071, and 3074 of, the Civil Code, and to amend Sections 22705 and 22851 of the Vehicle Code, relating to liens.

The people of the State of California do enact as follows:

SECTION 1. Section 3051 of the Civil Code is amended to read:

3051. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and livery or boarding or feed stable or feed yard proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and foundry proprietors and persons conducting a foundry business, have a lien, dependent on possession, upon all patterns in their hands belonging to a customer, for the balance due them from such customers for foundry work; and laundry proprietors and persons conducting a laundry business, and drycleaning establishment proprietors and persons conducting a drycleaning establishment, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work, and for the balance due them from such customers for drycleaning work, but nothing in this section shall be construed to confer a lien in favor of a wholesale drycleaner on materials received from a drycleaning establishment proprietor or a person conducting a drycleaning establishment; and veterinary proprietors and veterinary surgeons shall have a lien dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; ~~and keepers of garages for automobiles shall have a lien, dependent on possession for their compensation in caring for and safekeeping, and for making repairs and performing any labor~~

~~upon or furnishing supplies or materials for such automobiles;~~
and keepers of trailer parks shall have a lien, dependent on possession, for their compensation for rental of parking space for trailers, and for such other services as are furnished to the owners or legal possessors of trailers at their request; provided, however, that where the possession of, or lien upon, any automobile or trailer held under a claim of lien hereunder is lost by reason of fraud, trick or device, the repossession of said automobile or trailer by said garage keeper or trailer park keeper shall revive the lien so lost; provided, further, that any lien thus revived shall be subordinate to any sale, lien, encumbrance, right, title or interest in such automobile or trailer acquired or exercised in good faith and for value by any person ~~between the time of loss of possession and the time of repossession.~~

ALL IN
STRIKEOUT

This section shall have no application to any vessel as defined in Section 21 of the Harbors and Navigation Code.

Comment. The provisions concerning liens for keepers of garages and trailer parks are superseded by Chapter 6.5 (commencing with Section 3067).

SEC. 2. Section 3051a of the Civil Code is amended to read:

3051a. That portion of any lien, as provided for in the next preceding section, in excess of three hundred dollars (\$300) for any work, services, or care, or in excess of two hundred dollars (\$200) for any parking or safekeeping, rendered or performed at the request of any person other than the holder of the legal title, shall be invalid, unless prior to commencing any such work, service, care, parking, or safekeeping, the person claiming such lien shall give actual notice in writing either by personal service or by registered letter addressed to the holder of the legal title to such property, if known. ~~In the case of automobiles and trailers, the person named as legal owner in the registration certificate, shall be deemed for the purpose of this section, as the holder of the legal title and if any portion of a lien includes storage or parking charges upon automobiles or trailers for a period in excess of 60 days, the portion of the lien which accrued after the expiration of such period is invalid unless the provisions of Sections 10650 and 10652 of the Vehicle Code have been complied with by the holder of said lien.~~

ALL IN
STRIKEOUT

Comment. The provisions concerning liens for automobiles and trailers are superseded by Chapter 6.5 (commencing with Section 3067).

SEC. 3. Section 3052 of the Civil Code is amended to read:

3052. If the person entitled to the lien provided in Section 3051 ~~of this code~~ be not paid the amount due, and for which said lien is given, within ten (10) days after the same shall have become due, then such lienholder may proceed to sell said property, or so much thereof as may be necessary to satisfy said lien and costs of sale at public auction, and by giving at least ten (10) but not more than

twenty (20) days' previous notice of such sale by advertising in some newspaper published in the county in which said property is situated; or if there be no newspaper printed in such county, then by posting notice of sale in three (3) of the most public places in the town or place where such property is to be sold, for ten (10) days previous to the date of the sale; ~~provided, however, that prior to the sale of any trailer to satisfy any such lien, twenty (20) days' notice by registered mail shall be given to the legal owner and to the registered owner of such vehicle, if registered in this state as the same appear in the registration certificate, and also to the Division of Motor Vehicles by registered letter; and the Division of Motor Vehicles shall in like manner immediately notify said legal owner and said registered owner of said proposed sale, but failure on the part of said division to give such notice shall not affect the validity of any such sale; and provided, further, that within twenty (20) days after said sale, the legal owner may redeem any such trailer so sold to satisfy said lien upon the payment of the amount thereof, all costs and expenses of said sale, together with interest on said sum at the rate of 12 percent per annum from the due date thereof or the date when the same were advanced until the repayment.~~ The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the legal owner thereof.

