Conference Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

SENATE BILL 1089

AN ACT

CHANGING THE DESIGNATION OF TITLE 28, CHAPTER 8, ARTICLE 9, ARIZONA REVISED STATUTES, TO "VEHICLE IMMOBILIZATION, IMPOUNDMENT AND STORAGE"; AMENDING SECTIONS 28-3511, 28-3512, 28-3513 AND 28-3514, ARIZONA REVISED STATUTES; RELATING TO VEHICLE IMMOBILIZATION AND IMPOUNDMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

SENATE

STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

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May 20, 2005

The Honorable Ken Bennett
Senate President
Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

Re: Senate Bill 1089: vehicle impoundment; storage

Dear President Bennett:

Today I vetoed Senate Bill 1089, related to vehicle impoundment and storage.

Senate Bill 1089 requires law enforcement agencies to impound or immobilize a motor vehicle under various circumstances, including when the driver of the vehicle has been charged with driving under the influence of alcohol. The bill would allow the car's driver to decide whether the vehicle is immobilized or impounded, and it does not appropriate money to our law enforcement agencies to cover the costs of such actions.

Such infirmities jeopardize public safety and impose a heavy financial burden on Arizona's law enforcement agencies. Fortunately, they are not present in Senate Bill 1254, which addresses the same issue. For these and other reasons, I will sign Senate Bill 1254 and not Senate Bill 1089.

Yours very truly,

Janet Napolitano
Governor

JN:TN/jm
cc: The Honorable Jim Weiers
The Honorable Linda Gray

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Heading change
3 The article heading of title 28, chapter 8, article 9, Arizona Revised
4 Statutes, is changed from "SUSPENDED DRIVER LICENSE ENFORCEMENT" to "VEHICLE
5 IMMOBILIZATION, IMPOUNDMENT AND STORAGE".
6 Sec. 2. Section 28-3511, Arizona Revised Statutes, is amended to read:
7 28-3511. Removal and impoundment of vehicle; immobilization of
8 vehicle
9 A. A peace officer ~~may~~ SHALL cause the removal and EITHER
10 IMMOBILIZATION OR impoundment of a vehicle, WHICHEVER THE DRIVER OF THE
11 VEHICLE CHOOSES, if the peace officer determines that a person is driving the
12 vehicle while any of the following applies:
13 1. The person's driving privilege is revoked for any reason.
14 2. The person's driving privilege is suspended because of a driving
15 under the influence conviction.
16 3. The person's driving privilege is suspended pursuant to the
17 department's action based on a previous conviction for a violation of section
18 28-3473.
19 4. The person's driving privilege is suspended pursuant to section
20 28-3306, subsection A, paragraph 3.
21 B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, WHILE A PEACE
22 OFFICER HAS CONTROL OF THE VEHICLE THE PEACE OFFICER SHALL CAUSE THE REMOVAL
23 AND EITHER IMMOBILIZATION OR IMPOUNDMENT OF THE VEHICLE, WHICHEVER THE DRIVER
24 OF THE VEHICLE CHOOSES, IF THE PEACE OFFICER HAS PROBABLE CAUSE TO ARREST THE
25 DRIVER OF THE VEHICLE FOR A VIOLATION OF SECTION 4-244, PARAGRAPH 33 OR
26 SECTION 28-1382 OR 28-1383.
27 C. A PEACE OFFICER SHALL NOT CAUSE THE REMOVAL AND EITHER THE
28 IMMOBILIZATION OR IMPOUNDMENT OF A VEHICLE PURSUANT TO SUBSECTION B OF THIS
29 SECTION IF EITHER:
30 1. ALL OF THE FOLLOWING APPLY:
31 (a) THE PEACE OFFICER DETERMINES THAT THE VEHICLE IS CURRENTLY
32 REGISTERED AND THAT THE DRIVER OR THE VEHICLE IS IN COMPLIANCE WITH THE
33 FINANCIAL RESPONSIBILITY REQUIREMENTS OF CHAPTER 9, ARTICLE 4 OF THIS TITLE.
34 (b) THE SPOUSE OF THE DRIVER IS WITH THE DRIVER AT THE TIME OF THE
35 ARREST.
36 (c) THE PEACE OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT THE
37 SPOUSE OF THE DRIVER:
38 (i) HAS A VALID DRIVER LICENSE.
39 (ii) IS NOT IMPAIRED BY INTOXICATING LIQUOR, ANY DRUG, A VAPOR
40 RELEASING SUBSTANCE CONTAINING A TOXIC SUBSTANCE OR ANY COMBINATION OF
41 LIQUOR, DRUGS OR VAPOR RELEASING SUBSTANCES.
42 (iii) DOES NOT HAVE ANY SPIRITUOUS LIQUOR IN THE SPOUSE'S BODY IF THE
43 SPOUSE IS UNDER TWENTY-ONE YEARS OF AGE.

