
SENATE BILL 6368

State of Washington

55th Legislature

1998 Regular Session

By Senators Kline, Patterson, Fairley, Kohl, Goings, Jacobsen, McAuliffe, Snyder, Thibaudeau, Oke, Swecker and Haugen

Read first time 01/16/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to impoundment and forfeiture of vehicles operated
2 by persons driving or in actual physical control of a vehicle while
3 under the influence of intoxicating liquor; amending RCW 46.55.113,
4 46.55.120, 46.61.5058, and 46.12.240; creating a new section; and
5 prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that in 1996 drunk
8 drivers were involved in two hundred eighty-five fatal accidents
9 killing three hundred thirty-one people and six thousand four hundred
10 fifty injury accidents injuring ten thousand three hundred twenty-six
11 people. The legislature has increased criminal penalties, including
12 longer mandatory minimum jail sentences and fines, in order to punish
13 and deter drunk driving. In addition to criminal sanctions, however,
14 the legislature finds that authorizing the immediate impoundment of
15 vehicles driven by drunk drivers and in the case of repeat offenders
16 the forfeiture of such vehicles is reasonably necessary to increase
17 traffic safety and reduce the carnage caused by drunk driving. A
18 number of studies in states that have adopted impound and forfeiture
19 laws have found them effective in reducing drunk driving and related

1 fatalities. Repeat drunk drivers are more likely to continue to
2 reoffend and are substantially more likely to cause a fatal collision
3 than first-time offenders. Temporary impoundment for first-time
4 offenders and forfeiture for repeat offenders will reduce drunk
5 drivers' access to vehicles and help both prevent and deter drunk
6 driving.

7 **Sec. 2.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read
8 as follows:

9 Whenever the driver of a vehicle is arrested for a violation of RCW
10 46.61.502 or 46.61.504, the ~~((arresting officer may take custody of the
11 vehicle and provide for its prompt removal to a place of safety))~~
12 vehicle is subject to impoundment, pursuant to applicable local
13 ordinance at the direction of a law enforcement officer. In addition,
14 a police officer may take custody of a vehicle and provide for its
15 prompt removal to a place of safety under any of the following
16 circumstances:

17 (1) Whenever a police officer finds a vehicle standing upon the
18 roadway in violation of any of the provisions of RCW 46.61.560, the
19 officer may provide for the removal of the vehicle or require the
20 driver or other person in charge of the vehicle to move the vehicle to
21 a position off the roadway;

22 (2) Whenever a police officer finds a vehicle unattended upon a
23 highway where the vehicle constitutes an obstruction to traffic or
24 jeopardizes public safety;

25 (3) Whenever a police officer finds an unattended vehicle at the
26 scene of an accident or when the driver of a vehicle involved in an
27 accident is physically or mentally incapable of deciding upon steps to
28 be taken to protect his or her property;

29 (4) Whenever the driver of a vehicle is arrested and taken into
30 custody by a police officer;

31 (5) Whenever a police officer discovers a vehicle that the officer
32 determines to be a stolen vehicle;

33 (6) Whenever a vehicle without a special license plate, card, or
34 decal indicating that the vehicle is being used to transport a disabled
35 person under RCW 46.16.381 is parked in a stall or space clearly and
36 conspicuously marked under RCW 46.61.581 which space is provided on
37 private property without charge or on public property;

1 (7) Upon determining that a person is operating a motor vehicle
2 without a valid driver's license in violation of RCW 46.20.005 or with
3 a license that has been expired for ninety days or more, or with a
4 suspended or revoked license in violation of RCW 46.20.342 or
5 46.20.420.

6 Nothing in this section may derogate from the powers of police
7 officers under the common law. For the purposes of this section, a
8 place of safety may include the business location of a registered tow
9 truck operator.