ALL IN
STRIKEOUT

Comment. The provisions concerning lien sales of trailers are superseded by Chapter 6.5 (commencing with Section 3067). The redemption provision is repealed to be consistent with the repeal of Section 3074.

SEC. 4. Section 3068 of the Civil Code is repealed.

~~3068. (a) Every person has a lien dependent upon possession for the compensation to which he is legally entitled for making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair or safekeeping of, and for the rental of trailer parking space for, any vehicle of a type subject to registration under the Vehicle Code, subject to the limitations set forth in this chapter.~~

~~(b) That portion of the lien in excess of three hundred dollars (\$300) for any work or services, or in excess of two hundred dollars (\$200) or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 within 30 days after the commencement of the storage or safekeeping, three hundred dollars (\$300) for any storage or safekeeping, rendered or performed at the request of any person other than the holder of the legal title, is invalid, unless prior to commencing any such work or service the person claiming the lien gives actual notice in writing either by personal service or by registered letter addressed to the legal owner named in the registration certificate, and the consent of the holder of the legal title is obtained before any such work or services are performed. If any portion of a lien includes charges for the care, storage or safekeeping of, or for the rental of trailer parking space for, a vehicle for a period in excess of 60 days, the portion of the lien which accrued after the expiration of such period is invalid unless the provisions of Sections 10650 and 10652 of the Vehicle Code have been complied with by the holder of the lien.~~

ALL IN
STRIKEOUT

Comment. Former Section 3068 is superseded by new Section 3068.

SEC. 5. Section 3068 is added to the Civil Code, to read:

3068. (a) Subject to the limitations set forth in this chapter, a person who performs labor upon, furnishes materials or parking space for, or provides for storage or safekeeping of, any vehicle of a type subject to registration under the Vehicle Code, whether or not the vehicle is registered in this state, has a lien on the vehicle, dependent upon possession, for the compensation to which he is legally entitled.

(b) The amount of a lien for labor or materials in excess of three hundred dollars (\$300) is invalid unless prior to performing the labor or furnishing the materials the lienholder gives [actual] notice in writing by personal service or registered letter to the legal owner named in the registration certificate and obtains the consent of the owner.

(c) The amount of a lien for storage, safekeeping, or parking space in excess of two hundred dollars (\$200) or, if an application for authorization to conduct a lien sale has been received by the Department of Motor Vehicles pursuant to Section 3071.2 within 30 days after commencement of the storage, safekeeping, or furnishing of parking space, three hundred dollars (\$300), is invalid unless prior to providing the storage, safekeeping, or parking space, for which the charge exceeds the limitations provided by this subdivision, the lienholder gives [actual] notice in writing by personal service or registered letter to the legal owner named in the registration certificate and obtains the consent of the owner.

(d) The amount of a lien for storage, safekeeping, or furnishing parking space which accrues after 60 days is invalid unless the lienholder has complied with the provisions of Sections 10650 and 10652 of the Vehicle Code.

Comment. Section 3068 continues the substance of former Section 3068 but contains several clarifying changes. Subdivision (a) simplifies the description of the lien. Under subdivision (a) of former Section 3068, the lien was given for "making repairs or performing labor upon, and furnishing supplies or materials for, and for the storage, repair or safekeeping of, and for the rental of trailer parking space for, any vehicle of a type subject to registration under the Vehicle Code." However, subdivision (b) of former Section 3068 referred to "work or service" and to "care." Without limiting the extent of the lien provided by former law, Section 3068 and other provisions in this chapter refer uniformly to labor, materials, parking space, storage, or safekeeping. Parking space is no longer limited to space for parking trailers. The lien for labor includes towing charges. Subdivision (a) also makes clear that vehicles "of a type subject to registration under the Vehicle Code" include vehicles from other jurisdictions and unregistered vehicles.

Subdivision (b) continues the substance of part of the first sentence of subdivision (b) of former Section 3068. However, new subdivision (b) uses "labor or materials" in place of "work or services" in former law. The meaning of "work or services" was unclear under former law because former subdivision (a) did not use these words. The new subdivision (b) uses the word "owner" in place of "holder of the legal title." Section 3067 provides that definitions in Division 1 (commencing with Section 100) of the Vehicle Code are applicable; "owner" is defined whereas "holder of legal title" is not. Veh. Code § 460. See also the Automotive Repair Act, Bus. & Prof. Code §§ 9880-9889.61.

