

# HOUSE BILL REPORT

## HB 1221

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to the impoundment and immobilization 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:** 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:

#### Committee Activity:

Law & Justice: 2/5/97, 3/5/97 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

**Staff:** Edie Adams (786-7180).

**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. A registered tow truck operator must give notice to a person seeking to redeem the vehicle of redemption rights and the right to a hearing on the validity of the impound or the costs of towing and storage. The district court has jurisdiction to hear all matters relating to impoundment, including impoundments authorized by the state or its agents. 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.

When a person is convicted of DUI for the second time within a five-year period, the vehicle driven by the person is subject to forfeiture if the person has a financial interest in the vehicle. The law enforcement agency that seizes the vehicle must serve notice of the seizure and intended forfeiture on the owner of the vehicle and on any person with an interest in the vehicle within 15 days. The vehicle is forfeited if no person notifies the agency within 45 days of a claim of ownership or right of possession of the vehicle. If a person notifies the agency within 45 days of a claim to the vehicle, the agency must hold a hearing on the claim. The person making the claim on the vehicle has the burden of proof.

A security interest in a vehicle may be "perfected," which generally establishes priority over other claims to the vehicle, by submitting to the Department of Licensing (DOL) the certificate of ownership and an application for a new certificate of ownership to contain 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 Substitute 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. 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.

A forfeiture proceeding must be commenced within 10 days of the impound. The forfeiture procedures applicable to repeat DUI cases apply to a forfeiture for repeat DWLS 1 or DWLS two cases with a few differences. 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. Service by mail is complete upon mailing. 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 chief law enforcement officer or 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.

If a vehicle is forfeited, the law enforcement agency that ordered the impound must pay all costs of the impound. The agency may recover those costs from the operator of the forfeited vehicle.

In a proceeding contesting an impoundment, or forfeiture of a vehicle, an abstract of the person's driving record is admissible and is evidence of the status of the person's driving privilege, and that the person was convicted of each offense listed in the abstract. A certified vehicle registration is admissible without providing an evidentiary foundation.

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

A law enforcement officer and the local jurisdiction that employs the officer are not liable for damages for the unauthorized impoundment of a vehicle if the officer relied in good faith and without gross negligence on DOL records in determining that the operator of the vehicle had a suspended or revoked license.

The definition of abandoned vehicle is amended to be a vehicle that is left in a tow truck operator's possession for 120 consecutive hours, rather than 96 hours.

The requirements for the perfection of a security interest in a motor vehicle are changed. The time period within which a secured party may submit required information to the DOL in order to have the security interest perfected at the time of creation is increased from eight business days to 20 calendar days. A report of sale of a motor vehicle is properly filed if all required information is submitted and the DOL notes on the document that it was received within five days of sale.

A new mechanism is created for the perfection of a security interest in a vehicle, which allows a "transitional ownership record" to be submitted to the DOL in the place of a certificate of ownership. The transitional ownership record must contain specified information and may only be used as an ownership record if the certificate of ownership is not in possession of the selling vehicle dealer or new security interest holder at the time the transitional ownership record is submitted to the DOL and won't be available within 20 days of the date the security interest is created.

The provision that makes it a traffic infraction to knowingly permit an unlicensed driver to drive the person's car is repealed.

**Substitute Bill Compared to Original Bill:** The original bill authorizes immobilization as well as impoundment. The original bill requires the tow truck operator, rather than the law enforcement agency, to determine whether the person seeking to redeem the vehicle has met all conditions. The original bill does not specify that the law enforcement agency ordering the impound of a vehicle is responsible for paying the costs of impound if the vehicle is forfeited. The original bill allowed a forfeiture proceeding to be commenced within 15 days and did not provide that the law enforcement agency or the court must protect the community property interest in a forfeiture proceeding. The original bill did not amend the definition of abandoned vehicle and did not contain the provisions changing the requirements for the perfection of a security interest in a motor vehicle.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The current system for dealing with people who drive without a valid license is ineffective, inefficient, and doesn't protect the public safety. Prosecuting and incarcerating these people is extremely costly and doesn't work as a deterrent. Most injury accidents are caused by drivers with invalid licenses. Often, the person will drive away from the scene after being cited by the officer and told not to drive. The only way to keep these people from driving is to take away their cars. Jurisdictions that have aggressively pursued impoundment have had dramatic decreases in traffic offenses. There are concerns with allowing immobilization because of the potential liability problems that could arise if the car is vandalized. In addition, there are concerns relating to tow truck operators having to establish whether a person has a valid drivers' license and insurance, and having to pay for the costs of impound if a vehicle is subsequently forfeited. The bill should be amended to protect security interests in the vehicle and provide timely notice to secured parties.

**Testimony Against:** None.

**Testified:** Representative Ballasiotes, prime sponsor; Ed Crawford, Police Chief, Renton Police Department (pro); Dr. Cindy Horton, citizen (pro); Captain Marsh Pugh, Washington State Patrol (pro); Lieutenant Mike Qunell, Lakewood Fire Department (pro); Mark Sidran, Seattle City Attorney (pro); Evan Simpson, Harborview Medical Center's Injury Prevention and Research Center (pro); Lisa Thatcher, Washington State Auto Dealers (with concerns); Stu Halsan, Washington Tow Truck Association (with concerns and suggested amendment); and Lynda Henriksen, Department of Licensing (with concerns and suggested amendment).