

HOUSE BILL ANALYSIS

HB 1221

Title: An act relating to the impoundment and immobilization of vehicles being operated by persons who have a suspended or revoked driver's license.

Brief Description: Impounding vehicles driven by a person with a suspended or revoked license.

Sponsors: Representatives Ballasiotes, Sheahan, Robertson, Chandler, Cody, Crouse, K. Schmidt, Costa, Scott, Buck, Kessler, Schoesler, Chopp, Johnson, Honeyford, O'Brien, Wensman, Sheldon, McDonald, Zellinsky, Thompson, H. Sommers and Mason.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: A person's driver's license may be suspended or revoked for a variety of reasons, including a conviction for certain motor vehicle-related offenses, being an habitual traffic offender, failing to maintain liability insurance, and failing to respond to a traffic infraction.

The crime of driving while a license is suspended or revoked may be committed in any one of three degrees depending on the reason the license was suspended or revoked. The first-degree offense involves driving after the license was suspended for being an habitual traffic offender. The second-degree offense involves driving following the suspension or revocation of a license for DUI or other relatively serious offenses. The third-degree offense involves driving after a license is suspended or revoked solely for secondary reasons such as failure to furnish proof of financial responsibility, or failure to renew a license after a period of suspension has expired.

First-degree driving while a license is suspended or revoked (DWLS 1) is a gross misdemeanor offense that requires a mandatory sentence of at least 10 days on the first conviction, at least 90 days on the second conviction, and at least 180 days on the third and subsequent convictions. Second-degree driving while a license is suspended or revoked (DWLS 2) is also a gross misdemeanor but is not subject to a mandatory minimum jail term. Third-degree driving while a license is suspended or revoked (DWLS 3) is a misdemeanor.

Law enforcement officers are authorized to impound a vehicle in a variety of circumstances, such as when the officer arrests the driver, the person operating the

vehicle does not have a valid driver's license, or the person operating the vehicle is driving with a suspended or revoked license.

A vehicle impounded by a law enforcement officer may be redeemed only by the owner of the vehicle or a person who has the permission of the owner and upon payment of all costs associated with the impound. A registered tow truck operator must give notice to a person seeking to redeem the vehicle of redemption rights and the right to a hearing on the validity of the impound or the costs of towing and storage. The district court has jurisdiction to hear all matters relating to impoundment, including impoundments authorized by the state or its agents. If the court determines that the impoundment was invalid, the person or agency authorizing the impoundment is liable for the towing and storage costs and for damages for the loss of the use of the vehicle.

When a person is convicted of DUI for the second time within a five-year period, the vehicle driven by the person is subject to forfeiture if the person has a financial interest in the vehicle. The law enforcement agency that seizes the vehicle must serve notice of the seizure and intended forfeiture on the owner of the vehicle and on any person with an interest in the vehicle within 15 days. The vehicle is forfeited if no person notifies the agency within 45 days of a claim of ownership or right of possession of the vehicle. If a person notifies the agency within 45 days of a claim to the vehicle, the agency must hold a hearing on the claim. The matter may be removed to the district court within 45 days after notifying the agency of the claim. The person making the claim on the vehicle has the burden of proof.

There are two statutory provisions that prohibit a vehicle owner from knowingly allowing an unlicensed driver to drive the owner's car. One provision makes this offense a misdemeanor, and the other provision makes this offense a traffic infraction.

Summary of Bill: A law enforcement officer may impound or immobilize a vehicle operated by a person with a suspended or revoked driver's license.

If the vehicle is impounded or immobilized because the driver is in violation of DWLS 3, the vehicle may be released to the owner of the vehicle or a person who has the permission of the owner. The person redeeming the vehicle must have a valid driver's license and required liability insurance. If the owner was driving the vehicle when it was impounded or immobilized, the vehicle may not be released until all penalties, fines, or forfeitures owed by the vehicle owner have been satisfied.

If the vehicle is impounded or immobilized because the driver is in violation of DWLS 1 or DWLS 2, the vehicle may be held for up to 15 days and may only be released according to the same requirements for release of a vehicle impounded for DWLS 3. If the operator of the vehicle was previously convicted of DWLS 1 or

DWLS 2 within the past five years, the vehicle is subject to forfeiture if the operator has a financial interest in the vehicle.

The forfeiture procedures applicable to repeat DUI cases apply to a forfeiture for repeat DWLS 1 or DWLS 2 cases with a few differences. The law enforcement agency must serve notice of the forfeiture on the tow truck operator who impounded or immobilized the vehicle, the owner of the vehicle, the person in charge of the vehicle when it was seized, and any person having a known right or interest in the vehicle. Service is complete by mailing the notice within 15 days after the seizure. The tow truck operator must not release the vehicle after the notice of intent to forfeit is received except upon written order of the chief law enforcement officer of the agency directing impoundment or immobilization, an administrative law judge, or a court.

A law enforcement officer who immobilizes a vehicle must provide written notice to each person who seeks to redeem the vehicle of the right of redemption and opportunity for a hearing. The notice must include a form for requesting a hearing, the name of the person or agency authorizing the immobilization, and a copy of the immobilization invoice. The agency or person must keep a record that the notification was provided that includes the redeeming person's signature.

In a proceeding contesting an impoundment, immobilization, or forfeiture of a vehicle, an abstract of the person's driving record is admissible and is evidence of the status of the person's driving privilege, and that the person was convicted of each offense listed in the abstract. A certified vehicle registration is admissible without providing an evidentiary foundation.

The municipal court is granted jurisdiction over hearings involving a vehicle impoundment or immobilization authorized by an agent of the municipality.

A law enforcement officer and the local jurisdiction that employs the officer are not liable for damages for the unauthorized impoundment or immobilization of a vehicle if the officer relied in good faith and without gross negligence on Department of Licensing records in determining that the operator of the vehicle had a suspended or revoked license.

The provision that makes it a traffic infraction to knowingly permit an unlicensed driver to drive the person's car is repealed.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research