SENATE

(d) THE SPOUSE NOTIFIES THE PEACE OFFICER THAT THE SPOUSE WILL DRIVE THE VEHICLE FROM THE PLACE OF ARREST TO THE DRIVER'S HOME OR OTHER PLACE OF SAFETY.

(e) THE SPOUSE DRIVES THE VEHICLE AS PRESCRIBED BY SUBDIVISION (d) OF THIS PARAGRAPH.

2. THE VEHICLE IS OWNED BY THE DRIVER'S PARENT OR GUARDIAN AND THE PEACE OFFICER HAS PROBABLE CAUSE TO ARREST THE DRIVER OF THE VEHICLE FOR A VIOLATION OF SECTION 4-244, PARAGRAPH 33 BUT NOT FOR A VIOLATION OF SECTION 28-1382 OR 28-1383.

~~B.~~ D. Except as otherwise provided in this article, a vehicle that is removed and EITHER IMMOBILIZED OR impounded pursuant to subsection A OR B of this section shall be IMMOBILIZED OR impounded for thirty days. AN INSURANCE COMPANY DOES NOT HAVE A DUTY TO PAY ANY BENEFITS FOR CHARGES OR FEES FOR IMMOBILIZATION OR IMPOUNDMENT.

~~C.~~ E. The owner of a vehicle that is removed and EITHER IMMOBILIZED OR impounded pursuant to subsection A OR B of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle shall be provided with an opportunity for ~~a~~ AN IMMOBILIZATION OR poststorage hearing pursuant to section 28-3514.

F. A PEACE OFFICER SHALL INFORM THE DRIVER PRESCRIBED BY SUBSECTION A OR B OF THIS SECTION, OR BOTH, THAT THE DRIVER MAY CHOOSE EITHER IMMOBILIZATION OR IMPOUNDMENT OF THE VEHICLE.

Sec. 3. Section 28-3512, Arizona Revised Statutes, is amended to read:

28-3512. Release of vehicle; definition

A. An IMMOBILIZING OR impounding agency shall release a vehicle to the owner before the end of the thirty day IMMOBILIZATION OR impoundment period under any of the following circumstances:

1. If the vehicle is a stolen vehicle.

2. If the vehicle is subject to bailment and is driven by an employee of a business establishment, including a parking service or repair garage, who is subject to section 28-3511, subsection A OR B.

3. If the owner presents proof satisfactory to the IMMOBILIZING OR impounding agency that the owner's driving privilege has been reinstated.

4. ALL OF THE FOLLOWING APPLY:

(a) THE OWNER OR THE OWNER'S AGENT WAS NOT THE PERSON DRIVING THE VEHICLE PURSUANT TO SECTION 28-3511, SUBSECTION A.

(b) THE OWNER OR THE OWNER'S AGENT IS IN THE BUSINESS OF RENTING MOTOR VEHICLES WITHOUT DRIVERS.

(c) THE VEHICLE IS REGISTERED PURSUANT TO SECTION 28-2166.