10 **Sec. 3.** RCW 46.55.120 and 1996 c 89 s 2 are each amended to read
11 as follows:

12 (1) Vehicles or other items of personal property registered or
13 titled with the department that are impounded by registered tow truck
14 operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be
15 redeemed only under the following circumstances:

16 (a) Only the legal owner, the registered owner, a person authorized
17 in writing by the registered owner or the vehicle's insurer, a person
18 who is determined and verified by the operator to have the permission
19 of the registered owner of the vehicle or other item of personal
20 property registered or titled with the department, or one who has
21 purchased a vehicle or item of personal property registered or titled
22 with the department from the registered owner who produces proof of
23 ownership or written authorization and signs a receipt therefor, may
24 redeem an impounded vehicle or items of personal property registered or
25 titled with the department. In addition, any person redeeming a
26 vehicle impounded because the driver was arrested for a violation of
27 RCW 46.61.502 or 46.61.504 must prior to redemption establish with the
28 agency that ordered the vehicle impounded that he or she has a valid
29 driver's license and is in compliance with RCW 46.30.020. A vehicle
30 impounded because the driver is arrested for a violation of RCW
31 46.61.502 or 46.61.504 may be released only pursuant to a written order
32 from the agency that ordered the vehicle impounded.

33 (b) The vehicle or other item of personal property registered or
34 titled with the department shall be released upon the presentation to
35 any person having custody of the vehicle of commercially reasonable
36 tender sufficient to cover the costs of towing, storage, or other
37 services rendered during the course of towing, removing, impounding, or
38 storing any such vehicle. Commercially reasonable tender shall

1 include, without limitation, cash, major bank credit cards, or personal
2 checks drawn on in-state banks if accompanied by two pieces of valid
3 identification, one of which may be required by the operator to have a
4 photograph. If the towing firm can determine through the customer's
5 bank or a check verification service that the presented check would not
6 be paid by the bank or guaranteed by the service, the towing firm may
7 refuse to accept the check. Any person who stops payment on a personal
8 check or credit card, or does not make restitution within ten days from
9 the date a check becomes insufficient due to lack of funds, to a towing
10 firm that has provided a service pursuant to this section or in any
11 other manner defrauds the towing firm in connection with services
12 rendered pursuant to this section shall be liable for damages in the
13 amount of twice the towing and storage fees, plus costs and reasonable
14 attorney's fees.

15 (2)(a) The registered tow truck operator shall give to each person
16 who seeks to redeem an impounded vehicle, or item of personal property
17 registered or titled with the department, written notice of the right
18 of redemption and opportunity for a hearing, which notice shall be
19 accompanied by a form to be used for requesting a hearing, the name of
20 the person or agency authorizing the impound, and a copy of the towing
21 and storage invoice. The registered tow truck operator shall maintain
22 a record evidenced by the redeeming person's signature that such
23 notification was provided.

24 (b) Any person seeking to redeem an impounded vehicle under this
25 section has a right to a hearing in the district court for the
26 jurisdiction in which the vehicle was impounded to contest the validity
27 of the impoundment or the amount of towing and storage charges. The
28 district court has jurisdiction to determine the issues involving all
29 impoundments including those authorized by the state or its agents.
30 Any request for a hearing shall be made in writing on the form provided
31 for that purpose and must be received by the district court within ten
32 days of the date the opportunity was provided for in subsection (2)(a)
33 of this section. If the hearing request is not received by the
34 district court within the ten-day period, the right to a hearing is
35 waived and the registered owner is liable for any towing, storage, or
36 other impoundment charges permitted under this chapter. Upon receipt
37 of a timely hearing request, the district court shall proceed to hear
38 and determine the validity of the impoundment.

1 (3)(a) The district court, within five days after the request for
2 a hearing, shall notify the registered tow truck operator, the person
3 requesting the hearing if not the owner, the registered and legal
4 owners of the vehicle or other item of personal property registered or
5 titled with the department, and the person or agency authorizing the
6 impound in writing of the hearing date and time.

