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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 1393                      **Hearing Date:** July 11, 2017  
**Author:** Friedman  
**Version:** July 3, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Reckless Driving: Speed Contests: Vehicle Impoundment*

### HISTORY

Source: Author

Prior Legislation: SB 510 (Hall) Vetoed 2015  
SB 67 (Perata) - Chapter 727, Stats. 2007  
SB 1489 (Perata) - Chapter 411, Stats. 2002  
AB 2288 (Aguiar) - Chapter 884, Stats. 1996  
SB 833 (Bonta) - Chapter 922, Stats. 1995  
AB 5 - Chapter 3, Stats. 1959

Support: Association for Los Angeles Deputy Sheriffs; Los Angeles County Professional Peace Officers Association; Los Angeles County Sheriff's Department; Riverside Sheriffs' Association

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice

Assembly Floor Vote: 76 - 0

### PURPOSE

*The purpose of this bill is to allow for impound of a vehicle upon conviction for reckless driving and mandate impound upon a second conviction for reckless driving or speed contest.*

*Existing law* provides that any person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. (Vehicle Code § 23103)

*Existing law* prohibits a person from engaging in any motor vehicle speed contest which includes a motor vehicle race against another vehicle, a clock, or other timing device. (Vehicle Code § 23109)

*Existing law* prohibits a person from aiding or abetting in a speed contest. (Vehicle Code § 23109 (d))

*Existing law* specifies the penalty for a speed contest or the exhibition of speed is a misdemeanor. (Vehicle Code § 2309 (e) and (f))

*Existing law* provides that when a person is arrested for street racing or a speed contest, an officer may impound the vehicle for not more than 30 days and that the registered and legal owner of the vehicle is required to be provided a hearing regarding the storage of the vehicle. (Vehicle Code § 23109.2)

*Existing law* provides that when a person is convicted of a speed contest the court may impound the vehicle for not less than one day nor more than 30 days. (Vehicle Code § 23109)

*This bill* provides that for a first offense, a vehicle may be impounded for 30 days, at the owner's expense, if the vehicle's registered owner is convicted of reckless driving.

*This bill* provides that for a second and every other subsequent offense, a vehicle will be impounded for 30 days, at the owner's expense, if the vehicle's registered owner is convicted of reckless driving or speed contest.

*This bill* provides that the 30-day impound upon conviction shall be reduced by the number of days, if any, that the vehicle was impounded upon arrest.

*This bill* authorizes the court to waive the 30-day impoundment requirements if the court determines that impoundment of the vehicle would impose an undue hardship on the registered owner's family.

*This bill* provides that impounded vehicles may be released before the 30th day if the legal owner is a motor vehicle dealer, bank, or other financial institution that holds an interest in the vehicle provided the storage and towing fees are paid by the legal owner.

*This bill*, relative to speed contests, authorizes an officer to issue a notice to correct for a violation of a mechanical or safety requirement and require that the correction be made within 30 days after the date the vehicle is released from impound.

## COMMENTS

### 1. Need for This Bill

According to the author:

In order to combat reckless driving and street racing, law enforcement entities have turned to evidence-based penalties like extended vehicle impoundments that have proven to change driver behavior. A recent study by the National Highway Safety Administration evaluated California's 30-day impound requirement for motorists driving with a suspended license and found that impoundment of the vehicle substantially reduced a driver's subsequent violations and crashes. A California Department of Motor Vehicles study of the same requirement noted that the penalty resulted in an estimated 38% reduction in subsequent crashes and up to a 23% reduction in subsequent convictions when a driver's vehicle was impounded.

Illegal street racing continues to create a significant public safety threat across California. Traffic data collected by California High Patrol (CHP) show that over a four-year period, the CHP issued citations resulting in 12,586 convictions for engaging in, aiding or abetting exhibition of speed on a highway.

## 2. Brewster v Beck

The 9<sup>th</sup> Circuit released an opinion on June 21, 2017 in the Case of Brewster v. Beck.

The court held that the 30-day impoundment of a vehicle constitutes a “seizure” requiring compliance with the Fourth Amendment.

Lamya Brewster loaned her vehicle to a driver with a suspended license. Los Angeles Police Department (LAPD) officers stopped the driver, discovered the suspension, and impounded the vehicle, relying on Veh. Code §14602.6(a)(1), which authorizes impounding a vehicle when the driver has a suspended license. Vehicles seized under this section must generally be held in impound for 30 days. Three days later, Brewster appeared at a hearing before the LAPD with proof that she was the registered owner of the vehicle and her valid California driver’s license. Brewster offered to pay all towing and storage fees that had accrued, but the LAPD refused to release the vehicle before the 30-day holding period had lapsed.

Brewster filed suit under 42 U.S.C. §1983, arguing the 30-day impound was a warrantless seizure that violated the Fourth Amendment. The district court granted the city’s motion to dismiss, finding the 30-day impound was a valid administrative penalty.

The court of appeals reversed, holding that the 30-day impound of Brewster’s vehicle was a seizure that required compliance with the Fourth Amendment. That the seizure of the vehicle was lawful at the outset was not determinative. A seizure is justified under the Fourth Amendment only to the extent that the government’s justification holds force. Thereafter, the government must cease the seizure or secure a new justification. Here, although the initial seizure had a legitimate public safety purpose, that justification vanished when Brewster showed up with proof of ownership and a valid driver’s license. Because the city failed to provide any justification for the continued retention of her car, the district court erred in granting its motion to dismiss. (*Brewster v. Beck* D.C. No. 5:14-cv-02257-JGB-SP; Summary of the case from *The Recorder* June 21, 2017 <http://www.therecorder.com/id=1202790834632/Brewster-v-Beck?slreturn=20170528190128>)

## 3. Impound Upon Conviction in Addition to Upon Arrest

Existing law provides that law enforcement may impound for 30 days upon arrest and a court may impound upon conviction of a reckless driving or street contest violation. This bill would provide that upon conviction the court may impound the vehicle for 30 days and if it is a second or subsequent conviction the court *shall* impound a car upon a conviction for reckless driving or street racing.

The bill does say that the court shall reduce the number of days by the days a car may have been impounded upon arrest and also provides that the court shall not impound if it will result in undue hardship to the family.

Will this impound upon conviction pass the Constitutional issues raised by *Brewster*? Is there a legitimate safety concern after conviction, which may occur months after the violation?

**4. Veto to SB 510 (Hall) 2015**

SB 510 (Hall) 2015, which was vetoed, was similar to this bill, although it mandated impound on the 1<sup>st</sup> offense.

This bill requires courts to impose a mandatory 30-day vehicle impoundment for any case of reckless driving or engaging in an illegal speed contest.

Current law already allows judges - who see and evaluate first-hand the facts of each case to impound cars for up to 30 days when circumstances warrant. Accordingly, there would be no reason for this law except to supplant sound judicial discretion with robotic and abstract justice - something I don't support.

Does the Governor's point that this should remain in the discretion still apply to this bill?

**-- END --**