

SENATE BILL REPORT

ESHB 1221

As Reported By Senate Committee On:
Law & Justice, February 20, 1998

Title: An act relating to the impoundment and forfeiture 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: House Committee on Law & Justice (originally sponsored by 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).

Brief History: Law & Justice: 2/20/98 [DPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Goings, Kline, Long and Thibaudeau.

Staff: Lidia Mori (786-7755)

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 (DWLS) 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 traffic 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.

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. The district court has jurisdiction to hear all matters relating to impoundment. 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.

If an unauthorized vehicle is found abandoned and removed by a law enforcement officer, the last registered owner is guilty of a traffic infraction and is responsible for the costs of removing, storing, and disposal of the vehicle. The last registered owner is relieved of this liability if he or she filed a report of sale or transfer with the Department of Licensing (DOL) or a theft report with a law enforcement agency. Vehicles left in a tow truck operator's possession for 96 hours are considered abandoned. Tow truck operators who store abandoned vehicles must comply with certain procedures, including sending a notice of custody and sale to the registered owner of the vehicle within 24 hours. If the vehicle is not claimed within 15 days, the tow truck operator may auction the vehicle, and if the vehicle does not sell at auction, the tow truck operator must sell the vehicle within 30 days for scrap or apply for title to the vehicle.

A security interest in a vehicle may be "perfected," which generally establishes priority over other claims to the vehicle, by submitting to the DOL the certificate of ownership and an application for a new certificate of ownership containing the secured party's name. The security interest is perfected at the time of its creation if these documents are received within eight business days of the creation of the security agreement.

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

An impounded vehicle may only be released pursuant to a written order from the agency that ordered the impound. The person redeeming the vehicle must establish with the agency that the person has a valid drivers' license and mandatory liability insurance, and if the operator of the car is the owner, that all fines, penalties and forfeitures owed by the owner have been paid.

If the vehicle is impounded because the driver is in violation of DWLS 3, and if the driver has a previous violation of DWLS 3 in the past five years, the vehicle may be held for up to 15 days at the written direction of the agency ordering the impound. If the vehicle is impounded because the driver is in violation of DWLS 1 or DWLS 2, the vehicle may be held for up to 15 days. The vehicle may be released pursuant to a provision of a state agency rule or local ordinance authorizing release on the basis of economic or personal hardship to the spouse of the operator, taking into consideration public safety factors including the operator's criminal history and driving record. 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, unless an applicable state agency rule or local ordinance prohibits forfeiture on the basis of economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record.

If forfeiture is pursued, the law enforcement agency must serve notice of the forfeiture on the tow truck operator who impounded 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. 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.

In a forfeiture proceeding, the court must provide for the protection of a community property interest in the vehicle of a person other than the operator of the vehicle. The value of the undivided community property interest of the innocent spouse is not subject to the costs for towing, removal or storage of the vehicle.

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

The transitional ownership record must contain the date of sale, the name and address of each owner of the vehicle, the name and address of each security interest holder, the priorities of the security interests, the vehicle information, the name of the dealer or security interest holder who is submitting the record, and the transferee's driver's license number, if available.

Filing a vehicle theft report with a law enforcement agency relieves the last registered owner of criminal liability for failing to redeem the vehicle. The last registered owner remains liable for the costs incurred in removing and storing an abandoned vehicle. The last registered owner may bring a civil action or request restitution in a criminal action against the person responsible for the theft of the vehicle.

Properly filing a report of sale or transfer relieves the last registered owner of liability for the costs incurred in removing and storing the vehicle. If the date of sale on the report of sale is before the date of the impoundment, the new owner is liable for the costs of removing and storing the vehicle. If the date of sale is after the date of impoundment, the previous registered owner is presumed to be liable for the towing costs.

A licensed vehicle dealer is not liable for towing costs if the dealer filed a transitional ownership record or report of sale in a timely manner. The person to whom the dealer sold the vehicle is liable for the cost incurred in removing and storing the vehicle.

A motor vehicle dealer may use a transitional ownership record to perfect a security interest when the certificate of ownership is not available. It may only be used for vehicles already in the DOL system when proof of ownership is not in the possession of the vehicle dealer at the time, and when the certificate of ownership will not be received for submission to the department within 20 calendar days of the sale of the vehicle.

Amended Bill Compared to Original Bill: The intent section contains a clarification that the impoundment or forfeiture of a vehicle operated in violation of the driving with a suspended license law is intended to be civil action against the vehicle in order to remove it from the public highways and reduce the risk posed to traffic safety.

A vehicle that is impounded under this bill may be released pursuant to a provision of a state agency rule or local ordinance authorizing release on the basis of economic or personal

hardship to the spouse of the operator taking into consideration public safety factors, including the operator's criminal history and driving record. A vehicle is not subject to forfeiture under this bill if an applicable state agency rule or local ordinance prohibits forfeiture on the basis of economic or personal hardship to the spouse of the operator taking into consideration public safety factors, including the operator's criminal history and driving record.

The amendment contains the most recent, agreed upon changes to the concept of the transitional ownership record.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: San Diego has implemented the provisions that are contained in this bill and they have seen the number of traffic accidents go down and have seen a reduced incidence of driving with license suspended offenses. The number of driving with license suspended offenses are very numerous. In Seattle, at least 10,000 cases of driving with license suspended are filed annually and 53 percent of these people do not show up for their hearings. Bench warrants are issued and when police encounter these people, they are arrested and usually spend two days in jail. This costs the city of Seattle about \$1.25 million. If the cars of these people were impounded, they would show up and pay their traffic tickets in order to get their cars back. This revenue could help deal with any cost from the .08 bill. These people are criminal drivers. The reason they have suspended licenses is often due to drunken driving. They are over represented in fatal accidents. Towing their cars will send an effective message to these scofflaws.

Testimony Against: None.

Testified: PRO: Representative Robertson; Mark Sidran, Seattle City Attorney; John Moffat, WA Traffic Safety Commission; Captain Marsh Pugh, WA State Patrol.