

2/8/95 Judiciary

FILED FEB 7 1995

SENATE FILE 109
BY HALVORSON

WITHDRAWN
5-4-95
(P. 1622)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR WITHDRAWN

1 An Act to provide for the impoundment or immobilization of motor
2 vehicles driven or owned by persons convicted of operating
3 while intoxicated and being a second or subsequent offender
4 and providing a penalty.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 109

S-3070

1 Amend Senate File 109 as follows:

2 1. Page 4, by striking line 23 and inserting the
3 following: "order of impoundment or immobilization or
4 the owner of the motor vehicle is a motor vehicle
5 rental or leasing company, the owner, the".

6 2. Page 4, line 24, by inserting after the word
7 "designee" the following: ", or the rental or leasing
8 company".

9 3. Page 4, line 26, by inserting after the word
10 "immobilization." the following: "Upon learning the
11 address or phone number of a rental or leasing company
12 which owns a motor vehicle, the peace officer, county
13 attorney, or attorney general shall immediately
14 contact the company to inform the company that the
15 vehicle is available for return to the company."

16 4. Page 4, line 27, by striking the words ", or
17 owner's designee," and inserting the following: ",
18 owner's designee, or rental or leasing company".

19 5. Page 4, line 33, by inserting after the word
20 "intoxicated" the following: ", or if the rental or
21 leasing company did not know, should not have known,
22 and did not consent to the operation of the motor
23 vehicle used in the commission of the offense of
24 operating while intoxicated".

By RICHARD F. DRAKE

S-3070 FILED FEBRUARY 21, 1995

S.F. 109

1 Section 1. NEW SECTION. 321J.4B MOTOR VEHICLE
2 IMPOUNDMENT OR IMMOBILIZATION -- PENALTY.

3 1. If a person is convicted of a second, third, or
4 subsequent offense of operating while intoxicated, the court
5 shall order that any motor vehicles owned by the person and
6 any motor vehicles operated by the person be impounded or
7 immobilized.

8 2. The order shall specify all of the following:

9 a. The motor vehicles that are subject to the order.

10 b. The period of impoundment or immobilization.

11 c. The place at which the motor vehicles are to be
12 impounded or immobilized.

13 d. The person or agency responsible for carrying out the
14 order requiring impoundment or immobilization of the motor
15 vehicle. If a vehicle which is to be impounded or immobilized
16 is in the custody of a law enforcement agency, the court shall
17 designate that agency as the responsible agency. If the
18 vehicle is not in the custody of a law enforcement agency, the
19 person or agency responsible for carrying out the order shall
20 be any person deemed appropriate by the court, including but
21 not limited to a law enforcement agency with jurisdiction over
22 the area in which the residence of the vehicle owner is
23 located.

24 3. The period of impoundment or immobilization of a motor
25 vehicle under this section shall be the period of license
26 revocation imposed upon the person convicted of the offense or
27 one hundred eighty days, whichever period is longer. The
28 impoundment or immobilization period shall commence on the day
29 that the vehicle is actually impounded or immobilized.

30 4. The clerk of the district court shall send a copy of
31 the order to the department, the person convicted of the
32 offense, the motor vehicle owner if the owner is not the
33 person convicted, and the person or agency responsible for
34 executing the order for impoundment or immobilization.

35 5. If the vehicle to be impounded or immobilized is in the

1 custody of a law enforcement agency, the agency shall
2 immobilize or impound the vehicle upon receipt of the order,
3 seize the motor vehicle's license plates and registration, and
4 shall send or deliver the vehicle's license plates and
5 registration to the department.

6 6. If the vehicle to be impounded or immobilized is not in
7 the custody of a law enforcement agency, the person designated
8 in the order as the person responsible for executing the order
9 shall, upon receipt of the order, promptly search for and
10 locate the vehicle specified in the order, seize the motor
11 vehicle license plates, and send or deliver the vehicle's
12 license plates to the department.

