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Bill 22

**An Act to amend the Highway Traffic Act and the Civil Remedies Act, 2001
to promote public safety by prohibiting driving in a motor vehicle
with an unlawfully possessed handgun**

Mr. M. Colle

Private Member's Bill

1st Reading March 26, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to promote public safety and suppress conditions that lead to crime. The Bill adds a new section 172.2 to the *Highway Traffic Act*, which makes it an offence to drive on a highway a motor vehicle in which there is an unlawfully possessed handgun. The penalties associated with the offence are a fine of not less than \$2,000 and not more than \$10,000 or imprisonment of not more than six months, or both, and a driver's licence suspension of one year for a first conviction under the section, five years for a second conviction and indefinitely for a third conviction. A police officer who believes, on reasonable and probable grounds, that an offence has been committed shall request the surrender of the driver's licence and detain the vehicle. The licence is suspended for seven days and the vehicle is impounded for the same length of time. The new section applies to drivers' licences issued by Ontario or another jurisdiction. The Bill also amends various sections in the *Highway Traffic Act* to ensure that the impoundment period runs concurrently with the other administrative impoundments.

Part III.1 (Unlawful Activities Related to Road Safety) of the *Civil Remedies Act, 2001* is amended so that a vehicle involved in a contravention of section 172.2 of the *Highway Traffic Act* may become subject to forfeiture under that Act.

An Act to amend the Highway Traffic Act and the Civil Remedies Act, 2001 to promote public safety by prohibiting driving in a motor vehicle with an unlawfully possessed handgun

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

HIGHWAY TRAFFIC ACT

1 (1) Subsection 1 (1) of the *Highway Traffic Act* is amended by adding the following definitions:

“handgun” means a handgun within the meaning of the *Criminal Code* (Canada); (“arme de poing”)

“unlawfully possessed handgun” means any handgun whose possession is not authorized under the *Firearms Act* (Canada); (“arme de poing illégale”)

(2) Subsection 1 (8) of the Act is amended by striking out “55.2 or 172” and substituting “55.2, 172 or 172.2”.

2 Subsection 41.4 (21) of the Act is amended by striking out “82.1 or 172” at the end and substituting “82.1, 172 or 172.2”.

3 Subsection 48.4 (21) of the Act is amended by striking out “82.1 or 172” at the end and substituting “82.1, 172 or 172.2”.

4 Subsection 55.1 (37) of the Act is amended by striking out “82.1 or 172” at the end and substituting “82.1, 172 or 172.2”.

5 Subsection 55.2 (21) of the Act is amended by striking out “82.1 or 172” at the end and substituting “82.1, 172 or 172.2”.

6 Subsection 82.1 (36.2) of the Act is amended by striking out “55.2 or 172” at the end and substituting “55.2, 172 or 172.2”.

7 Subsection 172 (18.1) of the Act is amended by striking out “55.2 or 82.1” at the end and substituting “55.2, 82.1 or 172.2”.

8 The Act is amended by adding the following section:

Driving with unlawfully possessed handgun in motor vehicle prohibited

172.2 (1) No person shall drive on a highway a motor vehicle in which there is an unlawfully possessed handgun.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$2,000 and not more than \$10,000 or to imprisonment for a term of not more than six months, or to both, and in addition the person’s driver’s licence may be suspended,

- (a) on a first conviction under this section, for one year;
- (b) on the first subsequent conviction under this section, for five years; and
- (c) on the second subsequent conviction under this section, indefinitely.

Determining subsequent conviction

(3) In determining whether a conviction is a subsequent conviction for the purposes of subsection (2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

Police to require surrender of licence, detention of vehicle

(4) If a police officer believes on reasonable and probable grounds that a person has committed an offence under subsection (1), the officer shall,

- (a) request that the person surrender his or her driver’s licence; and
- (b) detain the motor vehicle until it is impounded under clause (6) (b).

Administrative seven-day licence suspension

(5) Upon a request being made under clause (4) (a), the person to whom the request is made shall forthwith surrender his or her driver's licence to the police officer and, whether or not the person is unable or fails to surrender the licence to the police officer, his or her driver's licence is suspended for a period of seven days from the time the request is made.

Administrative seven-day vehicle impoundment

(6) Upon a motor vehicle being detained under clause (4) (b), the motor vehicle shall, at the cost of and risk to its owner,

- (a) be removed to an impound facility as directed by a police officer; and
- (b) be impounded for seven days from the time it was detained under clause (4) (b).

Release of vehicle

(7) Subject to subsection (14), the motor vehicle shall be released to its owner from the impound facility upon the expiry of the period of impoundment.

Early release of vehicle

(8) Despite the detention or impoundment of a motor vehicle under this section, a police officer may release the motor vehicle to its owner before it is impounded under subsection (6) or, subject to subsection (14), may direct the operator of the impound facility where the motor vehicle is impounded to release the motor vehicle to its owner before the expiry of the seven days if the officer is satisfied that the motor vehicle was stolen at the time of the contravention of subsection (1).