7 (b) At the hearing, the person or persons requesting the hearing
8 may produce any relevant evidence to show that the impoundment, towing,
9 or storage fees charged were not proper. The court may consider a
10 written report made under oath by the officer who authorized the
11 impoundment in lieu of the officer's personal appearance at the
12 hearing.

13 (c) At the conclusion of the hearing, the district court shall
14 determine whether the impoundment was proper, whether the towing or
15 storage fees charged were in compliance with the posted rates, and who
16 is responsible for payment of the fees. The court may not adjust fees
17 or charges that are in compliance with the posted or contracted rates.

18 (d) If the impoundment is found proper, the impoundment, towing,
19 and storage fees as permitted under this chapter together with court
20 costs shall be assessed against the person or persons requesting the
21 hearing, unless the operator did not have a signed and valid
22 impoundment authorization from a private property owner or an
23 authorized agent.

24 (e) If the impoundment is determined to be in violation of this
25 chapter, then the registered and legal owners of the vehicle or other
26 item of personal property registered or titled with the department
27 shall bear no impoundment, towing, or storage fees, and any security
28 shall be returned or discharged as appropriate, and the person or
29 agency who authorized the impoundment shall be liable for any towing,
30 storage, or other impoundment fees permitted under this chapter. The
31 court shall enter judgment in favor of the registered tow truck
32 operator against the person or agency authorizing the impound for the
33 impoundment, towing, and storage fees paid. In addition, the court
34 shall enter judgment in favor of the registered and legal owners of the
35 vehicle, or other item of personal property registered or titled with
36 the department, for reasonable damages for loss of the use of the
37 vehicle during the time the same was impounded, for not less than fifty
38 dollars per day, against the person or agency authorizing the impound.
39 However, if an impoundment arising from an alleged violation of RCW

1 46.61.502 or 46.61.504 is determined to be in violation of this
2 chapter, then the law enforcement officer directing the impoundment and
3 the local government employing the officer are not liable for damages
4 if the officer had probable cause to believe the driver of the vehicle
5 was in violation of RCW 46.61.502 or 46.61.504. If any judgment
6 entered is not paid within fifteen days of notice in writing of its
7 entry, the court shall award reasonable attorneys' fees and costs
8 against the defendant in any action to enforce the judgment. Notice of
9 entry of judgment may be made by registered or certified mail, and
10 proof of mailing may be made by affidavit of the party mailing the
11 notice. Notice of the entry of the judgment shall read essentially as
12 follows:

13 TO:
14 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the
15 Court located at in the sum of
16 \$., in an action entitled, Case No.
17 YOU ARE FURTHER NOTIFIED that attorneys fees and costs
18 will be awarded against you under RCW . . . if the judgment is
19 not paid within 15 days of the date of this notice.
20 DATED this day of, 19. . .
21 Signature
22 Typed name and address
23 of party mailing notice

24 (4) Any impounded abandoned vehicle or item of personal property
25 registered or titled with the department that is not redeemed within
26 fifteen days of mailing of the notice of custody and sale as required
27 by RCW 46.55.110(2) shall be sold at public auction in accordance with
28 all the provisions and subject to all the conditions of RCW 46.55.130.
29 A vehicle or item of personal property registered or titled with the
30 department may be redeemed at any time before the start of the auction
31 upon payment of the applicable towing and storage fees.

32 **Sec. 4.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read
33 as follows:

34 (1) (~~Upon the arrest of a person or upon the filing of a~~
35 ~~complaint, citation, or information in a court of competent~~
36 ~~jurisdiction, based upon probable cause to believe that a person has~~
37 ~~violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance,~~

1 if such person has a prior offense within five years as defined in RCW
2 46.61.5055, and where the person has been provided written notice that
3 any transfer, sale, or encumbrance of such person's interest in the
4 vehicle over which that person was actually driving or had physical
5 control when the violation occurred, is unlawful pending either
6 acquittal, dismissal, sixty days after conviction, or other termination
7 of the charge, such person shall be prohibited from encumbering,
8 selling, or transferring his or her interest in such vehicle, except as
9 otherwise provided in (a), (b), and (c) of this subsection, until
10 either acquittal, dismissal, sixty days after conviction, or other
11 termination of the charge. The prohibition against transfer of title
12 shall not be stayed pending the determination of an appeal from the
13 conviction.