Subdivision (c) replaces part of the first sentence of subdivision (b) of former Section 3068. Changes similar to those described under subdivision (b) are made. In addition, subdivision (c) makes clear that notice to the legal owner and the consent of the owner are required only

before charges for storage, safekeeping, or parking space which would exceed the \$200 or \$300 limit accrue. Under former law, it appeared that notice and consent would have to be obtained before any storage, safekeeping, or parking began. In addition, under former law, there was apparently no limit on the amount of the lien where consent of the legal owner and the owner is not first obtained in the case of trailer parking space.

Subdivision (d) continues the substance of the last sentence of subdivision (b) of former Section 3068 except that parking space is no longer limited to that provided for trailers.

The liens of keepers of garages to which abandoned vehicles are removed are governed by Vehicle Code Sections 22705 and 22851.

SEC. 6. Section 3068.5 is added to the Civil Code, to read:

3068.5. (a) The lien ceases unless, within 15 days after the person requesting the labor, materials, storage, safekeeping, or parking space is given [oral or] written notice of the charges due, (1) the Department of Motor Vehicles receives an application from the lienholder for authorization to conduct a lien sale as provided in Section 3071.2, (2) the lienholder files an action on the claim giving rise to the lien, or (3) the registered and legal owners of the vehicle and all persons who the lienholder knows or reasonably should know claim an interest in the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle as provided by Section 3071.1.

(b) The lien ceases unless, within 15 days after the lienholder receives notice pursuant to Section 3071.4 that he is not authorized to conduct a lien sale or notice pursuant to Section 3071.6 that the vehicle is not registered in this state, (1) the lienholder files an action on the claim giving rise to the lien or (2) the registered and legal owners of the vehicle and all persons who the lienholder knows or reasonably

should know claim an interest in the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle as provided by Section 3071.1.

Comment. Section 3068.5 is new. It is based on the last sentence of subdivisions (d) and (f) of former Section 3071. Section 3068.5 provides a uniform 15-day period during which the lienholder must take some action if he desires to prevent the expiration of the lien. Former law provided periods of 10, 20, and 30 days and applied only where work or services were performed "with the consent of the registered owner." Subdivision (f) of former Section 3071 provided that the lien would expire unless the lienholder applied for an authorization to conduct a lien sale within 10 days after the lien arose or filed an action within 30 days after the lien arose, thereby leaving the validity of the lien in doubt where at the end of 10 days the lienholder had failed to make an application. For the purposes of subdivision (f) of former Section 3071, the lien was deemed to arise when a written statement of charges was presented to the registered owner. Under Section 3068.5, [oral or] written notice of the charges due must be given to the person requesting the garagekeeper to perform labor, furnish materials or parking space, or provide for storage or safekeeping.

SEC. 7. Section 3069 of the Civil Code is amended to read:

3069. Any A ~~lien provided for in this chapter for labor or materials, or for storage or safekeeping of~~ on a vehicle when abandoned on private property may be assigned by written instrument accompanied by delivery of possession of the vehicle, ~~subject to the lien, and the vehicle subject to the lien~~ . The assignee may exercise the rights of a lienholder as provided in this chapter. ~~Any lienholder assigning a lien as authorized herein shall at~~ At the time of assigning the lien , ~~the lienholder shall~~ give written notice of the assignment either by

personal delivery or by registered or certified mail, to the registered and legal owner of the assignment owners and to any other person the lienholder knows or reasonably should know claims an interest in the vehicle , including therein the name and address of the ~~person to whom the lien is assigned~~ assignee .

Comment. Section 3069 is amended to conform with new Section 3068 and to make technical changes. The amendment also provides that notice must be given to persons other than the legal or registered owners if the lienholder knows or should know of any such persons claiming an interest in the vehicle.

SEC. 8. Section 3070 of the Civil Code is amended to read:

3070. ~~Whenever the~~ Where a lien upon any such vehicle is lost by reason of the loss of possession of the vehicle through trick, fraud, or device, the repossession of the vehicle by the lienholder revives the lien but ~~any a~~ a lien so revived is subordinate to any ~~right, title or~~ interest of ~~any a~~ a person under any sale, transfer, encumbrance, lien, or other interest acquired or secured in good faith and for value between the time of the loss of possession and the time of repossession.

Comment. The amendment of Section 3070 is technical.

SEC. 9. Section 3071 of the Civil Code is repealed.