Duty of officer re licence suspension

(9) Every officer who asks for the surrender of a person's driver's licence under this section shall keep a record of the licence received with the name and address of the person and the date and time of the suspension and shall, as soon as practicable after receiving the licence, provide the person with a notice of suspension showing the time from which the suspension takes effect and the period of time for which the licence is suspended.

Duty of officer re impoundment

(10) Every officer who detains a motor vehicle under this section shall prepare a notice identifying the motor vehicle that is to be impounded under subsection (6), the name and address of the driver and the date and time of the impoundment and shall, as soon as practicable after the impoundment of the motor vehicle, provide the driver with a copy of the notice showing the time from which the impoundment takes effect, the period of time for which the motor vehicle is impounded and the place where the vehicle may be recovered.

Same

(11) A police officer shall provide a copy of the notice prepared under subsection (10) to the owner of the motor vehicle by delivering it personally or by mail to the address of the owner shown on the permit for the motor vehicle or to the latest address for the owner appearing on the records of the Ministry.

No appeal or hearing, court proceedings not affected

(12) There is no appeal from, or right to be heard before, a vehicle detention, driver's licence suspension or vehicle impoundment under subsection (4), (5) or (6), but this subsection does not affect the taking of any proceeding in court.

Lien for storage costs

(13) The costs incurred by the person who operates the impound facility where a motor vehicle is impounded under this section are a lien on the motor vehicle that may be enforced under the *Repair and Storage Liens Act*.

Costs to be paid before release of vehicle

(14) The person who operates the impound facility where a motor vehicle is impounded under subsection (6) is not required to release the motor vehicle until the removal and impound costs for the vehicle have been paid.

Owner may recover losses from driver

(15) The owner of a motor vehicle that is impounded under this section may bring an action against the driver of the motor vehicle at the time the vehicle was detained under clause (4) (b) to recover any costs or other losses incurred by the owner in connection with the impoundment.

Offence

(16) Every person who obstructs or interferes with a police officer in the performance of his or her duties under this section is guilty of an offence and on conviction is liable to a fine of not less than \$200 and not more than \$5,000 or to imprisonment for a term of not more than six months, or to both.

Intent of suspension and impoundment

(17) The suspension of a driver's licence and the impoundment of a motor vehicle under this section are intended to promote compliance with this Act and to thereby safeguard the public and do not constitute an alternative to any proceeding or penalty arising from the same circumstances or around the same time.

Impoundment concurrent with other administrative impoundments

(18) The impoundment of a motor vehicle under this section runs concurrently with an impoundment, if any, of the same motor vehicle under section 41.4, 48.4, 55.1, 55.2, 82.1 or 172.

Regulations

(19) The Lieutenant Governor in Council may make regulations,

- (a) requiring police officers to keep records with respect to licence suspensions and vehicle impoundments under this section for a specified period of time and to report specified information with respect to licence suspensions and vehicle impoundments to the Registrar and governing such records and reports;
- (b) exempting any class of persons or class or type of vehicles from any provision or requirement of this section or of any regulation made under this section, prescribing conditions for any such exemptions and prescribing different requirements for different classes of persons or different classes or types of vehicles.

Definition

(20) In this section,

“driver's licence” includes a driver's licence issued by another jurisdiction.

CIVIL REMEDIES ACT, 2001

9 Clause (b) of the definition of “vehicular unlawful activity” in section 11.1 of the *Civil Remedies Act, 2001* is amended by adding “or 172.2 (1)” after “subsection 53 (1.1)”.

10 (1) Section 11.2 of the Act is amended by adding the following subsection:

Same

(1.1) In a proceeding commenced by the Attorney General, the Superior Court of Justice shall, subject to subsection (4) and except where it would clearly not be in the interests of justice, make an order forfeiting a vehicle to the Crown in right of Ontario if the court finds that the vehicle,

- (a) was or is likely to be used to engage in vehicular unlawful activity in contravention of section 172.2 of the *Highway Traffic Act*; and
- (b) is owned by or is in the care, control or possession of a person whose driver's licence has been suspended under section 172.2 of the *Highway Traffic Act*.

(2) Subsection 11.2 (3) of the Act is amended by adding “or (1.1)” after “subsection (1)” wherever it appears.

(3) Subsection 11.2 (4) of the Act is amended by adding “or (1.1)” after “subsection (1)”.

11 Section 11.3 of the Act is amended by adding the following subsection:

Same

(2.1) The court shall make an order under subsection (1) if the court is satisfied that there are reasonable grounds to believe that the vehicle is owned by or is in the care, control or possession of a person whose driver's licence has been suspended under the *Highway Traffic Act* for vehicular unlawful activity that is a contravention of section 172.2 of that Act and that the vehicle,

- (a) is impounded under the *Highway Traffic Act* as a result of such vehicular unlawful activity; or
- (b) was or is likely to be used to engage in such vehicular unlawful activity.

COMMENCEMENT AND SHORT TITLE

Commencement

12 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

13 The short title of this Act is the *Prohibiting Driving with Unlawful Handguns Act, 2018*.