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HOUSE BILL 1387

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State of Washington

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By Representatives Riley, Ogden, Roland, Brown, Campbell, Dunshee, Cothorn, G. Cole, Flemming, Kremen, Locke, Sheldon, Orr, J. Kohl, Lisk and Jacobsen

Read first time 01/27/93. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence of  
2 intoxicating liquor or drugs; amending RCW 46.12.270; adding new  
3 sections to chapter 46.61 RCW; adding new sections to chapter 46.12  
4 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.61 RCW  
7 to read as follows:

8 (1) A vehicle driven by or under the actual physical control of a  
9 person in violation of RCW 46.61.502 or 46.61.504 is, upon the  
10 conviction of that person when that conviction is the second or  
11 subsequent conviction for a violation of RCW 46.61.502 or 46.61.504  
12 within a five-year period, subject to seizure and forfeiture and no  
13 property right exists in that vehicle, except that:

14 (a) A vehicle used by a person as a common carrier in the  
15 transaction of business as a common carrier is not subject to  
16 forfeiture under this section unless it appears that the owner or other  
17 person in charge of the vehicle is a consenting party or privy to a  
18 violation of RCW 46.61.502 or 46.61.504;

1 (b) A vehicle is not subject to forfeiture under this section by  
2 reason of a violation of RCW 46.61.502 or 46.61.504 established by the  
3 owner of the vehicle to have been committed without the owner's  
4 knowledge or consent;

5 (c) A forfeiture of a vehicle encumbered by a bona fide security  
6 interest is subject to the interest of the secured party if the secured  
7 party neither had knowledge of nor consented to the violation of RCW  
8 46.61.502 or 46.61.504.

9 (2) A vehicle subject to forfeiture under this chapter may be  
10 seized by a law enforcement officer of this state upon process issued  
11 by a court of competent jurisdiction. Seizure of a vehicle may be made  
12 without process if the vehicle subject to seizure has been the subject  
13 of a prior judgment in favor of the state in a forfeiture proceeding  
14 based upon this section.

15 (3) A seizure under subsection (2) of this section automatically  
16 commences proceedings for forfeiture. The law enforcement agency under  
17 whose authority the seizure was made shall cause notice of the seizure  
18 and intended forfeiture of the seized vehicle to be served within  
19 fifteen days after the seizure on the owner of the vehicle seized, on  
20 the person in charge of the vehicle, and on any person having a known  
21 right or interest in the vehicle, including a community property  
22 interest. The notice of seizure may be served by any method authorized  
23 by law or court rule, including but not limited to service by certified  
24 mail with return receipt requested. Service by mail is complete upon  
25 mailing within the fifteen-day period after the seizure.

26 (4) If no person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 the seized vehicle within forty-five days of the seizure, the vehicle  
29 is forfeited. However, the community property interest in the seized  
30 vehicle of a person whose spouse committed a violation giving rise to  
31 seizure of the vehicle is not forfeited if the person did not consent  
32 to or participate in the violation.

33 (5) If a person notifies the seizing law enforcement agency in  
34 writing of the person's claim of ownership or right to possession of  
35 the seized vehicle within forty-five days of the seizure, the law  
36 enforcement agency shall give the person or persons a reasonable  
37 opportunity to be heard as to the claim or right. The hearing must be  
38 before the chief law enforcement officer of the seizing agency or the  
39 chief law enforcement officer's designee, except that a person

1 asserting a claim or right may remove the matter to a court of  
2 competent jurisdiction if the value of the vehicle involved is more  
3 than five hundred dollars. The court to which the matter is to be  
4 removed must be the district court when the value of the vehicle is  
5 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
6 before the seizing agency and any appeal must be done in accordance  
7 with Title 34 RCW. In a court hearing between two or more claimants to  
8 the vehicle involved, the prevailing party is entitled to a judgment  
9 for costs and reasonable attorneys' fees. The burden of producing  
10 evidence is upon the person claiming to be the lawful owner or the  
11 person claiming to have the lawful right to possession of the vehicle.  
12 The seizing law enforcement agency shall promptly return the vehicle to  
13 the claimant upon a determination by the chief law enforcement officer,  
14 of the seizing agency, the chief law enforcement officer's designee, or  
15 the court that the claimant neither knew of nor consented to the  
16 violation leading to seizure and is the present lawful owner or is  
17 lawfully entitled to possession of the vehicle.

