Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 76

SENATE BILL 1075

AN ACT

AMENDING SECTIONS 28-3511, 28-3512, 28-3513 AND 28-3514, ARIZONA REVISED STATUTES; RELATING TO IMMOBILIZATION AND IMPOUNDMENT OF VEHICLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-3511, Arizona Revised Statutes, is amended to read:

28-3511. Removal and immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:

1. Except as otherwise provided in this paragraph, the person's driving privilege is suspended or revoked for any reason. A peace officer shall not cause the removal and either immobilization or impoundment of a vehicle pursuant to this paragraph if the person's privilege to drive is valid in this state.

2. The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

3. The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph does not apply to a person operating an employer's vehicle or the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

4. In furtherance of the illegal presence of an alien in the United States and in violation of a criminal offense, the person is transporting or moving or attempting to transport or move an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.

5. The person is concealing, harboring or shielding or attempting to conceal, harbor or shield from detection an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, entered or remains in the United States in violation of law.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled, suspended or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer

has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

2. The spouse of the driver is with the driver at the time of the arrest.

3. The peace officer has reasonable grounds to believe that the spouse of the driver:

(a) Has a valid driver license.

(b) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

(c) Does not have any spirituous liquor in the spouse's body if the spouse is under twenty-one years of age.

4. 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.

5. The spouse drives the vehicle as prescribed by paragraph 4 of this subsection.

E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C 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.

F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.

Sec. 2. Section 28-3512, Arizona Revised Statutes, is amended to read:

28-3512. <u>Release of vehicle; civil penalties; definition</u>

A. An immobilizing or impounding agency shall release a vehicle to the registered 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, B or C.

3. If the owner was operating the vehicle at the time of removal and either immobilization or impoundment and presents proof satisfactory to the immobilizing or impounding agency that the owner's driving privilege has been reinstated.

4. IF 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.

(d) There was a rental agreement in effect at the time of the immobilization or impoundment.

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 at the time of removal and either immobilization or impoundment, 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 a driver who does not have a valid driving privilege or a driver who commits a violation that causes the spouse's or person's vehicle to be removed and either immobilized or impounded pursuant to this article within one year after any agreement is signed by an immobilizing or impounding agency, the spouse or person will not be eligible to obtain release of the spouse's or person's vehicle before the end of the thirty day immobilization or impoundment period.

B. A vehicle shall not be released pursuant to subsection A of this section except pursuant to an immobilization or a poststorage hearing under section 28-3514 or if all of the following are presented to the immobilizing or impounding agency:

1. The owner's or owner's spouse's currently valid driver license issued by this state or the owner's or owner's spouse's state of domicile.

2. Proof of current vehicle registration or a valid salvage or dismantle certificate of title.

3. Proof that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

4. If the person is required by the department to install a certified ignition interlock device on the vehicle, 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 during normal business hours 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 any fee or require compensation for providing access to the vehicle or for the installation of the certified ignition interlock device.

C. The owner or the owner's spouse if the vehicle is released to the owner's spouse is responsible for paying all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to section 28-3513, 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, the operator of the vehicle at the time of immobilization or impoundment is responsible for all immobilization, towing, storage and administrative charges.

D. BEFORE THE END OF THE THIRTY DAY IMMOBILIZATION OR IMPOUNDMENT PERIOD, the immobilizing or impounding agency shall release a vehicle to a person, other than the owner, identified on the department's record as having an interest in the vehicle ~~before the end of the thirty day immobilization or impoundment period~~ IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT if all of the following conditions are met:

1. The person is either of the following:

(a) In the business of renting motor vehicles without drivers and the vehicle is registered pursuant to section 28-2166.

(b) A motor vehicle dealer, bank, credit union or acceptance corporation or any other licensed financial institution legally operating in this state or is another person who is not the owner and who holds a security interest in the vehicle IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT.

2. The person pays all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to section 28-3513 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, the operator of the vehicle at the time of immobilization or impoundment is responsible for all immobilization, towing, storage and administrative charges.

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

4. The person requesting release of the vehicle was not the person driving the vehicle at the time of removal and immobilization or impoundment.

E. Before a person described in subsection D of this section releases the vehicle to the owner who was operating the vehicle at the time of removal and immobilization or impoundment, the person described in subsection D of this section shall require the owner to present and shall retain for a period of at least three years from the date of releasing the vehicle a copy of all of the following:

1. A driver license issued by this state or the owner's or owner's agent's state of domicile.

2. A current vehicle registration or a valid salvage or dismantle certificate of title.

3. Evidence that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

F. The person described in subsection D of this section 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.

G. A vehicle shall not be released after the end of the thirty day immobilization or impoundment period unless the owner or owner's agent presents all of the following to the impounding or immobilizing agency:

1. A valid driver license issued by this state or by the owner's or owner's agent's state of domicile.

2. A current vehicle registration or a valid salvage or dismantle certificate of title.

3. Evidence that the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

4. If the person is required by the department to install a certified ignition interlock device on the vehicle, 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 during normal business hours 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 any fee or require compensation for providing access to the vehicle or for the installation of the certified ignition interlock device.