~~4.~~ 5. For the spouse of the owner or any person who is identified as an owner of the vehicle on the records of the department, if the spouse or person was not the driver of the vehicle at the time of removal and EITHER IMMOBILIZATION OR impoundment and the spouse or person enters into an agreement with the IMMOBILIZING OR impounding agency that stipulates that if the spouse or person allows an unlicensed driver OR A DRIVER ARRESTED IN

1 VIOLATION OF SECTION 4-244, PARAGRAPH 33 OR SECTION 28-1382 OR 28-1383 to
2 drive the spouse's or person's vehicle within one year after the agreement is
3 signed, the spouse or person will not be eligible to obtain release of the
4 spouse's or person's vehicle before the end of the thirty day IMMOBILIZATION
5 OR impoundment period.
6 B. A vehicle shall not be released pursuant to subsection A of this
7 section except on order of a justice court, IMMOBILIZING OR IMPOUNDING AGENCY
8 pursuant to AN IMMOBILIZATION OR POSTSTORAGE HEARING UNDER section 28-3514 or
9 on presentation of the owner's or owner's spouse's currently valid driver
10 license to operate the vehicle and proof of current vehicle registration and,
11 if the driving privilege of the person driving the vehicle was suspended due
12 to a previous conviction for driving under the influence pursuant to section
13 28-1381, subsection K, paragraph 4, section 28-1382 or section 28-1383 and a
14 certified ignition interlock device was required to be installed on the
15 vehicle, on presentation of proof of installation of a functioning certified
16 ignition interlock device in the vehicle. The impounding agency, storage
17 yard, facility, person or agency having physical possession of the vehicle
18 shall allow access to the impounded vehicle for the purpose of installing a
19 certified ignition interlock device. The impounding agency, storage yard,
20 facility, person or agency having physical possession of the vehicle shall
21 not charge a fee for providing access to the vehicle or for the installation
22 of the certified ignition interlock device.
23 C. The owner is responsible for paying all IMMOBILIZATION, towing and
24 storage charges related to the IMMOBILIZATION OR impoundment of the vehicle
25 and any administrative charges established pursuant to section 28-3513,
26 unless the vehicle is stolen and the theft was reported to the appropriate
27 law enforcement agency. If the vehicle is stolen and the theft was reported
28 to the appropriate law enforcement agency, the operator of the vehicle at the
29 time of IMMOBILIZATION OR impoundment is responsible for all IMMOBILIZATION,
30 towing, storage and administrative charges.
31 D. The IMMOBILIZING OR impounding agency shall release a vehicle to a
32 person, other than the owner, identified on the department's record as having
33 an interest in the vehicle before the end of the thirty day IMMOBILIZATION OR
34 impoundment period if all of the following conditions are met:
35 1. The person is a motor vehicle dealer, bank, credit union or
36 acceptance corporation or any other licensed financial institution legally
37 operating in this state or is another person who is not the owner and who
38 holds a security interest in the vehicle.
39 2. The person pays all IMMOBILIZATION, towing and storage fees related
40 to the IMMOBILIZATION OR impoundment of the vehicle unless the vehicle is
41 stolen and the theft was reported to the appropriate law enforcement
42 agency. If the vehicle is stolen and the theft was reported to the
43 appropriate law enforcement agency, the operator of the vehicle at the time
44 of IMMOBILIZATION OR impoundment is responsible for all IMMOBILIZATION,
45 towing, storage and administrative charges.

3. The person presents foreclosure documents or an affidavit of repossession of the vehicle.

E. Before a person described in subsection D of this section releases the vehicle, the person may require the owner to pay charges that the person incurred in connection with obtaining custody of the vehicle, including all IMMOBILIZATION, towing and storage charges that are related to the IMMOBILIZATION OR impoundment of the vehicle and any administrative charges that are established pursuant to section 28-3513.

F. A vehicle shall not be released after the end of the thirty day IMMOBILIZATION OR impoundment period except on presentation of the owner's or owner's agent's currently valid driver license to operate the vehicle and proof of current vehicle registration and, if the driving privilege of the person driving the vehicle was suspended due to a previous conviction for driving under the influence pursuant to section 28-1381, subsection K, paragraph 4, section 28-1382 or section 28-1383 and ~~an~~ A CERTIFIED ignition interlock device was required to be installed on the vehicle, on presentation of proof of installation of a functioning certified ignition interlock device in the vehicle. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall allow access to the impounded vehicle for the purpose of installing a certified ignition interlock device. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall not charge a fee for providing access to the vehicle or for the installation of the certified ignition interlock device.