18 (6) When a vehicle is forfeited under this chapter the seizing law  
19 enforcement agency may sell the vehicle, retain it for official use, or  
20 upon application by a law enforcement agency of this state release the  
21 vehicle to that agency for the exclusive use of enforcing this title.

22 (7) When a vehicle is forfeited, the seizing agency shall keep a  
23 record indicating the identity of the prior owner, if known, a  
24 description of the vehicle, the disposition of the vehicle, the value  
25 of the vehicle at the time of seizure, and the amount of proceeds  
26 realized from disposition of the vehicle.

27 (8) Each seizing agency shall retain records of forfeited vehicles  
28 for at least seven years.

29 (9) Each seizing agency shall file a report including a copy of the  
30 records of forfeited vehicles with the state treasurer each calendar  
31 quarter.

32 (10) The quarterly report need not include a record of a forfeited  
33 vehicle that is still being held for use as evidence during the  
34 investigation or prosecution of a case or during the appeal from a  
35 conviction.

36 (11) By January 31st of each year, each seizing agency shall remit  
37 to the state treasurer an amount equal to ten percent of the net  
38 proceeds of vehicles forfeited during the preceding calendar year. The

1 treasurer shall deposit these funds in the drug enforcement and  
2 education account under RCW 69.50.520.

3 (12) The net proceeds of a forfeited vehicle is the value of the  
4 forfeitable interest in the vehicle after deducting the cost of  
5 satisfying a bona fide security interest to which the vehicle is  
6 subject at the time of seizure; and in the case of a sold vehicle,  
7 after deducting the cost of sale, including reasonable fees or  
8 commissions paid to independent selling agents.

9 (13) The value of a sold forfeited vehicle is the sale price. The  
10 value of a retained forfeited vehicle is the fair market value of the  
11 vehicle at the time of seizure, determined when possible by reference  
12 to an applicable commonly used index, such as the index used by the  
13 department of licensing. A seizing agency may use, but need not use,  
14 an independent qualified appraiser to determine the value of retained  
15 vehicles. If an appraiser is used, the value of the vehicle appraised  
16 is net of the cost of the appraisal.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW  
18 to read as follows:

19 (1) Whenever a person is charged with a violation of RCW 46.61.502  
20 or 46.61.504 and that person has been previously convicted for a  
21 violation of RCW 46.61.502 or 46.61.504 within a five-year period, the  
22 court shall instruct the person charged of the provisions of section 4  
23 of this act and shall immediately forward notice of the charge to the  
24 director.

25 (2) Upon the conviction or acquittal of the person charged or if a  
26 pending charge is otherwise terminated, the court shall immediately  
27 forward notice of the termination of charge to the director.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.12 RCW  
29 to read as follows:

30 Upon receiving notice of a charge under section 2 of this act, the  
31 director shall withhold the issuance of a certificate of ownership on  
32 a vehicle subject to section 4 of this act unless the applicant is  
33 included in the exceptions listed in that section or until receiving  
34 notice of termination of the charge under section 2 of this act.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 46.12 RCW  
2 to read as follows:

3        It is unlawful to convey, sell, or transfer the ownership of a  
4 motor vehicle that was driven by or under the actual physical control  
5 of a person previously convicted for a violation of RCW 46.61.502 or  
6 46.61.504 within a five-year period and presently charged with a  
7 violation of RCW 46.61.502 or 46.61.504, except that:

8        (1) A vehicle encumbered by a bona fide security interest may be  
9 transferred to the secured party or to a person designated by the  
10 secured party; and

11       (2) A leased vehicle may be transferred to the lessor or to a  
12 person designated by the lessor.

13       **Sec. 5.**    RCW 46.12.270 and 1969 ex.s. c 125 s 3 are each amended to  
14 read as follows:

15       Any person violating (~~(the provisions of)~~) RCW 46.12.250 (~~(or)~~),  
16 46.12.260 (~~(shall be)~~), or section 4 of this act is guilty of a  
17 misdemeanor and shall be punished by a fine of not more than two  
18 hundred fifty dollars or by imprisonment in a county jail for not more  
19 than ninety days.

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