SPONSOR: Rep. K. Williams & Rep. Baumbach &
Rep. Dorsey Walker & Rep. Griffith & Rep. Mitchell &
Rep. Osienski & Rep. Ramone & Rep. Michael Smith &
Sen. Walsh & Sen. Hansen & Sen. Mantzavinos &
Sen. Sokola
Reps. Bentz, Briggs King, Cooke, Gray, Heffernan,
D. Short, Smyk; Sens. Bonini, Brown, Ennis, Gay,
Hocker, Lawson, Lockman, Lopez, S. McBride, Paradee,
Pettyjohn, Pinkney, Poore, Richardson, Sturgeon,
Townsend, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 328
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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.

HD : KL : MAW : 2141510408
LC : HVW : NMX : 5081510185
Released: 04/13/2022 04:37 PM

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

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

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

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

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

2. The vehicle is owned or leased by the arrestee and the arrestee gives permission to another person, who has provided written acknowledgment that he/she is responsible for not allowing the arrestee to drive the motor vehicle during the balance of the impoundment period, and the conditions for release in paragraph (d)(2)d. of this section are met. Should another person obtain the early release of an impounded vehicle under this paragraph and the arrestee thereafter drives, operates, or is in actual physical control of the vehicle during the balance of the 72-hour period of impoundment, the person that obtained the early release of the vehicle

shall be guilty of a violation and subject to a $200 fine, which shall not be suspended. In any such prosecution 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.

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