G. The storage charges relating to the impoundment of a vehicle pursuant to this section shall EITHER:

1. BE SUBJECT TO A CONTRACTUAL AGREEMENT BETWEEN THE IMPOUNDING AGENCY AND A TOWING FIRM FOR STORAGE SERVICES PURSUANT TO SECTION 28-1108.

2. Not exceed fifteen dollars for each day of storage.

H. The IMMOBILIZING OR impounding agency shall have no lien or possessory interest in a stolen vehicle if the theft was reported to the appropriate law enforcement agency. The IMMOBILIZING OR impounding agency shall release the vehicle to the owner or person other than the owner as identified in subsection D of this section even if the operator at the time of IMMOBILIZATION OR impoundment has not paid all IMMOBILIZATION, towing, storage and administrative fees.

I. For the purposes of this section, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

Sec. 4. Section 28-3513, Arizona Revised Statutes, is amended to read:

28-3513. Administrative charges

A. The IMMOBILIZING OR impounding agency shall establish procedures for ~~impounding agency~~ IMMOBILIZATION HEARINGS OR poststorage hearings, for the release of properly IMMOBILIZED OR impounded vehicles and for imposition of a charge equal to the administrative costs relating to the removal,

IMMOBILIZATION, impoundment, storage or release of a vehicle. The IMMOBILIZING OR impounding agency may waive the administrative charges.

B. The administrative charges established pursuant to this section shall not exceed one hundred fifty dollars.

C. The IMMOBILIZING OR impounding agency shall collect any administrative charges at the time of the release of the vehicle unless the vehicle is stolen and the theft was reported to the appropriate law enforcement agency. If the vehicle is stolen and the theft was reported to the appropriate law enforcement agency, ~~then~~ the operator of the vehicle at the time of IMMOBILIZATION OR impoundment is responsible for all towing, IMMOBILIZATION, storage and administrative charges.

D. The administrative charges established pursuant to this section are in addition to any other IMMOBILIZATION, impoundment or storage charges.

E. A justice court providing ~~a~~ AN IMMOBILIZATION OR poststorage hearing may collect a fee equal to the fee established pursuant to section 22-281 for a small claims answer.

Sec. 5. Section 28-3514, Arizona Revised Statutes, is amended to read:

28-3514. Hearings; notice of immobilization or storage

A. If a peace officer removes and EITHER IMMOBILIZES OR impounds a vehicle pursuant to section 28-3511, the IMMOBILIZING OR impounding agency may provide the owner, the spouse of the owner and any other person identified on the department's record as having an interest in the vehicle with the opportunity for ~~a~~ AN IMMOBILIZATION OR poststorage hearing to determine the validity of the IMMOBILIZATION OR storage or consider any mitigating circumstances relating to the IMMOBILIZATION OR storage or release of the vehicle before the end of the thirty day IMMOBILIZATION OR impoundment period. If the IMMOBILIZING OR impounding agency provides the opportunity for ~~a~~ AN IMMOBILIZATION OR poststorage hearing, the IMMOBILIZING OR impounding agency shall conduct the hearing in accordance with any of the following:

1. In the IMMOBILIZING OR impounding agency's jurisdiction.

2. Telephonically.

3. Pursuant to procedures prescribed by the IMMOBILIZING OR impounding agency to transfer the authority to conduct the IMMOBILIZATION OR poststorage hearing to a law enforcement agency in the jurisdiction in which the owner, the spouse of the owner, the owner's agent or any person identified in the department's record as having an interest in the vehicle resides.

B. If the IMMOBILIZING OR impounding agency does not provide an opportunity for ~~a~~ AN IMMOBILIZATION OR poststorage hearing, a justice court shall conduct the IMMOBILIZATION OR poststorage hearing. If ~~a~~ AN IMMOBILIZATION OR poststorage hearing is conducted by a justice court, the IMMOBILIZING OR impounding agency shall appear and show evidence. IMMOBILIZATION OR poststorage hearings conducted by a justice court shall be considered as civil filings for the purposes of judicial productivity credits.