~~3071. (a) If the lienholder is not paid the amount due, and for which the lien is given, within 10 days after the same becomes due, then the lienholder may proceed to sell the property, or so much thereof as may be necessary to satisfy the lien and costs of sale pursuant to Section 3072 or 3073, if (1) an authorization to conduct a lien sale has been issued by the Department of Motor Vehicles pursuant to this section, (2) a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or (3) the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed by Section 3071.5.~~

(b) A lienholder may apply to the department for the issuance of an authorization to conduct a lien sale. The application shall be executed under penalty of perjury and shall include all of the following:

- (1) A description of the vehicle.
- (2) The names and addresses of the registered and legal owners of the vehicle, if ascertainable from registration certificates within the vehicle, and the names and addresses of any other persons who the lienholder knows or reasonably should know claim an interest in the vehicle.
- (3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.
- (4) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(c) Upon receipt of an application which is made pursuant to subdivision (a), the department shall send a notice and a copy of the application and a preaddressed return envelope by certified mail to the registered and legal owners at their addresses of record with the department and any other persons whose names and addresses are listed in the application. The notice shall include all of the following:

- (1) A statement that an application has been made with the department for the issuance of an authorization to conduct a lien sale.
- (2) A statement that (i) the person has a legal right to a hearing in court, (ii) if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned, and (iii) if the declaration is signed and returned, the lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the registered and legal owners.
- (3) A statement that (i) if the declaration is signed and returned, the lienholder must file an action in court, (ii) the registered and legal owners will be notified of the lawsuit, and (iii) the registered and legal owners may then appear to contest the claim of the lienholder.
- (4) A statement that the department will issue the authorization to conduct a lien sale unless the person signs and returns, within 20 days after the date on which the notice was mailed, the enclosed declaration stating that the person desires to contest the claim which gives rise to the lien.

~~(5) A statement that the person shall be liable for costs if the lienholder brings an action and a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.~~

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~~(c) A declaration which may be executed by the person under penalty of perjury stating that he desires to contest the claim which gives rise to the lien and an address at which the person may be served in any action in court arising out of the lien.~~

(d) If the department receives a declaration described in paragraph (3) of subdivision (c) which is mailed within 20 days after the date upon which the notice described in subdivision (c) is mailed, it shall notify the lienholder that he may not conduct a lien sale unless (1) a judgment has been entered in his favor on the claim which gives rise to the lien or (2) the registered and legal owners of the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle in the form prescribed by Section 3071.5. In any other case, the department shall issue an authorization to conduct a lien sale. Any lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless the lienholder files an action in court within 20 days after the lienholder receives a notice from the department under this subdivision.

(e) Upon the filing of an application, the department shall charge a fee which shall be established by the department in an amount equal to the actual costs of the department incurred in processing the application. The fee shall be recoverable as a cost by the lienholder if a lien sale is conducted.

(f) Any lien under this chapter or Section 3051 which arises because work or services have been performed on a vehicle with the consent of the registered owner shall be extinguished unless (1) the lienholder applies for an authorization to conduct a lien sale under subdivision (a) within 10 days after the lien has arisen or (2) if no application is made under subdivision (a), an action in court is filed within 30 days after the lien has arisen. For the purposes of this subdivision, a lien shall be deemed to arise at the time a written statement of charges for completed work or services is presented to the registered owner.

(g) The form of the applications, notices, and declarations described in this section shall be prescribed by the department. The language used in the applications, notices, and declarations should be simple and nontechnical. The notice and declaration described in subdivision (c) shall be printed in both English and Spanish.

(h) The procedure described in subdivisions (b), (c), and (d) shall not be applicable if the vehicle is a mobilehome which is required to be moved under a permit issued pursuant to Section 35790 of the Vehicle Code. A lien sale of the mobilehome may be conducted only if a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien or the registered and legal owners have signed, after the lien has arisen, a release of ~~any interest in the mobilehome in the form prescribed by Section 3071.5.~~

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Comment. Former Section 3071 is superseded by Sections 3071 through 3071.8.

SEC. 10. Section 3071 is added to the Civil Code, to read:

3071. Where the lienholder is not paid the amount due and for which the lien is given, the lienholder may sell the vehicle [or so much thereof as may be necessary] to satisfy the lien and costs of sale pursuant to Section 3072 or 3073 if the lienholder obtains one of the following:

(a) A release of any interest in the vehicle signed after the lien has arisen by the registered and legal owners and any other person the lienholder knows or reasonably should know claims an interest in the vehicle as provided in Section 3071.1.

