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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)

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.

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

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

3 2. THE VEHICLE IS OWNED BY THE DRIVER'S PARENT OR GUARDIAN AND THE
4 PEACE OFFICER HAS PROBABLE CAUSE TO ARREST THE DRIVER OF THE VEHICLE FOR A
5 VIOLATION OF SECTION 4-244, PARAGRAPH 33 BUT NOT FOR A VIOLATION OF SECTION
6 28-1382 OR 28-1383.

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

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

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

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

21 28-3512. Release of vehicle; definition

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

25 1. If the vehicle is a stolen vehicle.

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

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

31 4. ALL OF THE FOLLOWING APPLY:

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

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

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

37 ~~4-~~ 5. For the spouse of the owner or any person who is identified as
38 an owner of the vehicle on the records of the department, if the spouse or
39 person was not the driver of the vehicle at the time of removal and EITHER
40 IMMOBILIZATION OR impoundment and the spouse or person enters into an
41 agreement with the IMMOBILIZING OR impounding agency that stipulates that if
42 the spouse or person allows an unlicensed driver OR A DRIVER ARRESTED IN
43 VIOLATION OF SECTION 4-244, PARAGRAPH 33 OR SECTION 28-1382 OR 28-1383 to
44 drive the spouse's or person's vehicle within one year after the agreement is
45 signed, the spouse or person will not be eligible to obtain release of the

1 spouse's or person's vehicle before the end of the thirty day **IMMOBILIZATION**
2 **OR** impoundment period.

3 B. A vehicle shall not be released pursuant to subsection A of this
4 section except on order of a justice court, **IMMOBILIZING OR IMPOUNDING AGENCY**
5 pursuant to **AN IMMOBILIZATION OR POSTSTORAGE HEARING UNDER** section 28-3514 or
6 on presentation of the owner's or owner's spouse's currently valid driver
7 license to operate the vehicle and proof of current vehicle registration and,
8 if the driving privilege of the person driving the vehicle was suspended due
9 to a previous conviction for driving under the influence pursuant to section
10 28-1381, subsection K, paragraph 4, section 28-1382 or section 28-1383 and a
11 certified ignition interlock device was required to be installed on the
12 vehicle, on presentation of proof of installation of a functioning certified
13 ignition interlock device in the vehicle. The impounding agency, storage
14 yard, facility, person or agency having physical possession of the vehicle
15 shall allow access to the impounded vehicle for the purpose of installing a
16 certified ignition interlock device. The impounding agency, storage yard,
17 facility, person or agency having physical possession of the vehicle shall
18 not charge a fee for providing access to the vehicle or for the installation
19 of the certified ignition interlock device.

20 C. The owner is responsible for paying all **IMMOBILIZATION**, towing and
21 storage charges related to the **IMMOBILIZATION OR** impoundment of the vehicle
22 and any administrative charges established pursuant to section 28-3513,
23 unless the vehicle is stolen and the theft was reported to the appropriate
24 law enforcement agency. If the vehicle is stolen and the theft was reported
25 to the appropriate law enforcement agency, the operator of the vehicle at the
26 time of **IMMOBILIZATION OR** impoundment is responsible for all **IMMOBILIZATION**,
27 towing, storage and administrative charges.

28 D. The **IMMOBILIZING OR** impounding agency shall release a vehicle to a
29 person, other than the owner, identified on the department's record as having
30 an interest in the vehicle before the end of the thirty day **IMMOBILIZATION OR**
31 impoundment period if all of the following conditions are met:

32 1. The person is a motor vehicle dealer, bank, credit union or
33 acceptance corporation or any other licensed financial institution legally
34 operating in this state or is another person who is not the owner and who
35 holds a security interest in the vehicle.

36 2. The person pays all **IMMOBILIZATION**, towing and storage fees related
37 to the **IMMOBILIZATION OR** impoundment of the vehicle unless the vehicle is
38 stolen and the theft was reported to the appropriate law enforcement
39 agency. If the vehicle is stolen and the theft was reported to the
40 appropriate law enforcement agency, the operator of the vehicle at the time
41 of **IMMOBILIZATION OR** impoundment is responsible for all **IMMOBILIZATION**,
42 towing, storage and administrative charges.

