
SENATE BILL 6431

State of Washington

55th Legislature

1998 Regular Session

By Senators Roach, Goings, Rasmussen, T. Sheldon, Rossi, Stevens, Long, Hochstatter, Oke, Swecker, McCaslin, Morton, Johnson, Deccio and Sellar

Read first time 01/19/98. 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. The impoundment or forfeiture of a vehicle operated in
7 violation of RCW 46.61.502 or 46.61.504 is intended to be a civil in
8 rem action against the vehicle in order to remove it from the public
9 highways and reduce the risk posed to traffic safety by a vehicle
10 accessible to a driver who is reasonably believed to have violated
11 these laws.

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

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

22 (1) Whenever a police officer finds a vehicle standing upon the
23 roadway in violation of any of the provisions of RCW 46.61.560, the
24 officer may provide for the removal of the vehicle or require the
25 driver or other person in charge of the vehicle to move the vehicle to
26 a position off the roadway;

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

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

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

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

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

6 (7) Upon determining that a person is operating a motor vehicle
7 without a valid driver's license in violation of RCW 46.20.005 or with
8 a license that has been expired for ninety days or more, or with a
9 suspended or revoked license in violation of RCW 46.20.342 or
10 46.20.420.

11 Nothing in this section may derogate from the powers of police
12 officers under the common law. For the purposes of this section, a
13 place of safety may include the business location of a registered tow
14 truck operator.

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

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

21 (a) Only the legal owner, the registered owner, a person authorized
22 in writing by the registered owner or the vehicle's insurer, a person
23 who is determined and verified by the operator to have the permission
24 of the registered owner of the vehicle or other item of personal
25 property registered or titled with the department, or one who has
26 purchased a vehicle or item of personal property registered or titled
27 with the department from the registered owner who produces proof of
28 ownership or written authorization and signs a receipt therefor, may
29 redeem an impounded vehicle or items of personal property registered or
30 titled with the department. In addition, any person redeeming a
31 vehicle impounded because the driver was arrested for a violation of
32 RCW 46.61.502 or 46.61.504 must prior to redemption establish with the
33 agency that ordered the vehicle impounded that he or she has a valid
34 driver's license and is in compliance with RCW 46.30.020. A vehicle
35 impounded because the driver is arrested for a violation of RCW
36 46.61.502 or 46.61.504 may be released only pursuant to a written order
37 from the agency that ordered the vehicle impounded.

1 (b) The vehicle or other item of personal property registered or
2 titled with the department shall be released upon the presentation to
3 any person having custody of the vehicle of commercially reasonable
4 tender sufficient to cover the costs of towing, storage, or other
5 services rendered during the course of towing, removing, impounding, or
6 storing any such vehicle. Commercially reasonable tender shall
7 include, without limitation, cash, major bank credit cards, or personal
8 checks drawn on in-state banks if accompanied by two pieces of valid
9 identification, one of which may be required by the operator to have a
10 photograph. If the towing firm can determine through the customer's
11 bank or a check verification service that the presented check would not
12 be paid by the bank or guaranteed by the service, the towing firm may
13 refuse to accept the check. Any person who stops payment on a personal
14 check or credit card, or does not make restitution within ten days from
15 the date a check becomes insufficient due to lack of funds, to a towing
16 firm that has provided a service pursuant to this section or in any
17 other manner defrauds the towing firm in connection with services
18 rendered pursuant to this section shall be liable for damages in the
19 amount of twice the towing and storage fees, plus costs and reasonable
20 attorney's fees.

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

30 (b) Any person seeking to redeem an impounded vehicle under this
31 section has a right to a hearing in the district court for the
32 jurisdiction in which the vehicle was impounded to contest the validity
33 of the impoundment or the amount of towing and storage charges. The
34 district court has jurisdiction to determine the issues involving all
35 impoundments including those authorized by the state or its agents.
36 Any request for a hearing shall be made in writing on the form provided
37 for that purpose and must be received by the district court within ten
38 days of the date the opportunity was provided for in subsection (2)(a)
39 of this section. If the hearing request is not received by the

1 district court within the ten-day period, the right to a hearing is
2 waived and the registered owner is liable for any towing, storage, or
3 other impoundment charges permitted under this chapter. Upon receipt
4 of a timely hearing request, the district court shall proceed to hear
5 and determine the validity of the impoundment.