(b) An authorization to conduct a lien sale as provided in Section 3071.5.

(c) A judgment entered in favor of the lienholder on the claim giving rise to the lien.

Comment. Section 3071 is similar to subdivision (a) of former Section 3071. Section 3071 refers to sale of "the vehicle" whereas former law provided for sale of "the property." [The provision for the sale of "so much [of the property] as may be necessary" is not continued.] Subdivision (a) of former Section 3071 provided that the lienholder could "proceed to sell" the property if within 10 days after the amount became due the lienholder had not been paid. This provision in some situations was in conflict with subdivision (f) of former Section 3071 which provided that a lien was extinguished if, within 10 days after a written statement of charges for completed work was presented to the registered owner, the lienholder did not apply for an authorization to conduct a lien sale or if, within 30 days after the statement was presented, he did not file an action. Subdivision (a) makes clear that a release must be obtained from any person the lienholder knows or reasonably should know claims an interest in the vehicle in addition to

the registered and legal owners. Former law seemed to require releases only from the registered and legal owners. See former Sections 3071(a) and 3071.5.

SEC. 11. Section 3071.2 is added to the Civil Code, to read:

3071.2. (a) Within the time allowed by Section 3068.5, the lienholder may apply to the Department of Motor Vehicles for an authorization to conduct a lien sale. The application shall be executed under penalty of perjury and shall include all of the following:

(1) A description of the vehicle.

(2) The names and addresses of the registered and legal owners of the vehicle if ascertainable from a registration certificate within the vehicle and the names and addresses of any other person the lienholder knows or reasonably should know claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(5) The name, business address, and telephone number of the lienholder.

(b) Upon the filing of an application, the department shall charge a fee which shall be established by the department in an amount equal to the actual costs of the department incurred in processing the application. The fee shall be recoverable as a cost by the lienholder if a lien sale is conducted.

Comment. Subdivision (a) of Section 3071.2 is based on subdivision (b) of former Section 3071. If the lienholder wishes to make an application under this section, he must do so within 15 days after the person

requesting the lienholder's services is given notice of the charges due. See Section 3063.5. Paragraph (5) of subdivision (a) is new. Subdivision (b) is identical to subdivision (e) of former Section 3071.

SEC. 12. Section 3071.3 is added to the Civil Code, to read:

3071.3. (a) Immediately upon receipt of the lienholder's application made pursuant to Section 3071.2, if the Department of Motor Vehicles finds that the vehicle is registered in this state, it shall send to the registered and legal owners at their addresses of record with the department, and to any other person claiming an interest in the vehicle whose name and address is listed in the application, all of the following:

- (1) A notice of application described by subdivision (b).
- (2) A copy of the lienholder's application.
- (3) A blank declaration form described by subdivision (c).
- (4) A return envelope addressed to the department.

(b) The notice of application shall include all of the following:

- (1) The name, business address, and telephone number of the lienholder.

- (2) A statement that an application for an authorization to conduct a lien sale has been made by the lienholder to the department.

- (3) A statement that the person receiving notice has a legal right to a hearing in court on the disputed claim and that, if such a hearing is desired, the declaration included with the notice and copy of the application must be signed under penalty of perjury and received by the department not later than the date specified, which shall be a date 20 days after the notice is sent by the department.

(4) A statement that, if the declaration is signed and received by the department on or before the date specified pursuant to paragraph (3), the vehicle must be released unless, before the expiration of 15 days after receiving notice from the department that the declaration has been signed and returned, the lienholder files an action in court on the claim giving rise to the lien or a release of any interest in the vehicle is signed after the lien arose by the registered and legal owners and any other person the lienholder knows or reasonably should know claim an interest in the vehicle.

(5) A statement that the registered and legal owners and any other persons claiming an interest in the vehicle and known to the lienholder will be notified of any court action filed against them on the claim and that such owners and interested persons may appear to contest the claim of the lienholder.

(6) A statement that the department will issue an authorization to conduct a lien sale unless, not later than the date specified pursuant to paragraph (3), the registered or legal owner or a person claiming an interest in the vehicle signs and returns the declaration stating that the person desires to contest the claim which gives rise to the lien.

(7) A statement that the person is liable for costs if the lienholder brings an action and a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.

(c) The declaration form which may be signed under penalty of perjury and returned to the department shall include the following:

(1) A statement that the person signing it desires to contest the claim which gives rise to the lien.

(2) The address at which the person making the declaration may be served in any action in court on the claim which gives rise to the lien.