13 7. If the vehicle is located at a place other than the
14 place specified in the order as the place at which the
15 impoundment or immobilization is to be carried out, the person
16 or agency responsible for executing the order shall arrange
17 for the vehicle to be moved to the place specified in the
18 order as the place of impoundment or immobilization. When the
19 vehicle is found, is impounded or immobilized, and is at the
20 place specified in the order as the place of impoundment or
21 immobilization, the person or agency responsible for executing
22 the order shall notify the clerk of the date on which the
23 order was executed. The clerk shall notify the department of
24 the date on which the order was executed.

25 8. The department shall destroy license plates received
26 under this section and shall not authorize the release of the
27 vehicle or the issuance of new license plates for the vehicle
28 until the period of impoundment or immobilization has expired,
29 and the fee and costs assessed under subsection 9 have been
30 paid. The fee for issuance of new license plates and
31 certificates of registration shall be the same as for the
32 replacement of lost, mutilated, or destroyed license plates
33 and certificates of registration.

34 9. Except where the person who is convicted of operating
35 while intoxicated and being a second or subsequent offender is

1 not lawfully in possession of the motor vehicle, the owner of
2 any motor vehicle that is impounded or immobilized under this
3 section shall be assessed a fee of one hundred dollars plus
4 the cost of any expenses for storage of the motor vehicle, to
5 be paid to the clerk of the district court. Upon payment of
6 the fee and costs, the clerk shall forward a copy of the
7 receipt to the department.

8 10. If a law enforcement agency impounds or immobilizes a
9 motor vehicle, the amount of the fee and expenses deposited
10 with the clerk shall be paid by the clerk to the law
11 enforcement agency responsible for executing the order to
12 reimburse the agency for costs incurred for impoundment or
13 immobilization equipment and, if required, in sending officers
14 to search for and locate the vehicle specified in the
15 impoundment or immobilization order.

16 11. A motor vehicle which is subject to an order of
17 impoundment or immobilization that is operated on a street or
18 highway in this state during the period of impoundment or
19 immobilization, shall be seized and forfeited to the state
20 under chapter 809.

21 12. Once the period of impoundment or immobilization has
22 expired, the owner of the motor vehicle shall have forty-five
23 days to claim the motor vehicle and pay the fees and charges
24 imposed under this section. If the owner or the owner's
25 designee has not claimed the vehicle and paid the fees and
26 charges imposed under this section within seven days from the
27 date of expiration of the period, the clerk shall send written
28 notification to the motor vehicle owner, at the owner's last
29 known address, notifying the owner of the date of expiration
30 of the period of impoundment or immobilization and of the
31 period in which the motor vehicle must be claimed. If the
32 motor vehicle owner fails to claim the motor vehicle and pay
33 the fees and charges imposed within the forty-five day period,
34 the motor vehicle shall be forfeited to the state under
35 chapter 809.

1 13. a. During the period of impoundment or
2 immobilization, a person convicted of the offense of operating
3 while intoxicated which resulted in the impoundment or
4 immobilization shall not sell or transfer the title of the
5 motor vehicle which is subject to the order of impoundment or
6 immobilization. The person convicted of the offense of
7 operating while intoxicated shall also not be permitted to
8 purchase another motor vehicle or register any motor vehicle
9 during the period of impoundment or immobilization. Violation
10 of this paragraph is a serious misdemeanor.

11 b. If, during the period of impoundment or immobilization,
12 the title to the motor vehicle which is the subject of the
13 order is transferred by the foreclosure of a chattel mortgage,
14 a sale upon execution, the cancellation of a conditional sales
15 contract, or an order of a court, the court which enters the
16 order that permits transfer of the title shall notify the
17 department of the transfer of the title. The department shall
18 enter notice of the transfer of the title to the motor vehicle
19 in the previous owner's vehicle registration record.

