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## Judiciary Committee

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### E2SSB 5000

**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:** Senate Committee on Transportation (originally sponsored by Senators Haugen, Erickson, Hatfield, Schoesler, Shin, Conway, Tom, Sheldon and Kilmer).

#### Brief Summary of Engrossed Second Substitute Bill

- Requires a police officer to impound the vehicle operated by a person arrested for driving under the influence of alcohol or drugs, and requires that the vehicle be held for 12 hours if the person arrested is the only registered owner of the vehicle.
- Provides some immunity from liability for tow truck operators and police officers complying with the impoundment requirements.

**Hearing Date:** 3/14/11

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

#### **Background:**

##### Vehicle Impounds.

Law enforcement officers may impound a vehicle for a number of reasons, including when the driver is arrested for driving under the influence of alcohol or drugs (DUI) or driving while license suspended (DWLS). However, there is no statute requiring an officer to impound a vehicle under those circumstances.

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

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validity of the impoundment or the amount of towing and storage charges. When the driver of a commercial vehicle is arrested for DWLS and the driver is not the owner of the vehicle, the officer must attempt to contact the owner before ordering the impoundment. An impounded vehicle may be redeemed only by a registered owner or a legal owner of the vehicle (such as a lien holder) or a person who has permission of a registered owner, and upon payment of all costs associated with the impoundment.

If, in a hearing, the impoundment is found to violate the impound laws, the person or agency that authorized the impoundment is responsible for costs associated with the impoundment, the filing fee, and reasonable damages for loss of use of the vehicle. However, if the impoundment is based on DWLS, the law enforcement officer is 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 (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:**

When an officer arrests a person for DUI, the officer must order that the vehicle be impounded, except for commercial vehicles or farm transport vehicles.

Redeeming the Vehicle and the 12-Hour Hold.

When the driver is the 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 or a legal owner. A registered owner or legal owner, who is not the driver that was arrested, may redeem the vehicle upon impound without waiting the 12 hours. The law enforcement officer directing the impoundment must notify the operator of the vehicle that a registered owner or legal owner may redeem the vehicle.

Leaving the Vehicle Before the Tow Truck Operator Arrives.

The officer may leave the vehicle before it is towed if the officer puts the impound order and inventory inside the vehicle and secures the vehicle by closing the windows and locking the doors, and the officer:

- Has waited 30 minutes after a tow truck operator has been dispatched and the tow truck has not arrived;
- Is presented with exigent circumstances, such as being called to another incident, or must return to patrol due to limited available resources.

If the officer has secured the vehicle and left it, the officer is not liable for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time the

tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the tow truck operator arrives.

Commercial Vehicles and Farm Transport Vehicles.

If the vehicle is a commercial vehicle or farm transport vehicle and the driver is not the owner of the vehicle, the officer must attempt in a reasonable and timely manner to contact the owner of the vehicle before ordering the vehicle to be impounded. The officer may release the vehicle to the owner if the owner is reasonably available and the owner was not in the vehicle at the time of the stop and arrest. A farm transport vehicle is also added as an exemption from the impoundment provisions for when a driver is arrested for DWLS.

A farm transport vehicle means a motor vehicle owned by a farmer and that is being actively used in the transportation of a farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight of 16,001 pounds or more.

Liability of Tow Truck Operators and Police Officers.

Registered tow truck operators that release an impounded vehicle in compliance with these requirements are not liable for injuries or damages sustained by the driver or by other parties that may result from the driver'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:** Not requested.

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