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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 328

AN ACT TO AMEND TITLE 21 AND TITLE 11 OF THE DELAWARE CODE RELATING TO DRAG RACING AND
OTHER DANGEROUS OPERATIONS OF MOTORIZED VEHICLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members
elected to each house thereof concurring therein):

Section 1. Amend § 4172, Title 21 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 4172. Speed exhibitions; drag races and other speed contests.

(a) No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest,
test of physical endurance, exhibition of speed or acceleration and no person shall aid, abet, promote, assist or in any
manner participate in any such race, competition, contest, test or exhibition. ~~A violation of this subsection shall be an~~
~~unclassified misdemeanor.~~

(b) No person shall accelerate or try to accelerate a ~~vehicle~~ vehicle, or any of its tires, regardless of whether the
vehicle is stationary or in motion, at a rate which causes the drive wheels to spin or slip on the road ~~surface.~~ surface, to
produce smoke from tire slippage, or to leave visible tire acceleration marks on a highway, ground, or other surface. This
subsection shall not apply during periods of inclement ~~weather.~~ weather, unless such conduct is done in willful or wanton
disregard for the safety of persons or property.

(c) No owner or person in charge of a vehicle shall permit that vehicle or any vehicle under the person's control to
be used by another person for any of the purposes listed in subsection (a) or (b) of this section. If any vehicle is ~~witnessed~~
~~by a police officer to be used~~ in violation of this section and the identity of the operator is not otherwise apparent, the
person in whose name such vehicle is registered as the owner shall be held prima facie responsible for such violation.

(d) ~~Whoever violates this section shall be fined for the first offense not less than \$25 nor more than \$200, or~~
~~imprisoned not less than 10 days nor more than 30 days or both.~~ (1) A violation of this section is an unclassified

19 misdemeanor for the first offense. For a first offense, any sentence shall also include 16 hours of community service either
20 as a condition of probation or pursuant to § 4204(m) of Title 11. For each A subsequent like offense, offense is a class A
21 misdemeanor. the person shall be fined not less than \$50 nor more than \$400, or imprisoned not less than 15 days nor more
22 than 60 days or both. For a subsequent offense, any sentence shall also include 40 hours of community service either as a
23 condition of probation or pursuant to § 4202(m) of Title 11. Any fine imposed may not be suspended. Upon receiving
24 notice of a conviction for a first offense, the Secretary shall forthwith suspend the driver's license of the person convicted,
25 for a period of not longer than 6 months. Upon receiving notice of a conviction of a subsequent like offense, the Secretary
26 shall suspend the driver's license for a 1-year period. Notwithstanding the foregoing, there shall not be a suspension of
27 driver's license upon conviction for a first offense under subsection (b) of this section.

28 (2)a. Whenever a person is arrested or issued a citation for a violation of this section, the issuing or arresting
29 law enforcement agency shall impound the vehicle used in the offense. A law enforcement officer may elect not to
30 impound the vehicle, if there is an emergency or medical necessity jeopardizing life or limb, or if the law enforcement
31 officer is presented with exigent circumstances, including resource constraints.

32 b. A vehicle impounded pursuant to this section shall be impounded for a period of 72 hours after the
33 time of arrest or citation, or until such later time as the person claiming the vehicle meets the conditions for release
34 listed in paragraph (d)(2)d. of this section. This section does not otherwise limit any other provisions of the Code
35 that govern the lawful seizure of vehicles or evidence.

36 c. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior
37 to the end of the impoundment period only under one of the following conditions:

38 1. The arrestee does not own and has not leased the vehicle, and the person who owns or leases the
39 vehicle claims the vehicle and meets the conditions of release set forth in paragraph (d)(2)d. of this section.

40 2. The vehicle is owned or leased by the arrestee and the arrestee gives permission to another person,
41 who has provided written acknowledgment that he/she is responsible for not allowing the arrestee to drive the
42 motor vehicle during the balance of the impoundment period, and the conditions for release in paragraph
43 (d)(2)d. of this section are met. Should another person obtain the early release of an impounded vehicle under
44 this paragraph and the arrestee thereafter drives, operates, or is in actual physical control of the vehicle during
45 the balance of the 72-hour period of impoundment, the person that obtained the early release of the vehicle
46 shall be guilty of a violation and subject to a \$200 fine, which shall not be suspended. In any such prosecution
47 under this paragraph, the State does not need to present a copy of the written acknowledgement.

d. A vehicle impounded pursuant to this section shall not be released unless all of the following conditions are met:

1. The claimant presents a valid driver's license or other photo identification, proof of ownership or lawful authority to operate the motor vehicle, and proof of valid motor vehicle insurance for that vehicle. If the vehicle will be driven out of impoundment, the claimant must have a valid driver's license or be accompanied by a person with a valid driver's license. If the vehicle is an ATV or OHV, proof of insurance is not necessary.