20 14. Notwithstanding the requirements of this section, if
21 the owner of the motor vehicle is not the person who is
22 convicted of the offense which resulted in the issuance of the
23 order of impoundment or immobilization, the owner or the
24 owner's designee shall be permitted to submit a claim for
25 return of the motor vehicle within twenty-four hours from
26 receipt of the order for impoundment or immobilization. The
27 vehicle shall be returned to the owner, or owner's designee,
28 and the order for impoundment or immobilization shall be
29 rescinded with respect to the particular motor vehicle, if the
30 owner or owner's designee can prove to the satisfaction of the
31 court that the owner did not know or should not have known
32 that the vehicle was to be used in the commission of the
33 offense of operating while intoxicated. For purposes of this
34 section, unless the person convicted of the offense which
35 results in the imposition of the order for impoundment or

1 immobilization is not in lawful possession of the motor
2 vehicle used in the commission of the offense, an owner of a
3 motor vehicle shall be presumed to know that the vehicle was
4 to be used by the person who is convicted of the offense, in
5 the commission of the offense of operating while intoxicated.

6 Sec. 2. Section 809.1, subsection 4, Code 1995, is amended
7 to read as follows:

8 4. The definitions contained in subsections 1 through 3
9 shall not apply to violations of chapter 321 ~~or-321~~.

10 Sec. 3. REPEAL. Section 321J.4A, Code 1995, is repealed.

11 Sec. 4. IMPLEMENTATION OF ACT -- LEGISLATIVE INTENT.

12 Section 25B.2, subsection 3, shall not apply to this Act.

13 However, it is the intent of the general assembly that the
14 fees and funds generated as a result of the passage of this
15 Act be used to cover the costs associated with the additional
16 duties imposed.

17

EXPLANATION

18 This bill provides, upon the conviction of a person of
19 operating while intoxicated and being a second or subsequent
20 offender (OWI 2nd), for the impoundment or immobilization of
21 motor vehicles that are either owned or used by the person to
22 commit the offense. If a motor vehicle is impounded or
23 immobilized, the period of impoundment or immobilization shall
24 be for 180 days or the period of license suspension for the
25 person convicted of OWI 2nd, whichever period is longer. The
26 person convicted of OWI 2nd is prohibited from purchasing
27 another vehicle, registering any motor vehicle, or selling or
28 transferring title to an impounded or immobilized vehicle
29 during the period of impoundment or immobilization. Violation
30 of the requirement is a serious misdemeanor. With the
31 exception of the situation in which the person convicted of
32 OWI 2nd is not in lawful possession of the motor vehicle,
33 owners of motor vehicles which are the subject of orders for
34 impoundment or immobilization must pay a fee of \$100 plus
35 expenses to cover the cost of impoundment or immobilization

1 before the owner can obtain the return of the motor vehicle.
2 Motor vehicles which are impounded or immobilized will be
3 forfeited to the state if the owner fails to claim the vehicle
4 within 45 days of expiration of the period of impoundment or
5 immobilization. Motor vehicles which are subject to an order
6 for impoundment or immobilization and which are operated on a
7 street or highway in the state during the period of
8 impoundment or immobilization are to be seized and forfeited
9 to the state. An owner, who is not the person convicted of
10 the offense of OWI 2nd, and who either did not know or should
11 not have known that the vehicle was to be used in the
12 commission of the offense has the opportunity to obtain the
13 release of the vehicle if the owner can prove that they did
14 not know or should not have known about the offense. The bill
15 establishes a presumption that, unless the vehicle is stolen,
16 owners have knowledge that their vehicles are to be used in
17 the commission of the offense of operating while intoxicated
18 by persons who use their motor vehicles and are subsequently
19 convicted.

20 This bill may create a state mandate under chapter 25B.
21 The bill makes inapplicable the statutory provision which
22 would relieve a political subdivision from complying with a
23 state mandate if funding for the cost of the state mandate is
24 not provided or specified. However, the bill also provides
25 that it is the intent of the general assembly that the fees
26 and funds generated in the bill are to be used to cover the
27 costs associated with the additional duties imposed.

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