Comment. Section 3071.3 is based on subdivision (c) of former Section 3071. Paragraph (6) of subdivision (b) makes clear that an authorization to conduct a lien sale will not be issued where one of several persons claiming an interest in the vehicle signs a declaration and returns it to the department within the time allowed. Paragraph (3) of subdivision (b) provides that the department is to specify a date 20 days after the notice is sent on or before which a declaration must be received by the department if any interested person desires to preserve his right to a hearing in court. Under paragraph (4) of subdivision (c) of former Section 3071, the person claiming an interest was required to sign and return the declaration within 20 days after notice was sent. Under subdivision (d) of former Section 3071, the person claiming an interest was required to mail the declaration within 20 days. Under these provisions of former law, the department could not know at the end of 20 days whether or not to send an authorization to the lienholder since a declaration mailed within the 20-day period might not have been received until later. See Sections 3071.4(a) and 3071.5.

SEC. 13. Section 3071.4 is added to the Civil Code, to read:

3071.4. (a) If the Department of Motor Vehicles receives a declaration described in Section 3071.3 on or before a date 20 days after the department sends the notice of application described in Section 3071.3, it shall immediately notify the lienholder that he is not authorized to conduct a lien sale unless (1) a judgment has been entered in his favor on the claim which gives rise to the lien or (2) the registered and legal owners of the vehicle and all persons who the lienholder knows or reasonably should know claim an interest in the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle as provided by Section 3071.1.

(b) The notice to the lienholder provided by this section shall inform the lienholder that the lien expires unless, within 15 days after receipt of the notice, (1) the lienholder files an action on the claim giving rise to the lien or (2) the registered and legal owners of the vehicle and all persons who the lienholder knows or reasonably should know claim an interest in the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle as provided by Section 3071.1.

Comment. Section 3071.4 is based on the first and third sentences of subdivision (d) of former Section 3071. Subdivision (b) shortens the time within which the lienholder must file an action to preserve the lien from 20 to 15 days and makes clear that the lien may also be preserved by obtaining releases from the registered and legal owners and all other persons who the lienholder knows or reasonably should know claim an interest in the vehicle.

SEC. 14. Section 3071.5 of the Civil Code is amended and renumbered to read:

~~3071.5~~ 3071.1. (a) * The registered or legal owner of a vehicle or any other person claiming an interest in a vehicle in the possession of a person holding a lien under this chapter or Section 3054 the lienholder may release any interest in the vehicle after the lien has arisen.

The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.

(b) The release shall be in at least 12-point type and shall contain all of the following information in simple, nontechnical language:

(1) A description of the vehicle, including the year and make, the engine or vehicle identification number, and the license number, if available.

(2) The names and addresses of the registered and legal owners of record with the Department of Motor Vehicles, if available, and the names and addresses of any other person the lienholder knows or reasonably should know claims an interest in the vehicle.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the person releasing the interest understands that (i) he has a legal right to a hearing in court prior to ~~any~~ sale of the vehicle to satisfy the lien and (ii) he is giving up the right to appear to contest the claim of the lienholder.

(5) A statement that ~~(i) the person releasing the interest gives up any interest he may have in the vehicle and (ii) he is giving the~~ lienholder permission to sell the vehicle on condition that it be sold pursuant to Section 3072 or 3073 to satisfy the claim giving rise to the lien.

(c) The release ~~required by~~ described in this section shall not be filed with the department in connection with any transfer of interest in a vehicle.

Comment. The amendments to former Section 3071.5, now renumbered as Section 3071.1, are largely technical. The references to other persons who claim an interest in the vehicle are required by subdivision (a) of Section 3071. Paragraph (5) of subdivision (b) is amended to provide that the release is given only for the purpose of allowing a sale in order to satisfy the lienholder's claim. Hence, for example, if the registered owner should pay the claim after some other person has signed a release, this provision makes clear that the other person has not lost his interest in the vehicle. Proceeds of sale remaining after satisfaction of the lienholder's claim and costs of sale are distributed as provided in Section 3072 or 3073.

SEC. 15. Section 3071.5 is added to the Civil Code, to read:

3071.5. If the Department of Motor Vehicles does not receive a properly signed declaration described in Section 3071.3 from any person to whom notice was sent as provided in Section 3071.3 on or before the date 20 days after the department sends notice, it shall send to the lienholder an authorization to conduct a lien sale.