2. The claimant is able to operate the vehicle in a safe manner and would not be in violation of Title 21, Section 4177(a).

3. Any other conditions for release established by the law enforcement agency have been met.

4. All reasonable towing and storage fees connected to the vehicle have been paid. The State and the arresting law enforcement agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(e)(1) This section applies on highways and elsewhere throughout the State including all of the following:

a. On any driveway or premises of a church, school, recreational facility, or business or governmental property open to the public.

b. On the premises of any industrial establishment providing parking space for customers, patrons, or employees.

c. On any highway under construction or not yet open to the public.

(2) This section does not apply on any raceway, drag strip, or other place customarily and lawfully used for speed exhibitions or contests, or any non-residential commercial, industrial, or other property where the participants have received express permission from the owner or the owner's agent.

(3) For the purpose of this section, the term "vehicle" includes "all terrain vehicle," "ATV," "Off-highway vehicle," and "OHV" as those terms are defined in § 101 of this title.

(4) For purposes of this section, a "subsequent offense" means a new violation of either subsection (a) or (b) occurring within 5 years of the date of any former offense under this section.

(f)(1) If a person is found in violation of this section and the vehicle used in the violation is registered to that person or where the registrant permits the use of the vehicle, the court, at the time of sentencing the operator for violating this section, may, upon motion by the State, order said vehicle be impounded for up to 90 days for the first violation of this section, and for up to 1 year for a subsequent violation, provided that a public or private secure storage area may be

obtained by the arresting law enforcement agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to releasing said vehicle, the person to whom the vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting law enforcement agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(2) In lieu of impoundment under paragraph (f)(1) of this section, the court may order that the number plate or registration plate of any vehicle used in connection with a violation of subsection (a) of this section be surrendered to the Department within 72 hours of the issuance of the order, or in accordance with the Department's procedures, for up to 90 days for the first violation of this section, and for up to 1 year for a subsequent violation. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the surrender of said plate should cease. After a person is convicted for a violation of this section, no person shall sell, transfer, or encumber the title to a vehicle that the person knows is subject to a court order, except in the case of salvage, repossession, or unless first approved by the court that issued the order. The Department may not issue any alternate number plate or registration plate to that vehicle during the period of surrender, unless approved by the court that entered the order or upon presentment of proof of salvage or repossession. Anyone convicted of a violation of this section is prohibited from driving, operating, or being in physical control of the vehicle during the period of surrender absent specific court approval, regardless of any legal or equitable interest they might have in the vehicle.

(g) Whenever any vehicle has been used in, or in connection with, the commission of a violation of this section, or in connection with the flight or escape of any person convicted of a violation of this section, and any vehicle involved causes serious physical injury or death to another person during the course of the violation, or its operator is in violation of § 4177(a) of this title as a second offense or higher, the State, pursuant to the procedure governing set forth in Chapter 23 of Title 11 may seek to have forfeited any vehicle involved, whether it be the vehicle or an accomplice vehicle.

(h) Nothing in this section shall be construed to preclude or otherwise limit prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be prosecuted and convicted of both the offenses of speed exhibitions, drag races and other speed contests and any other offenses as defined elsewhere by the laws of the State.

Section 2. Amend § 4101, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4101. Provisions refer to vehicles upon highways; exceptions; powers of local authorities.

(a) The provisions of this title relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) That subchapter IX of this chapter shall apply upon highways and elsewhere throughout the State.

(3) That subchapter VIII of this chapter and § 4164 of this title shall apply upon highways and elsewhere throughout the State, except that subchapter VIII of this chapter and § 4164 of this title shall not apply upon any nonresidential, commercial ~~property.~~ property, except as set forth in § 4172 of this title. For the purposes of this paragraph, ~~“elsewhere”~~ “elsewhere,” except for purposes of § 4172 of this title, shall mean only those areas regulated by traffic-control devices which have been reviewed and approved as acceptable for the area by the Delaware Department of Transportation.

Section 3. Amend § 701, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) The Secretary of Safety and Homeland Security, the Secretary of Safety and Homeland Security’s deputies, Division of Motor Vehicles investigators, State Police, state detectives and other police officers authorized by law to make arrests for violation of the motor vehicle and traffic laws of this State, provided such officers are in uniform or displaying a badge of office or an official police identification folder, may arrest a person without a warrant:

(6) For violations of § 4172 of this title relating to speed exhibitions, drag races and other speed contests, when the violation is determined by personal observation, video surveillance device, other method of identifying the vehicle, or a review of any existing video recording of the violation. The violation may also be determined by personal observation by another law-enforcement officer who immediately communicates the information to the arresting officer, provided the arresting officer is working in conjunction with the observing officer, and the vehicle being apprehended is the vehicle detected.

