

SENATE BILL REPORT

SB 5000

As Reported by Senate Committee On:
Judiciary, February 8, 2011

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: Senators Haugen, Ericksen, Hatfield, Schoesler, Shin, Conway, Tom, Sheldon and Kilmer.

Brief History:

Committee Activity: Judiciary: 1/21/11, 2/08/11 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5000 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles and Regala.

Staff: Lidia Mori (786-7755)

Background: 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). 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.

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.

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.

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 (Recommended Substitute): 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 driver 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 or there is a legal owner of the vehicle. If there are two or more registered owners or a legal owner, the registered owner or the legal owner who is not the driver of the vehicle may redeem the vehicle upon impound. When the driver 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 driver of the vehicle that a registered owner or a legal owner who is not the driver may redeem the vehicle.

If the police officer who directed that a vehicle be impounded is presented with exigent circumstances and has waited 30 minutes after a tow truck operator has been dispatched, the officer may leave the vehicle after placing inside it the completed impound order and inventory and securing the vehicle. The officer and the government or agency employing the officer are not liable for damages or theft of the vehicle or its contents or for the actions of any person who removes the vehicle prior to the arrival of the tow truck operator as long as the officer has secured the vehicle and followed the specified procedures.

If the vehicle subject to impoundment is a commercial vehicle, the police officer must attempt, in a reasonable and timely manner, to contact the owner of the vehicle and may release it to the owner as long as he or she was not in the vehicle at the time of the stop and arrest.

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 suspicion 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.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Replaces the word operator with driver. If the vehicle subject to impoundment is a commercial vehicle, the police officer must attempt, in a reasonable and timely manner, to contact the owner of the vehicle and may release it to the owner as long as he or she was not in the vehicle at the time of the stop and arrest. If the police officer who directed that a vehicle be impounded is presented with exigent circumstances and has waited 30 minutes after a tow truck operator has been dispatched, the officer may leave the vehicle after placing inside it the completed impound order and inventory and securing the vehicle. In a lock and leave situation, the officer and the government or agency employing the officer are not liable for damages or theft of the vehicle or its contents or for the actions of any person who removes the vehicle prior to the arrival of the tow truck operator. An impounded vehicle may be released to a legal owner of the vehicle who was not the driver. A police officer directing an impound and the government agency that employs him or her are not liable for loss of use of the vehicle if the officer had reasonable grounds to believe the driver was under the influence of alcohol or drugs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: There are 45,000 arrested annually for driving under the influence of alcohol or drugs (DUI). We need to remove the discretion as to whether to order a vehicle impounded. Four years ago, I was hit by a drunk driver. Had this law been in effect, it never would have happened. I wouldn't have had to schedule my 14th surgery last week. It's a whole lot cheaper for someone to have to pay to get their car out of impound than what I have had to pay. The woman who hit me had been given a DUI earlier in the evening; she was processed and taken home. The first thing she did was call a cab and go back to her car. She crossed the center line and hit me head on. A lawsuit was filed and the WA State Patrol (WSP) was found to have to pay over \$2 million. The driver who received the DUI was supposed to have an ignition interlock device, but nobody followed through and confirmed that she got one. In the case of *Potter v WSP*, the court said you can't require impounds by rule. Local governments were slow to order impounds because of the *Potter* ruling, then the case of the woman being hit head on by a driver arrested earlier in the evening for DUI occurred. There is a need to draw a bold line for the officers. Operators come in to get their car and they're still drunk, the tow company has to give it to them. When a person calls a tow operator and requests a tow, they have to be

wheels rolling in 15 minutes and if they don't do that, they can lose their letters of appointment and lose their business. The tow company would never get another police call if they didn't respond when they're supposed to do so. The towing fees are the responsibility of the registered owner and that's current law. If you loan your car to someone and they park it in front of a fire hydrant and it's impounded, it's that owner's responsibility to pay the charges associated with the impound.

CON: It is important to have a policy of deterrence. We should be concerned about trampling on people's rights; we should have concerns about seizing a car due to the 4th amendment. Not all people arrested for DUI are guilty. For poor people, having one's car impounded is a crushing financial impact. Impounding of a person's car should only happen when the person is a repeat offender or has a blood alcohol level well over the legal limit.

OTHER: There are some technical concerns. Also, there should not be any liability for the police if they do the toss, lock, and leave procedure.

Persons Testifying: PRO: Jason Berry, WSP; Stu Halsan, Towing and Recovery Assn.

CON: Arthur West, citizen.

OTHER: Candice Bock, Assn. of WA Cities.