14 (a) A vehicle encumbered by a bona fide security interest may be
15 transferred to the secured party or to a person designated by the
16 secured party;

17 (b) A leased or rented vehicle may be transferred to the lessor,
18 rental agency, or to a person designated by the lessor or rental
19 agency; and

20 (c) A vehicle may be transferred to a third party or a vehicle
21 dealer who is a bona fide purchaser or may be subject to a bona fide
22 security interest in the vehicle unless it is established that (i) in
23 the case of a purchase by a third party or vehicle dealer, such party
24 or dealer had actual notice that the vehicle was subject to the
25 prohibition prior to the purchase, or (ii) in the case of a security
26 interest, the holder of the security interest had actual notice that
27 the vehicle was subject to the prohibition prior to the encumbrance of
28 title.

29 (2) On conviction for a violation of either RCW 46.61.502 or
30 46.61.504 or any similar municipal ordinance where the person convicted
31 has a prior offense within five years as defined in RCW 46.61.5055, the
32 motor vehicle the person was driving or over which the person had
33 actual physical control at the time of the offense, if the person has
34 a financial interest in the vehicle, is subject to seizure and
35 forfeiture pursuant to this section.

36 (3) A vehicle subject to forfeiture under this chapter may be
37 seized by a law enforcement officer of this state upon process issued
38 by a court of competent jurisdiction. Seizure of a vehicle may be made
39 without process if the vehicle subject to seizure has been the subject

1 of a prior judgment in favor of the state in a forfeiture proceeding
2 based upon this section.

3 ~~(4) Seizure under subsection (3) of this section automatically~~
4 ~~commences proceedings for forfeiture. The law enforcement agency under~~
5 ~~whose authority the seizure was made shall cause notice of the seizure~~
6 ~~and)) If a vehicle is impounded because the operator is arrested for a~~
7 ~~violation of RCW 46.61.502 or 46.61.504, the vehicle may be held for up~~
8 ~~to fifteen days at the written direction of the agency ordering the~~
9 ~~vehicle impounded and must not be released until a person eligible to~~
10 ~~redeem it under RCW 46.55.120(1)(a) pays all towing, removal, and~~
11 ~~storage fees, notwithstanding the fact that the impoundment was ordered~~
12 ~~by a government agency. However, if the department's records show that~~
13 ~~the operator has a prior offense within five years, as defined in RCW~~
14 ~~46.61.5055(8), and the operator has a financial interest in the~~
15 ~~vehicle, the vehicle is subject to forfeiture. If the vehicle is~~
16 ~~forfeited, then the forfeiting agency shall pay all the impoundment,~~
17 ~~towing, and storage fees for the vehicle and shall be entitled to~~
18 ~~recover those fees from the operator of the forfeited vehicle,~~
19 ~~including any attorneys' fees, costs of collection, and interest at the~~
20 ~~statutory rate for judgment interest from the date of payment by the~~
21 ~~agency of such fees.~~

22 (2) A forfeiture proceeding is commenced by the law enforcement
23 agency causing notice of the intended forfeiture of the seized vehicle
24 to be served within fifteen days after the seizure on the registered
25 tow truck operator that impounded the vehicle, on the owner of the
26 vehicle seized, on the person in charge of the vehicle when it was
27 seized, and on any person having a known right or interest in the
28 vehicle, including a community property interest. The notice ((of
29 seizure)) may be served by any method authorized by law or court rule,
30 including but not limited to service by certified mail with return
31 receipt requested. Service by mail is complete upon mailing ((within
32 the fifteen-day period after the seizure)). Notice ((of seizure)) in
33 the case of ((property)) a vehicle subject to a security interest that
34 has been perfected on a certificate of title shall be made by service
35 upon the secured party or the secured party's assignee at the address
36 shown on the financing statement ((or)), the certificate of title, or
37 the transitional ownership record. Once the registered tow truck
38 operator that impounded the vehicle receives notice, the vehicle must
39 not be released except upon written order of the chief law enforcement

1 officer of the agency directing the impoundment or his or her designee,
2 an administrative law judge, or a court.