Comment. Section 3071.5 is based on the second sentence of subdivision (d) of former Section 3071. Section 3071.5 provides a specific date after which the department is to send an authorization to conduct a lien sale if it has not received a declaration. Former law provided no specific date after which the department properly could act. See Comment to Section 3071.3.

SEC. 16. Section 3071.6 is added to the Civil Code, to read:

3071.6. Immediately upon receipt of the lienholder's application made pursuant to Section 3071.2, if the Department of Motor Vehicles finds that the vehicle is not registered in this state, it shall send notice to the lienholder that the vehicle is not so registered and that the lienholder may not conduct a lien sale unless a judgment has been entered in his favor on the claim which gives rise to the lien or the registered owner, if any, and the legal owners of the vehicle and all persons who the lienholder knows or reasonably should know claim an interest in the vehicle have signed, after the lien has arisen, a release of any interest in the vehicle as provided by Section 3071.1.

Comment. Section 3071.6 is new. Former Law did not specifically provide for the situation where the vehicle held subject to the lien was either not registered or registered in some other state. See Section 3068(a).

SEC. 17. Section 3071.7 is added to the Civil Code, to read:

3071.7. The form of the applications, notices, and declarations described in Sections 3071.2 to 3071.6 shall be prescribed by the Department of Motor Vehicles. The language used in the applications, notices, and declarations should be simple and nontechnical. The notice of application described in Section 3071.3 and the declaration described in Section 3071.3 shall be printed in both English and Spanish.

Comment. Section 3071.7 is substantively identical to subdivision (g) of former Section 3071.

SEC. 18. Section 3071.8 is added to the Civil Code, to read:

3071.8. The procedure provided by Sections 3071.2 to 3071.6 is not applicable if the vehicle is a mobilehome required to be moved under a permit issued pursuant to Section 35790 of the Vehicle Code.

Comment. Section 3071.8 is substantively identical to subdivision (h) of former Section 3071.

SEC. 19. Section 3072 of the Civil Code is amended to read:

3072. ~~Prior to any such~~ Except as provided by Section 3073, prior to the sale of a vehicle to satisfy the lien, the lienholder shall give at least 10 days but not more than 20 days notice of the sale by advertising for one issue in some newspaper of general circulation published in the county in which the ~~property~~ vehicle is situated. If there is no newspaper printed in such county, notice shall be given by posting notice of sale in three of the most public places in the town or place where the ~~property~~ vehicle is to be sold, for 10 days previous to the date of the sale. Prior to the sale of any the vehicle ~~to satisfy any such lien,~~ 20 days notice by registered mail or registered mail, return receipt requested, shall be given to the registered and legal owner ~~owners~~ and ~~to the registered owner~~ of the vehicle, if registered in this state, as the same appear in the registration certificate, and to any other persons who the lienholder knows or reasonably should know claim an interest in the vehicle and also to the Department of Motor Vehicles by registered mail ~~or certified mail~~ whether or not the vehicle is registered in this state. All notices required in this chapter shall

specify the make, the engine or vehicle identification number, and license number, if available, of the vehicle, and the date, time, and place of the sale. The proceeds of the sale shall be applied to the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, shall be paid to the legal owner, if any, or to the owner if there is no legal owner, or if no owner or legal owner can be located, the remainder shall be deposited with the department for deposit in the Motor Vehicle Fund.

Comment. The amendments of Section 3072 are primarily technical. In addition to the registered and legal owners, the lienholder is required by Section 3072, as amended, to give notice of sale to other persons claiming an interest in the vehicle. The reference to certified mail is deleted because it is superfluous. See Civil Code § 17.

SEC. 20. Section 3073 of the Civil Code is amended to read:

3073. When the lienholder can certify under penalty of perjury that the value of the vehicle subject to the lien does not exceed two hundred dollars (\$200), the lienholder may sell such vehicle at public sale, upon the giving of notice as provided in this section. At least 10 days before the sale, the lienholder shall notify the legal owner, the registered owner, and the ~~department~~ Department of Motor Vehicles by registered mail or registered mail, return receipt requested, certified mail, or United States ~~Post Office~~ Postal Service certificate of mailing, of the time and place of the sale. At least 10 days before the sale, the lienholder shall also post a notice of the sale in a conspicuous place on the premises where the vehicle is stored, giving the date of the sale and a description of the vehicle, including the make, model, type, and license number. The proceeds of the sale shall be applied to

the discharge of the lien and the cost of keeping and selling the property. The remainder, if any, shall be paid to the legal owner, if any, or to the owner if there is no legal owner, or if no owner or legal owner can be located, the remainder shall be deposited with the department for deposit in the Motor Vehicle Fund.

