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**SUBSTITUTE SENATE BILL 5341**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley, McCaslin, Vognild, Winsley, Deccio, von Reichbauer, M. Rasmussen, Roach and Oke)

Read first time 02/12/93.

1       AN ACT Relating to driving while under the influence of  
2 intoxicating liquor or drugs; adding a new section to chapter 46.61  
3 RCW; and prescribing penalties.

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

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

7       (1)(a) The court shall confiscate from every person who is  
8 convicted of a second violation of RCW 46.61.502 or 46.61.504 within a  
9 five-year period the Washington state vehicle registration and vehicle  
10 license plates of the vehicle the person was driving at the time of the  
11 violation, if the person is the owner of the vehicle, and if the person  
12 is not the owner of the vehicle, the court shall confiscate the  
13 Washington state vehicle registration and vehicle license plates of a  
14 vehicle owned by the person, if any. The person shall have seven days  
15 to surrender the Washington state vehicle registration and vehicle  
16 license plates.

17       (b) The Washington state vehicle registration and vehicle license  
18 plates shall be held for a period of ninety days from the date of  
19 surrender.

1 (c) The court shall notify the department of licensing of the  
2 confiscation and the duration of the confiscation. No Washington state  
3 vehicle registrations or vehicle license plates may be issued by the  
4 department to the person during the period of confiscation.

5 (d) No confiscation under this section affects the right of any  
6 person to transfer or acquire title in the vehicle, or the right of any  
7 person other than the arrested driver to become the registered owner of  
8 the vehicle.

9 (e) In any case provided for in this section, where a Washington  
10 state vehicle registration or vehicle license is to be confiscated, the  
11 confiscation shall be stayed and shall not take effect until after the  
12 determination of any appeal from the conviction which may lawfully be  
13 taken, but in case the conviction is sustained on appeal the  
14 confiscation takes effect as of the date that the conviction becomes  
15 effective for other purposes.

16 (2)(a) On a third or subsequent conviction for a violation of RCW  
17 46.61.502 or 46.61.504 within a five-year period the motor vehicle the  
18 person was driving at the time of the violation, if the person is the  
19 owner of the vehicle, shall be seized by a law enforcement officer of  
20 this state upon process issued by the court issuing the conviction.

21 (b) Proceedings for forfeiture shall be deemed commenced by the  
22 seizure. The law enforcement agency under whose authority the seizure  
23 was made shall cause notice to be served within fifteen days following  
24 the seizure on the owner of the vehicle seized and the person in charge  
25 thereof and any person having any known right or interest therein,  
26 including any community property interest, of the seizure and intended  
27 forfeiture of the seized vehicle. The notice of seizure may be served  
28 by any method authorized by law or court rule including but not limited  
29 to service by certified mail with return receipt requested. Service by  
30 mail shall be deemed complete upon mailing within the fifteen-day  
31 period following the seizure.

32 (c) If no person notifies the seizing law enforcement agency in  
33 writing of the person's claim of ownership or right to possession of  
34 the vehicle within forty-five days of the seizure, the vehicle seized  
35 shall be deemed forfeited.

36 (d) If any person notifies the seizing law enforcement agency in  
37 writing of the person's claim of ownership or right to possession of  
38 the vehicle within forty-five days of the seizure, the person or  
39 persons shall be afforded a reasonable opportunity to be heard as to

1 the claim or right. The hearing shall be before the chief law  
2 enforcement officer of the seizing agency or the chief law enforcement  
3 officer's designee, except where the seizing agency is a state agency  
4 as defined in RCW 34.12.020(4), the hearing shall be before the chief  
5 law enforcement officer of the seizing agency or an administrative law  
6 judge appointed under chapter 34.12 RCW, except that any person  
7 asserting a claim or right may remove the matter to a court of  
8 competent jurisdiction if the value of the vehicle involved is more  
9 than five hundred dollars. The court to which the matter is to be  
10 removed shall be the district court when the value of the vehicle is  
11 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
12 before the seizing agency and any appeal therefrom shall be under Title  
13 34 RCW. In a court hearing between two or more claimants to the  
14 vehicle, the prevailing party shall be entitled to a judgment for costs  
15 and reasonable attorneys' fees. The burden of producing evidence shall  
16 be upon the person claiming to be the lawful owner or the person  
17 claiming to have the lawful right to possession of the vehicle. The  
18 seizing law enforcement agency shall promptly return the vehicle to the  
19 claimant upon a determination by the administrative law judge or court  
20 that the claimant is the present lawful owner or is lawfully entitled  
21 to possession thereof.

22 (e) When a vehicle is forfeited under this chapter the seizing law  
23 enforcement agency may:

24 (i) Retain it for official use or upon application by any law  
25 enforcement agency of this state release such vehicle to such agency  
26 for the exclusive use of enforcing the provisions of this chapter;

27 (ii) Sell the vehicle; or

28 (iii) Remove it for disposition in accordance with law.

29 (f)(i) When a vehicle is forfeited, the seizing agency shall keep  
30 a record indicating the identity of the prior owner, if known, a  
31 description of the vehicle, the disposition of the vehicle, the value  
32 of the vehicle at the time of seizure, and the amount of proceeds  
33 realized from disposition of the vehicle.

34 (ii) Each seizing agency shall retain records of forfeited vehicles  
35 for at least seven years.

36 (iii) Each seizing agency shall file a report including a copy of  
37 the records of forfeited vehicles with the state treasurer each  
38 calendar quarter.

1 (iv) The quarterly report need not include a record of forfeited  
2 vehicles that are still being held for use as evidence during the  
3 investigation or prosecution of a case or during the appeal from a  
4 conviction.

5 (g) Forfeited vehicles and net proceeds shall be retained by the  
6 seizing law enforcement agency exclusively for the expansion and  
7 improvement of law enforcement activity. Money retained under this  
8 section may not be used to supplant preexisting funding sources.

9 (h) A forfeiture of a motor vehicle encumbered by a bona fide  
10 security interest is subject to the interest of the secured party if  
11 the secured party, at the time the security interest was created,  
12 neither had knowledge of nor consented to the act or omission.

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