3 ~~((+5))~~ (3) If no person notifies the seizing law enforcement
4 agency in writing of the person's claim of ownership or right to
5 possession of the seized vehicle within forty-five days of the seizure,
6 the vehicle is deemed forfeited.

7 ~~((+6))~~ (4) If a person notifies the seizing law enforcement agency
8 in writing of the person's claim of ownership or right to possession of
9 the seized vehicle within forty-five days of the seizure, the law
10 enforcement agency shall give the person or persons a reasonable
11 opportunity to be heard as to the claim or right. The hearing shall be
12 before the chief law enforcement officer of the seizing agency or the
13 chief law enforcement officer's designee, except where the seizing
14 agency is a state agency as defined in RCW 34.12.020, the hearing shall
15 be before the chief law enforcement officer of the seizing agency or an
16 administrative law judge appointed under chapter 34.12 RCW, except that
17 any person asserting a claim or right may remove the matter to a court
18 of competent jurisdiction. Removal may only be accomplished according
19 to the rules of civil procedure. The person seeking removal of the
20 matter must serve process against the state, county, political
21 subdivision, or municipality that operates the seizing agency, and any
22 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
23 within forty-five days after the person seeking removal has notified
24 the seizing law enforcement agency of the person's claim of ownership
25 or right to possession. The court to which the matter is to be removed
26 shall be the district court when the aggregate value of the vehicle is
27 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
28 before the seizing agency and any appeal therefrom shall be under Title
29 34 RCW. In a court hearing between two or more claimants to the
30 vehicle involved, the prevailing party shall be entitled to a judgment
31 for costs and reasonable attorneys' fees. The burden of producing
32 evidence shall be upon the person claiming to be the legal owner or the
33 person claiming to have the lawful right to possession of the vehicle.
34 The seizing law enforcement agency shall promptly return the vehicle to
35 the claimant upon a determination by the administrative law judge or
36 court that the claimant is the present legal owner under Title 46 RCW
37 or is lawfully entitled to possession of the vehicle.

38 ~~((+7))~~ (5) When a vehicle is forfeited under this chapter the
39 seizing law enforcement agency may sell the vehicle, retain it for

1 official use, or upon application by a law enforcement agency of this
2 state release the vehicle to that agency for the exclusive use of
3 enforcing this title; provided, however, that the agency shall first
4 satisfy any bona fide (~~(security interest to which the vehicle is~~
5 ~~subject under subsection (1)(a) or (c) of this section)) community
6 property interest in the vehicle of a person other than the person
7 whose operation of the vehicle in violation of RCW 46.61.502 or
8 46.61.504 led to the forfeiture, and secondly, any bona fide security
9 interest to which the vehicle is subject. The community property
10 interest shall be calculated as one-half of the sale price of a vehicle
11 sold at auction, or one-half of the fair market value of a vehicle
12 retained or otherwise disposed of, without deduction for towing,
13 removal, and storage fees.~~

14 ~~((+8))~~ (6) When a vehicle is forfeited, the seizing agency shall
15 keep a record indicating the identity of the prior owner, if known, a
16 description of the vehicle, the disposition of the vehicle, the value
17 of the vehicle at the time of seizure, and the amount of proceeds
18 realized from disposition of the vehicle.

19 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
20 vehicles for at least seven years.

21 ~~((+10))~~ (8) Each seizing agency shall file a report including a
22 copy of the records of forfeited vehicles with the state treasurer each
23 calendar quarter.

