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## Judiciary Committee

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### HB 1017

**Title:** An act relating to mandating a twelve-hour impound hold on motor vehicles used by persons arrested for driving under the influence of alcohol or drugs or being in physical control of a vehicle while under the influence of alcohol or drugs.

**Brief Description:** Mandating a twelve-hour impound hold on motor vehicles used by persons arrested for driving under the influence.

**Sponsors:** Representatives Goodman, Buys, Liias, Armstrong, Rolfes, Springer, Clibborn, Rodne, Finn, Seaquist, Moscoso, Probst, Kelley, Orwall, Fitzgibbon, Stanford, Kagi, Dammeier, Blake, Ladenburg, Pearson, Miloscia, Jacks, Van De Wege, Sells, Hurst, Smith and Moeller.

#### Brief Summary of Bill

- Requires that the vehicle operated by a person arrested for driving under the influence of alcohol or drugs be impounded and held for 12 hours, but allows a registered owner who is not the operator of the vehicle to redeem the vehicle upon impound;
- Relieves a tow truck operator from liability if the tow truck operator complies with the impound provisions;
- Relieves the law enforcement officer from liability for loss of use of the vehicle in an improper impound, if the officer had reasonable grounds to believe the driver was driving under the influence of alcohol or drugs.

**Hearing Date:** 1/12/11

**Staff:** Trudes Tango (786-7384).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## Vehicle Impounds

Law enforcement officers may impound a vehicle for a number of reasons, including when the operator of a vehicle is arrested for driving under the influence of alcohol or drugs (DUI). However, there is no requirement that officers impound a vehicle driven by a person arrested for DUI.

When a vehicle is impounded, the tow truck operator must notify the legal and registered owners of the impoundment, the right of redemption, and the opportunity for a hearing to contest the validity of the impoundment or the amount of towing and storage charges. An impounded vehicle may be redeemed only by a registered owner of the vehicle or a legal owner (such as a lien holder) or a person who has permission of a registered owner, and upon payment of all costs associated with the impound.

If, in a hearing contesting the impoundment, the impound is found to be in violation of the impound laws, the person or agency that authorized the impound is responsible for costs associated with the impound, the filing fee, and reasonable damages for loss of use of the vehicle. However, if the impound is based on driving with a suspended license and the impound is found to be improper, the law enforcement officer and the agency employing the officer are not liable for damages for loss of use of the vehicle if the officer relied in good faith and without gross negligence on the Department of Licensing's driving records.

### *All Around Underground v. The Washington State Patrol*

In a 2002 Washington Supreme Court case, *All Around Underground v. The Washington State Patrol*, the Court held that a Washington State Patrol rule requiring impoundment of the vehicle operated by a person arrested for having a suspended license exceeded statutory authority because the impoundment statute requires officer discretion in whether or not to impound. While the case was decided on statutory grounds, the majority opinion noted that courts have generally found that in order to satisfy constitutional requirements, impoundment must be reasonable, which includes taking into account whether reasonable alternatives to impoundment exist. Under both the state and federal Constitutions, seizures of property must be reasonable.

### **Summary of Bill:**

The Legislature finds that protecting the public from an intoxicated person operating a vehicle is the primary reason for impounding the vehicle driven by a person arrested for DUI.

When a law enforcement officer arrests a person for DUI, the officer must impound the vehicle. When the operator of the vehicle is a registered owner of the vehicle, the impounded vehicle may not be redeemed until 12 hours after the vehicle arrives at the tow truck operator's storage facility, unless there are two or more registered owners. If there are two or more registered owners, the registered owner who is not the operator of the vehicle may redeem the vehicle upon impound.

When the operator of the vehicle is not a registered owner, the registered owner may redeem the vehicle once impounded.

The law enforcement officer directing the impound must notify the operator of the vehicle that a registered owner who is not the operator may redeem the vehicle.

Registered tow truck operators that release an impounded vehicle in compliance with these impound requirements are not liable for injuries or damages sustained by the vehicle operator or by other parties that may result from the vehicle operator's intoxicated state.

If an impoundment is found improper, the arresting officer and the officer's government employer are not liable for damages for loss of use of the vehicle if the officer had reasonable grounds to believe the operator was driving or controlling a vehicle while under the influence of alcohol or drugs.

The act is to be known as "Hailey's Law."

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.