Comment. The last two sentences of Section 3073 as amended are identical to the last two sentences of Section 3072.

SEC. 21. Section 3074 of the Civil Code is repealed.

~~3074. Within 20 days after the sale of any vehicle under the authority of Section 3071, the legal owner may redeem such vehicle upon the payment of the amount thereof, all costs and expenses of said sale, together with interest on said sum at the rate of 12 percent per annum from the due date thereof or the date when the same were advanced until the repayment.~~

~~This section shall not be applicable to vehicles sold under the authority of Section 3073.~~

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Comment. Section 3074 is repealed. The notice provisions of Section 3071.3, along with the provisions for notice of sale in Sections 3072 and 3073, should adequately protect the interests of the legal owner. See also Section 3071.6 (unregistered and out-of-state vehicles).

SEC. 22. Section 22705 of the Vehicle Code is amended to read:

22705. If the vehicle is appraised at a value not exceeding two hundred dollars (\$200), the public agency which removed the vehicle shall:

(a) Within 48 hours after appraisal notify the Department of Justice in Sacramento of the removal of such vehicle.

(b) Prepare a certificate which shall describe the vehicle including the location of any license plates thereon, state the appraised value and that the vehicle will be junked or dismantled, and indicate that:

(1) An authorization to conduct a lien sale has been issued by the department pursuant to Section ~~3071~~ of the Civil Code or a judgment has been entered in favor of the lienholder on the claim which gives rise to the lien, or

(2) The registered and legal owners have signed a release under penalty of perjury disclaiming any interest, which release shall be included with the certificate, or

3071.5

(3) The vehicle is in such condition that vehicle identification numbers are not available to determine owners of record with the department, in which event the vehicle may be disposed of.

(a) Upon completion of the certificate, execute and deliver a bill of sale free of any lien for fees and penalties due and payable to the department together with a copy of the certificate to either the Perholder who shall endorse the bill of sale to a licensed automobile dismantler, or to the licensed automobile dismantler, or to the public agency for disposal, whichever has the vehicle in possession.

(d) Forward the completed certificate to the Department of Motor Vehicles in Sacramento.

(e) A vehicle which is the subject of a certificate prepared and forwarded pursuant to this section shall not be reconstructed or made operable.

(f) Licensed dismantlers acquiring vehicles which are the subject of certificates prepared and forwarded pursuant to this section shall be excused from any fees and penalties which would otherwise be due to the Department of Motor Vehicles, provided that a copy of the certificate forwarded to the Department of Motor Vehicles pursuant to this section is retained in the licensed dismantlers' business record.

(g) A local agency may authorize by contract or franchise the removal, disposal, or removal and disposal, of such vehicles by other than a licensed automobile dismantler if it has first requested bids for removal, disposal, or removal and disposal, of such vehicles. Such franchise or contract shall be issued to or executed with the lowest responsible bidder. The bill of sale shall then be executed and delivered pursuant to subdivision (c) with the franchisee or contractor.

Comment. Section 22705 is amended to conform with the amendments of Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of the Civil Code.

SEC. 23. Section 22851 of the Vehicle Code is amended to read:

22851. (a) Whenever a vehicle has been removed to a garage under

the provisions of this chapter and the keeper of the garage has received the notice or notices as provided herein, the keeper shall have a lien dependent upon possession for his compensation for towage and for caring for and keeping safe such vehicle for a period not exceeding 60 days or, if an application for an authorization to conduct a lien sale has been filed pursuant to Section 3071 of the Civil Code within 30 days after the removal of the vehicle to the garage,

120 days . and if

(b) If the vehicle is not recovered by the owner within such the period allowed by subdivision (a) or the owner is unknown, the keeper of the garage may satisfy his lien in the manner and after

giving the notices required in Sections 3071 and 3072 provided in Sections 3071 to 3072 of the Civil Code.

(c) Notwithstanding the ~~previous~~ provisions of this section subdivision (b), if the vehicle is appraised at a value not

exceeding two hundred dollars (\$200) by a person authorized to make such appraisal, the keeper of the garage may, if the vehicle is not recovered by the owner within (20) days or the owner is unknown, satisfy his lien as provided in Section 3073 of the Civil Code or Section 22705 of this code.

Comment. Section 22851 is amended to conform with the amendment of Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of the Civil Code.