24 ~~((+11))~~ (9) The quarterly report need not include a record of a
25 forfeited vehicle that is still being held for use as evidence during
26 the investigation or prosecution of a case or during the appeal from a
27 conviction.

28 ~~((+12))~~ (10) By January 31st of each year, each seizing agency
29 shall remit to the state treasurer an amount equal to ten percent of
30 the net proceeds of vehicles forfeited during the preceding calendar
31 year. Money remitted shall be deposited in the public safety and
32 education account.

33 ~~((+13))~~ (11) The net proceeds of a forfeited vehicle is the value
34 of the forfeitable interest in the vehicle after deducting the cost of
35 satisfying a bona fide community property interest and security
36 interest to which the vehicle is subject at the time of seizure and all
37 towing, removal, and storage fees; and in the case of a sold vehicle,
38 after deducting the cost of sale, including reasonable fees or
39 commissions paid to independent selling agents.

1 (~~(14)~~) (12) The value of a sold forfeited vehicle is the sale
2 price. The value of a retained forfeited vehicle is the fair market
3 value of the vehicle at the time of seizure, determined when possible
4 by reference to an applicable commonly used index, such as the index
5 used by the department of licensing. A seizing agency may, but need
6 not, use an independent qualified appraiser to determine the value of
7 retained vehicles. If an appraiser is used, the value of the vehicle
8 appraised is net of the cost of the appraisal.

9 (13) When a vehicle is forfeited under this chapter, the seizing
10 law enforcement agency shall send to the department a copy of the order
11 of forfeiture. Upon receipt of that order, the department shall cancel
12 the registration and license plates of the vehicle. A new registration
13 and license plates may be issued for the vehicle only to: (a) A person
14 who purchases the vehicle from the seizing law enforcement agency; (b)
15 the seizing law enforcement agency; or (c) another law enforcement
16 agency.

17 (14) Notwithstanding RCW 46.52.120(2), in any hearing under this
18 section to contest the validity of the forfeiture, an abstract of the
19 person's driving record may be admitted as and is prima facie evidence
20 that the person was convicted of each offense shown by the abstract.
21 In addition, a certified vehicle registration of the vehicle sought to
22 be forfeited shall be admissible without further evidentiary
23 foundation.

24 (15) A determination of facts made by a person conducting a hearing
25 under this section or RCW 46.55.120 shall not have any collateral
26 estoppel effect on a subsequent criminal prosecution and shall not
27 preclude litigation of those same facts in a subsequent criminal
28 prosecution.

29 **Sec. 5.** RCW 46.12.240 and 1987 c 388 s 8 are each amended to read
30 as follows:

31 (1) The suspension, revocation, cancellation, or refusal by the
32 director of any license or certificate provided for in chapters 46.12
33 and 46.16 RCW is conclusive unless the person whose license or
34 certificate is suspended, revoked, canceled, or refused appeals to the
35 superior court of Thurston county, or at his option to the superior
36 court of the county of his residence, for the purpose of having the
37 suspension, revocation, cancellation, or refusal of the license or
38 certificate set aside. Notice of appeal must be filed within ten days

1 after receipt of the notice of suspension, revocation, cancellation, or
2 refusal. Upon the filing of the notice of appeal the court shall issue
3 an order to the director to show cause why the license should not be
4 granted or reinstated, which order shall be returnable not less than
5 ten days after the date of service thereof upon the director. Service
6 shall be in the manner prescribed for service of summons and complaint
7 in other civil actions. Upon the hearing on the order to show cause,
8 the court shall hear evidence concerning matters with reference to the
9 suspension, revocation, cancellation, or refusal of the license or
10 certificate and shall enter judgment either affirming or setting aside
11 the suspension, revocation, cancellation, or refusal.

12 (2) This section does not apply to vehicle registration
13 cancellations under RCW ((~~46.16.710 through 46.16.760~~)) 46.61.5058(13).

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