C. Within two working days after IMMOBILIZATION OR impoundment, the IMMOBILIZING OR impounding agency shall send a notice of storage by first class mail to each person, other than the owner, identified on the department's record as having an interest in the vehicle. Service of notice of IMMOBILIZATION OR storage is complete on mailing. If the IMMOBILIZING OR impounding agency fails to notify a person, other than the owner, identified on the department's record as having an interest in the vehicle within two working days after IMMOBILIZATION OR impoundment, THE IMMOBILIZING AGENCY OR the person in possession of the vehicle shall not charge more than fifteen days' IMMOBILIZATION OR impoundment when the person redeems the impounded vehicle OR HAS THE IMMOBILIZATION DEVICE REMOVED FROM THE VEHICLE.

D. Within two working days after IMMOBILIZATION OR impoundment, the IMMOBILIZING OR impounding agency shall mail or personally deliver notice of IMMOBILIZATION OR storage to the owner of the vehicle.

E. The notice of IMMOBILIZATION OR storage shall include all of the following information:

1. A statement that the vehicle was IMMOBILIZED OR impounded.

2. The name, address and telephone number of the IMMOBILIZING OR impounding agency providing the notice.

3. The name, address and telephone number of the IMMOBILIZING OR impounding agency or justice court that will provide the IMMOBILIZATION OR poststorage hearing.

4. The location of the place of storage and a description of the vehicle, including, if available, the manufacturer, model, license plate number and mileage of the vehicle.

5. A statement that in order to receive ~~a~~ AN IMMOBILIZATION OR poststorage hearing the owner, the spouse of the owner, the owner's agent or the person identified in the department's record as having an interest in the vehicle ~~shall~~, within ten days after the date on the notice, SHALL request ~~a~~ AN IMMOBILIZATION OR poststorage hearing by contacting the IMMOBILIZING OR impounding agency in person or in writing or by filing a request with the justice court and paying a fee equal to the fee established pursuant to section 22-281 for a small claims answer.

6. A statement that if the IMMOBILIZING OR impounding agency does not provide the opportunity for ~~a~~ AN IMMOBILIZATION OR poststorage hearing, the owner, the spouse of the owner, the owner's agent or any person identified in the department's record as having an interest in the vehicle may request that the IMMOBILIZATION OR poststorage hearing be conducted by a justice court in the IMMOBILIZING OR impounding agency's jurisdiction or the jurisdiction in which the owner, the spouse of the owner, the owner's agent or the person identified in the department's record as having an interest in the vehicle resides.

F. The IMMOBILIZATION OR poststorage hearing shall be conducted by the IMMOBILIZING OR impounding agency or justice court within five working days after receipt of the request.

1 G. Failure of the owner, the spouse of the owner or other person or
2 the other person's agent to request or to attend a scheduled hearing
3 satisfies the IMMOBILIZATION OR poststorage hearing requirement.
4 H. The IMMOBILIZING OR impounding agency employing the person who
5 directed the IMMOBILIZATION OR storage is responsible for the costs incurred
6 for IMMOBILIZATION, towing and storage if it is determined in the
7 IMMOBILIZATION OR poststorage hearing that reasonable grounds for the
8 IMMOBILIZATION OR impoundment and storage are not established.
9 Sec. 6. Effective date
10 This act is effective from and after October 31, 2005.

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 10, 2005,

by the following vote: 33 Ayes,

19 Nays, 8 Not Voting

Speaker of the House
Pro Tempore

Norman L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 4, 2005,

by the following vote: 23 Ayes,

6 Nays, 1 Not Voting

President of the Senate

Charmin B. Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor

this 11th day of May, 2005

at 11:30 o'clock a. M.

Jennifer Upchurch
Secretary to the Governor

Approved this _____ day of

_____, 20 _____,

at _____ o'clock _____ M.

VETO

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE
This Bill was received by the Secretary of State

this 20th day of May, 2005,

at 3:03 o'clock p M.

Janice K. Brewer
Secretary of State

S.B. 1089

Passed the House April 11, 20 05,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate March 2, 20 05,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

President of the Senate

Charmion Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1089