

RCW 46.61.748 Racing—Impoundment. (1) A vehicle used to commit the crime of racing is subject to impoundment as provided for in chapter 46.55 RCW.

(2) If an operator has previously had a vehicle impounded due to illegal racing conduct, regardless of whether a criminal charge or a conviction resulted from that conduct, and the operator is convicted of a subsequent offense that was originally charged under RCW 46.61.500 or 46.61.530 or a comparable municipal ordinance, the vehicle operated by the operator is subject to forfeiture as follows:

(a) No property may be forfeited under this section until after the operator is convicted of the crime of racing under RCW 46.61.530 and a finding is made that the operator used the vehicle to commit such crime.

(b) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the offense.

(c) A vehicle subject to forfeiture under this section may be seized by any law enforcement officer of this state upon process issued by any court having jurisdiction over the property. However, seizure of the vehicle may be made without process if:

(i) The seizure is incident to an arrest or a search under a search warrant; or

(ii) The vehicle subject to seizure has been the subject of a prior judgment in favor of the seizing agency in a forfeiture proceeding based on this section; or

(iii) A law enforcement officer has probable cause to believe that the vehicle was used or is intended to be used in the commission of a felony.

(d) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within 15 days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including, but not limited to, service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the 15-day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(e) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within 60 days of the seizure, the item seized shall either be deemed forfeited if the operator is convicted as provided for in this section, or the vehicle shall be returned to the owner of record if the operator is not convicted as provided for in (a) of this subsection.

(f) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within 60 days of the seizure, the law enforcement

agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within 45 days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the municipal court of the municipality that operates the seizing agency, or if there is no such municipal court, the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(g) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(i) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;

(ii) Sell that which is not required to be destroyed by law and which is not harmful to the public, and use the proceeds to fund personnel, programs, services, and equipment related to the enforcement and processing of street racing violations, or to address and improve general traffic safety, within the seizing agency's jurisdiction. [2023 c 283 s 5.]

Effective date—2023 c 283: See note following RCW 46.04.367.