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

45 E. Before a person described in subsection D of this section releases
46 the vehicle, the person may require the owner to pay charges that the person

1 incurred in connection with obtaining custody of the vehicle, including all
2 **IMMOBILIZATION**, towing and storage charges that are related to the
3 **IMMOBILIZATION OR** impoundment of the vehicle and any administrative charges
4 that are established pursuant to section 28-3513.

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

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

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

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

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

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

35 Sec. 4. Section 28-3513, Arizona Revised Statutes, is amended to read:
36 **28-3513. Administrative charges**

37 A. The **IMMOBILIZING OR** impounding agency shall establish procedures
38 for ~~impounding agency~~ **IMMOBILIZATION HEARINGS OR** poststorage hearings, for
39 the release of properly **IMMOBILIZED OR** impounded vehicles and for imposition
40 of a charge equal to the administrative costs relating to the removal,
41 **IMMOBILIZATION**, impoundment, storage or release of a vehicle. The
42 **IMMOBILIZING OR** impounding agency may waive the administrative charges.

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

45 C. The **IMMOBILIZING OR** impounding agency shall collect any
46 administrative charges at the time of the release of the vehicle unless the

1 vehicle is stolen and the theft was reported to the appropriate law
2 enforcement agency. If the vehicle is stolen and the theft was reported to
3 the appropriate law enforcement agency, ~~then~~ the operator of the vehicle at
4 the time of IMMOBILIZATION OR impoundment is responsible for all towing,
5 IMMOBILIZATION, storage and administrative charges.

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

8 E. A justice court providing ~~a~~ AN IMMOBILIZATION OR poststorage
9 hearing may collect a fee equal to the fee established pursuant to section
10 22-281 for a small claims answer.

11 Sec. 5. Section 28-3514, Arizona Revised Statutes, is amended to read:
12 28-3514. Hearings; notice of immobilization or storage

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

- 25 1. In the IMMOBILIZING OR impounding agency's jurisdiction.
- 26 2. Telephonically.
- 27 3. Pursuant to procedures prescribed by the IMMOBILIZING OR impounding
28 agency to transfer the authority to conduct the IMMOBILIZATION OR poststorage
29 hearing to a law enforcement agency in the jurisdiction in which the owner,
30 the spouse of the owner, the owner's agent or any person identified in the
31 department's record as having an interest in the vehicle resides.

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

40 C. Within two working days after IMMOBILIZATION OR impoundment, the
41 IMMOBILIZING OR impounding agency shall send a notice of storage by first
42 class mail to each person, other than the owner, identified on the
43 department's record as having an interest in the vehicle. Service of notice
44 of IMMOBILIZATION OR storage is complete on mailing. If the IMMOBILIZING OR
45 impounding agency fails to notify a person, other than the owner, identified
46 on the department's record as having an interest in the vehicle within two

1 working days after IMMOBILIZATION OR impoundment, THE IMMOBILIZING AGENCY OR
2 the person in possession of the vehicle shall not charge more than fifteen
3 days' IMMOBILIZATION OR impoundment when the person redeems the impounded
4 vehicle OR HAS THE IMMOBILIZATION DEVICE REMOVED FROM THE VEHICLE.

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

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

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

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

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

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

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

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

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

39 G. Failure of the owner, the spouse of the owner or other person or
40 the other person's agent to request or to attend a scheduled hearing
41 satisfies the IMMOBILIZATION OR poststorage hearing requirement.

42 H. The IMMOBILIZING OR impounding agency employing the person who
43 directed the IMMOBILIZATION OR storage is responsible for the costs incurred
44 for IMMOBILIZATION, towing and storage if it is determined in the
45 IMMOBILIZATION OR poststorage hearing that reasonable grounds for the
46 IMMOBILIZATION OR impoundment and storage are not established.

1 Sec. 6. Effective date
2 This act is effective from and after October 31, 2005.