
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 644 **Hearing Date:** March 28, 2017
Author: Stone
Version: February 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Vessels: Forfeiture*

HISTORY

Source: Debbie Bresslin, Consituent

Prior Legislation: AB 1829 (Levine) – Chapter 68, Stats. 2016
AB 538 (Levine) – Chapter 118, Stats. 2015
SB 717 (DeSaulnier) – Chapter 317, Stats. 2013

Support: American Civil Liberties Union of California

Opposition: None known

PURPOSE

The purpose of this bill is to provide for the impounding of a vessel if a person is boating under the influence (BUI) and the conduct resulted in the unlawful killing of a person.

Existing law provides that a motor vehicle used by the registered owner in driving under the influence (DUI) conviction may be impounded for one to 30 days upon conviction. (Vehicle Code § 23594(a))

Existing law provides that if the DUI offense occurred within five years of another offense the court shall, except in unusual cases where the interest of justice would not be served, impound the vehicle upon conviction for one to 30 days. (Vehicle Code § 23594 (a))

Existing law provides that if the DUI offense occurred within five years of two or more offenses the court shall, except in unusual cases where the interest of justice would not be served impound the vehicle upon conviction for one to 30 days. (Vehicle Code § 23594 (a))

Existing law prohibits a person from operating a vessel or manipulate water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harbors & Navigation Code, § 655 (b))

Existing law prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harbors & Navigation Code, § 655 (c))

Existing law prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harbors & Navigation Code, § 655 (d))

This bill provides that if a peace officer determines that a person is BUI and the conduct resulted in the unlawful killing of a person, the peace officer may immediately arrest and take into custody that person and may cause the removal and seizure of the vessel used in that offense.

This bill provides that the vessel may be impounded for not more than 30 days.

This bill would allow the registered and legal owner of a vessel removed and seized or their agents the opportunity for a storage hearing to determine the validity of the storage.

This bill would allow for the return of the vessel to the registered owner: if the vessel was stolen; if the person was not authorized by the registered owner to drive the vessel; if the registered owner was neither the operator or passenger at the time of the violation; if the legal owner is a rental agency; or, if the prior to the conclusion of the impound charges have not been filed.

This bill provides that if the vessel is released prior to the impound date then the registered owner is not responsible for the towing and storage charges.

This bill provides that the vessel shall be released to the legal owner: if the legal owner is a vessel dealer, bank, credit union, acceptance corporation or other licensed financial institution or another person holding a security interest in the property; the legal owner pays all the towing or storage fees related to the impoundment; and, the legal owner presents foreclosure documents or an affidavit of repossession for the vessel.

This bill provides that if the person convicted of the BUI was not authorized by the registered owner of the vessel to operate the vessel at the time of the commission of the offense, the court shall order the convicted person to reimburse the registered owner for any towing and storage charges relate do the impoundment incurred by the registered owner to obtain possession of the vessel unless the courts finds that the person does not have the ability to pay all or part of those charges.

This bill provides that if the vessel is a rental, the rental agency may require the person to whom the vessel was rented to pay all towing and storage charges related to the impoundment incurred by the rental agency in connection with obtaining possession of the vessel.

COMMENTS

1. Need for This Bill

According to the author:

SB 644 was introduced in response to a tragic accident that occurred to a constituent on Senate District 28. The constituent noticed that when someone is arrested for Driving Under the Influence (DUI), the vehicle is subject to impound rules that include having the vehicle sold after 30 days. But the rules are less clear for a vessel used in a Boating Under the Influence (BUI). SB 644 states that, if a vessel is used in the commission of a BUI crime that involves the unlawful killing of a person, the vessel will be subject to the same seizure and impound rules as a vehicle used in a DUI.

2. DUI and Impound

Existing law allows for the impound of a vehicle upon the *conviction* of a DUI for up to 30 days. (Vehicle Code § 23594) It is discretionary on a first offense and provides that the court shall impose it for a repeat offense within five years, although it unclear how often the court actually orders an impound in these cases.

3. BUI and Impound

Under existing law it is illegal to drive a vessel under the influence of drugs or alcohol or to drive a vessel with a .08% blood alcohol concentration (BAC) or a .04% BAC for a commercial vessel.

This provides that if a peace officer suspects a person of BUI and that conduct resulted in the unlawful killing of a person, the peace officer shall cause the removal and seizure of the vessel and the impounding of the vessel for not more than 30 days. The bill sets forth when the vehicle can be returned to the registered owner or the legal owner in a time less than 30 days and provides who shall be liable for the impound costs in those circumstances.

4. No Conviction Required

Unlike the impound provisions related to a DUI, this bill does not require a conviction for the impounding of the vessel. The impound is based solely on the peace officer's determination that a BUI occurred and resulted in the unlawful killing of a person. If the charges are dropped the person can get the vessel out of impound and not pay the fees, however it is unlikely that charges will be dropped or a person acquitted within the 30 days of the impound. If the charges are dropped and a person has already paid these fees can he or she get them back? What about any lost income they may have lost by not having the boat if it was used for their livelihood?

5. Violation Resulted in Unlawful Killing

Without a trial, how is a peace officer going to be able to determine if the violation "resulted in the unlawful killing?" If a jet ski cuts in front of a large speed boat and the jet ski driver is killed, even if the speed boat tried evasive maneuvers to avoid hitting the jet ski, was the death a result of the BUI? Will the speed boat driver ultimately be found not to be liable because the jet ski cut in front of the large vessel? As noted above, this may take more than 30 days to determine so if a person is not found liable for the unlawful killing, can he or she get their impound fees or costs back. What about any lost income they may have lost by not having the boat if it was used for their livelihood?

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