Section 4. Amend Subchapter II, Chapter 23 of Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2322. Grounds for seizure.

Whenever any vehicle, as defined in this subchapter, has been used in, or in connection with, the commission of any felony or in connection with the flight or escape of any person who has committed any felony or in the transporting of cigarettes in violation of Chapter 53 of Title 30, or in a violation of § 1343 of this title, or in a violation of § 4172 of Title 21 in a manner meeting the criteria set forth in § 4172(g) of Title 21, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

§ 2326. Application of subchapter.

137 This subchapter with respect to condemnation and forfeiture shall not apply to or against the owner of a vehicle
138 who has not knowingly used or permitted the vehicle to be used in, or in connection with, the commission of a felony, or
139 who has not knowingly and voluntarily used or permitted the vehicle to be used in, or in connection with, the flight or
140 escape of any person who has committed any such felony or in the transporting of cigarettes in violation of Chapter 53 of
141 Title 30, or in a violation of § 1343 of this title. title, or in a violation of § 4172 of Title 21 in a manner meeting the criteria
142 set forth in § 4172(g) of Title 21. Nothing in this subchapter shall be construed as authorizing the condemnation and
143 forfeiture of the interest of any bona fide mortgagee or lienholder with respect to the vehicle but the burden in all such cases
144 shall be upon such mortgagee or lienholder to show that it did not know or have cause to know, at the time its interest
145 accrued, of a contemplated unlawful use of such vehicle.

SYNOPSIS

This Act makes several adjustments to the law prohibiting drag racing and other speed contests. Many individuals lawfully gather to share their enthusiasm for vehicles and may do so while abiding the rules of the road and without otherwise endangering persons or property. However, others have taken their enthusiasm into dangerous directions that often results in damage to property, injury, or death. For example, Kirkwood Highway has experienced an uptick in large crowds engaged in dangerous driving behavior and as the result of a drag racing event at the Christiana Mall Fashion Center, there was a vehicular fatality. Whether by drag racing, trick or stunt riding, conducting burnouts in intersections, doing donuts in parking lots, or taking over roadways to showboat, these dangers are further amplified by the crowd size that follows and the attempted notoriety sought through social media posts.

The intent of the statute is to promote law-enforcement's ability to enforce the statute, eliminate prior inadvertent loopholes in the current statute regarding geographic and vehicle type limitations, update the statute to reflect current dangerous driving trends and behavior, and ultimately serve as a deterrent for future unsafe behavior. The current statute incorporates potential penalties for the individual and their licensing status, but it does not address the actual vehicle, as the tool and mechanism that is central to the dangerous behavior. This Act enhances existing penalties and promotes public safety by restricting drivers charged with these dangerous driving behaviors access to their vehicles.

- First, while a first offense remains an unclassified misdemeanor, a subsequent offense becomes a Class A Misdemeanor. The minimum applicable fines are substituted for mandatory community service instead.

- Second, for the purpose of this statute, a subsequent offense is defined as one occurring within 5 years from a prior offense, rather than the default of 2 years set forth in 21 Del. C. § 713.

- Third, the statute expands the list of prohibited conduct to better encompass existing dangerous driving behavior, like tire burnouts in intersections that are not part of races and the dangers to persons or property they pose.

- Fourth, within the context of 21 Del. C. § 4101(a)(3), the statute more clearly defines the geographic enforceability of the statute on non-highway property, such as commercial parking lots, while still allowing commercial property or other owners to consent to the use of their property for these purposes.

- Fifth, the statute expands the types of vehicles that the provision addresses, to include ATV's and OHV, which are excepted from the 21 Del. C. § 101 definition of vehicles, but which are also used to engage in this behavior. Non street-legal vehicles are often used to participate in the dangerous driving behavior.

- Sixth, recognizing that law-enforcement resources, crowd size, environmental factors, and other safety concerns do not always allow law-enforcement to prioritize on-scene engagement with single vehicles while the behavior in this statute is occurring, the Act expands law-enforcement's ability to later investigate and arrest for violations of this statute. Under the current statute, violators, when contemplating commission of such offenses, might rely on the fact that law-enforcement safety and resource concerns might dictate that the violators cannot be apprehended on scene or that chasing them might be too dangerous to do. This Act expands the definition of "witnessed" by a law-enforcement officer, under 21 Del. C. § 701(a), to include after the fact review of video surveillance or any other video that captures the violation.

- Seventh, the Act allows for the vehicles used, as the mechanism by which the dangerous behavior is conducted, to be impounded, de-registered, otherwise immobilized, or even eligible for forfeiture proceedings under certain conditions. As the same time, the Act does not prohibit an innocent owner from applying for return of the vehicle from the Court, under certain conditions, if their vehicle is used in a violation of this statute.