H. The storage charges relating to the impoundment of a vehicle pursuant to this section shall be subject to a contractual agreement between the impounding agency and a towing firm for storage services pursuant to section 28-1108 ~~but~~ AND shall ~~not exceed~~ BE fifteen dollars for each day of storage, including any time the vehicle remains in storage after the end of the thirty day impoundment period.

I. 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 charges.

J. A person who enters into an agreement pursuant to subsection A, paragraph 5 of this section and who allows another person to operate the vehicle in violation of the agreement is responsible for a civil traffic violation and shall pay a civil penalty of at least two hundred fifty dollars.

K. A person described in subsection D, paragraph 1 of this section who violates subsection E of this section is responsible for a civil traffic violation and shall pay a civil penalty of at least two hundred fifty dollars.

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

Sec. 3. Section 28-3513, Arizona Revised Statutes, is amended to read:

28-3513. Administrative charges

A. The immobilizing or impounding agency shall establish procedures for immobilization hearings or poststorage hearings, for the release of properly immobilized or impounded vehicles and for imposition of a charge for 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~~ BE one hundred fifty dollars and shall not be charged to a towing company that performs removal, immobilization, impoundment, storage or release of the vehicle.

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, 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 an immobilization or poststorage hearing may collect a fee equal to the fee established pursuant to section 22-281 for a small claims answer.

F. If the immobilizing or impounding agency is:

1. A municipality, the administrative charges collected pursuant to this section shall be transmitted to the city treasurer for deposit in a special fund established by the municipality for the purpose of implementing section 28-872 and this article.

2. A county, the administrative charges collected pursuant to this section shall be transmitted to the county treasurer for deposit in a special fund established by the county for the purpose of implementing section 28-872 and this article.

3. The department of public safety, the administrative charges collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund established by section 41-1752.

4. The capitol police, the administrative charges collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147,

in the capitol police administrative towing fund established by section 41-1725.

Sec. 4. 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT with the opportunity for 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 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT resides.

B. If the immobilizing or impounding agency does not provide an opportunity for an immobilization or poststorage hearing, a justice court shall conduct the immobilization or poststorage hearing. If 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 three business days after immobilization or impoundment, excluding weekends and holidays, 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT. Service of notice of immobilization or storage is complete on mailing. If WITHIN THREE BUSINESS DAYS AFTER IMMOBILIZATION OR IMPOUNDMENT, EXCLUDING WEEKENDS AND HOLIDAYS, 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 three business days after immobilization or impoundment, excluding weekends and holidays~~ IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT, the immobilizing agency or the person in possession of the vehicle shall not charge any administrative fees or 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 three business days after immobilization or impoundment, excluding weekends and holidays, 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 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT, within ten days after the date on the notice, shall request 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 if the impounding agency does not provide for a hearing 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 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT 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 IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT resides.

F. The immobilization or poststorage hearing shall be conducted by the immobilizing or impounding agency or justice court within five business days, excluding weekends and holidays, after receipt of the request.

G. Failure of the owner, the spouse of the owner or other person or the other person's agent to request an immobilization or poststorage hearing within ten days after the date on the notice prescribed in subsection E of this section or to attend a scheduled hearing satisfies the immobilization or poststorage hearing requirement.

H. The immobilizing or impounding agency employing the person who directed the immobilization or storage is responsible for the costs incurred for immobilization, towing and storage if it is determined in the immobilization or poststorage hearing that reasonable grounds for the immobilization or impoundment and storage are not established.

I. In compliance with the requirements of this section, the vehicle owner, the vehicle owner's spouse or ~~other~~ ANOTHER person having an interest in the vehicle IMMEDIATELY BEFORE THE IMMOBILIZATION OR IMPOUNDMENT shall have an opportunity for a single poststorage hearing for the release of the vehicle by either the immobilizing or impounding agency or a justice court but not both.

APPROVED BY THE GOVERNOR APRIL 10, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2013.

Passed the House April 1, 2013,

by the following vote: 41 Ayes,

19 Nays, 0 Not Voting

Speaker of the House

Pro Tempore

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 28, 2013,

by the following vote: 21 Ayes,

7 Nays, 2 Not Voting

President of the Senate

Susan Anders

Assistant Secretary of the Senate

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

8 day of April, 2013,

at 2:10 o'clock P M.

Mikhaila Howard

Secretary to the Governor

Approved this 10th day of

April, 2013,

at 1:57 o'clock P. M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10th day of April, 2013,

at 4:58 o'clock P M.

Ken Bennett

Secretary of State

S.B. 1075