

SENATE BILL REPORT

ESSB 5341

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, JANUARY 25, 1994

Brief Description: Providing for confiscation of registration and license plates and forfeiture of the vehicle upon conviction for driving while under the influence of intoxicating liquor or drugs.

SPONSORS: Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley, McCaslin, Vognild, Winsley, Deccio, von Reichbauer, M. Rasmussen, Roach and Oke)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Second Substitute Senate Bill No. 5341 be substituted therefor, and the second substitute bill do pass.

Signed by Senators A. Smith, Chairman; Ludwig, Vice Chairman; Hargrove, Nelson, Quigley, Roach, Schow and Spanel.

Staff: Lidia Mori (786-7755)

Hearing Dates: February 4, 1993; February 10, 1993; January 11, 1994; January 25, 1994

BACKGROUND:

When a person is convicted of DWI for the second time within a five-year period, the court may direct law enforcement to seize the motor vehicle the convicted person was driving at the time of the second DWI offense. The seizure automatically commences proceedings for forfeiture.

At the time a person is charged with a DWI violation, if that person has previously been convicted of DWI within a five-year period, the court is required to inform the person of the prohibition against selling the vehicle that he or she owns and was driving at the time of the offense. The court will also immediately send notice of the charge to the Department of Licensing. The court is required to notify the Department of Licensing of the subsequent conviction, acquittal, or other termination of the charge.

When the Department of Licensing receives notice of the DWI charge, it is required to withhold issuance of a certificate of ownership for the vehicle the person who is charged with DWI was driving at the time of the offense unless the applicant is the holder of a bona fide security interest or the lessor of the vehicle.

There is concern that due to technical problems with the current law deriving from a lack of automation in the Department of Licensing, the law dealing with the seizure and

forfeiture of vehicles connected with driving while intoxicated needs to be revised for purposes of enforcement.

SUMMARY:

When a person is convicted of a second charge of driving while under the influence of intoxicating liquor or drug within a five-year period, the court is directed to confiscate the Washington State vehicle registration and license plates of the vehicle that the person was driving at the time of the offense. If the person is not the owner of the vehicle, the court will require the person to surrender, within seven days, the vehicle registration and license plates of a vehicle owned by the person, if any. The license plates and vehicle registration will be held for 90 days from the date of surrender. No Washington State vehicle registrations or license plates may be issued to the person by the Department of Licensing during the period of confiscation. The confiscation is suspended while any lawful appeal is pursued.

On a third or subsequent conviction for driving while under the influence of intoxicating liquor or drug within a five-year period, a law enforcement officer is directed to seize the vehicle the person was driving at the time of the offense, if owned by that person. Notice is required to be served within 15 days of the seizure on the owner and any person having any known right or interest in the vehicle, including a community property interest. The vehicle is determined to be forfeited if no one notifies the law enforcement agency within 45 days of the seizure. A person who claims ownership or right to possession of the vehicle is entitled to a hearing and the vehicle is required to be returned to the claimant if the court or administrative law judge determines that the person has a lawful right to possession.

The Department of Licensing (DOL) is authorized to administratively suspend or revoke the driving privileges of any person arrested for DWI who has a breath or blood alcohol reading of 0.10 or greater.

The Department of Licensing is instructed to refrain from suspending or revoking a person's driver's license or to lift the suspension or revocation of a person's driver's license if the person obtains a court order authorizing entry into a deferred prosecution program.

The Department of Licensing is directed to revoke the license of any driver for one year if that driver is convicted of a felony level drug offense. The department will revoke the license for two years if the driver is convicted of a second felony level drug offense within five years.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

A person who is arrested for DWI and has a previous conviction for DWI within the last five years is prohibited from transferring, selling or encumbering his or her interest in the motor vehicle the person was driving at the time of the

violation. However, a rented vehicle may be transferred to the rental agency.

On a second or subsequent conviction for DWI, when the offense was committed within five years of the previous conviction for DWI, the vehicle the person was driving at the time of the offense is subject to seizure and forfeiture if the person has a financial interest in the vehicle.

The person claiming to be the legal owner of the vehicle shall have the burden of producing evidence that the vehicle should not be forfeited.

A law enforcement agency must first satisfy any bona fide security interest in a vehicle the agency may have seized before it sells the vehicle or retains it for official use.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

This bill corrects some problems encountered by SB 5815, which passed last year. It will provide law enforcement with a workable tool.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Lisa Thatcher, WA State Auto Dealers; Tim Schellberg, WA State Sheriffs & Police Chiefs; Jack Nevin, WA Assoc. of Prosecuting Attorneys; Judge Kip Stilz, WA State District & Municipal Court Judges Assoc.