

HOUSE BILL REPORT

E2SSB 5000

As Reported by House Committee On:

Judiciary
Transportation

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, Ericksen, Hatfield, Schoesler, Shin, Conway, Tom, Sheldon and Kilmer).

Brief History:

Committee Activity:

Judiciary: 3/14/11, 3/17/11 [DP];

Transportation: 3/30/11 [DP].

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.
- Allows the police officer to contact the owner, providing the owner was not in the vehicle or operating the vehicle at the time of arrest of a commercial or farm transport vehicle to pick up the vehicle prior to the officer ordering the impound.

HOUSE COMMITTEE ON JUDICIARY

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.

Majority Report: Do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall and Roberts.

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 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; or
- 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, except for section 6, which, because of prior double amendments, takes effect July 1, 2011.

Staff Summary of Public Testimony:

(In support) There is a loophole in the law that allows a drunk driver to return to the vehicle and drive again after being processed through law enforcement. Tow truck operators worked hard on this bill and the concerns raised for innocent spouses and farm vehicles carrying perishable loads have been addressed. Concerns about officers in rural areas having to wait with the car until the tow truck operator arrives have been addressed. The bill allows the officer to "toss, lock, and leave." If the officer has secured the car, the officer is not liable for damages that might happen to the car before the car is towed. If the officer cannot secure the car, the officer should wait with the car. It is a rare situation when a car cannot be locked and a tow truck operator does not arrive within a few minutes of being called. Adding farm vehicles to the driving while license suspended statute is just clarifying the original intent of having commercial vehicles in that section. The Washington State Patrol has been sued when they have impounded cars and sued for not impounding cars. In the Hailey case, the officer did the right thing and used a reasonable alternative to impoundment, as required by the current law. The law needs to remove the officer's discretion. For the sake of public safety, these vehicles should be impounded.

(Opposed) None.

Persons Testifying: Senator Haugen, prime sponsor; Stu Halson, Towing and Recovery Association; and Jason Berry, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 29 members: Representatives Clibborn, Chair; Billig, Vice Chair; Lias, Vice Chair; Armstrong, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Angel, Asay, Eddy, Finn, Fitzgibbon, Jinkins, Johnson, Klippert, Kristiansen, Ladenburg, McCune, Moeller, Morris, Moscoso, Overstreet, Reykdal, Rivers, Rodne, Rolfes, Ryu, Shea, Takko, Upthegrove and Zeiger.

Staff: Jerry Long (786-7306).

Summary of Recommendation of Committee On Transportation Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 6, which, because of prior double amendments, takes effect July 1, 2011.

Staff Summary of Public Testimony:

(In support) The bill is greatly improved from the first original bill. The toss, lock, and leave provision was placed in the bill by a request from local government experiencing tight law enforcement resources. If, after waiting 30 minutes, a law enforcement officer receives another call, the officer can secure the vehicle and take the next call. The police officer and their employer are not liable under this bill for something that happens to the vehicle between the time the officer leaves and the tow operator arrives. This normally is not an issue since the tow regions and call lists are set up to make sure a tow operator can arrive within the 30 minutes. After the dispatch operator calls the tow operator, the tow operator has 15 minutes to be in route. This is current practice in the law enforcement community today. The addition of farm transport vehicles is due to the fact that a lot of vehicles are not classified as commercial, even though the vehicles are hauling product, in most cases, to market. This gives the police officer the opportunity to call the owner if the owner was not the driver or in the vehicle at the time of arrest, especially if the vehicle is hauling perishable products.

The Washington State Patrol supports the bill. The bill is a good public safety bill since it helps keep an intoxicated driver from getting back in the vehicle and driving again for a 12-hour period. The bill limits liability since the police officer now has the option to impound or not impound, which has created a liability in the past for state and local governments for millions of dollars in settlements. Law enforcement has arrested a person multiple times in a short period of time for driving under the influence. This bill allows another registered owner or legal owner to pick up the vehicle, but only after it has reached the tow operator's impound yard.

(Opposed) None.

Persons Testifying: Stu Halsan, Towing and Recovery Association; and Jason Berry, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.