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

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

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

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

29 (e) If the impoundment is determined to be in violation of this
30 chapter, then the registered and legal owners of the vehicle or other
31 item of personal property registered or titled with the department
32 shall bear no impoundment, towing, or storage fees, and any security
33 shall be returned or discharged as appropriate, and the person or
34 agency who authorized the impoundment shall be liable for any towing,
35 storage, or other impoundment fees permitted under this chapter. The
36 court shall enter judgment in favor of the registered tow truck
37 operator against the person or agency authorizing the impound for the
38 impoundment, towing, and storage fees paid. In addition, the court
39 shall enter judgment in favor of the registered and legal owners of the

1 vehicle, or other item of personal property registered or titled with
2 the department, for reasonable damages for loss of the use of the
3 vehicle during the time the same was impounded, for not less than fifty
4 dollars per day, against the person or agency authorizing the impound.
5 However, if an impoundment arising from an alleged violation of RCW
6 46.61.502 or 46.61.504 is determined to be in violation of this
7 chapter, then the law enforcement officer directing the impoundment and
8 the government employing the officer are not liable for damages if the
9 officer had probable cause to believe the driver of the vehicle was in
10 violation of RCW 46.61.502 or 46.61.504. If any judgment entered is
11 not paid within fifteen days of notice in writing of its entry, the
12 court shall award reasonable attorneys' fees and costs against the
13 defendant in any action to enforce the judgment. Notice of entry of
14 judgment may be made by registered or certified mail, and proof of
15 mailing may be made by affidavit of the party mailing the notice.
16 Notice of the entry of the judgment shall read essentially as follows:

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

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

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

1 (1) (~~Upon the arrest of a person or upon the filing of a~~
2 ~~complaint, citation, or information in a court of competent~~
3 ~~jurisdiction, based upon probable cause to believe that a person has~~
4 ~~violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance,~~
5 ~~if such person has a prior offense within five years as defined in RCW~~
6 ~~46.61.5055, and where the person has been provided written notice that~~
7 ~~any transfer, sale, or encumbrance of such person's interest in the~~
8 ~~vehicle over which that person was actually driving or had physical~~
9 ~~control when the violation occurred, is unlawful pending either~~
10 ~~acquittal, dismissal, sixty days after conviction, or other termination~~
11 ~~of the charge, such person shall be prohibited from encumbering,~~
12 ~~selling, or transferring his or her interest in such vehicle, except as~~
13 ~~otherwise provided in (a), (b), and (c) of this subsection, until~~
14 ~~either acquittal, dismissal, sixty days after conviction, or other~~
15 ~~termination of the charge. The prohibition against transfer of title~~
16 ~~shall not be stayed pending the determination of an appeal from the~~
17 ~~conviction.~~

18 (a) ~~A vehicle encumbered by a bona fide security interest may be~~
19 ~~transferred to the secured party or to a person designated by the~~
20 ~~secured party;~~

21 (b) ~~A leased or rented vehicle may be transferred to the lessor,~~
22 ~~rental agency, or to a person designated by the lessor or rental~~
23 ~~agency; and~~

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

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

1 ~~(3) A vehicle subject to forfeiture under this chapter may be~~
2 ~~seized by a law enforcement officer of this state upon process issued~~
3 ~~by a court of competent jurisdiction. Seizure of a vehicle may be made~~
4 ~~without process if the vehicle subject to seizure has been the subject~~
5 ~~of a prior judgment in favor of the state in a forfeiture proceeding~~
6 ~~based upon this section.~~

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

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

1 certificate of title, or the transitional ownership record. Once the
2 registered tow truck operator that impounded the vehicle receives
3 notice, the vehicle must not be released except upon written order of
4 the chief law enforcement officer of the agency directing the
5 impoundment or his or her designee, an administrative law judge, or a
6 court.

7 ((+5)) (3) If no person notifies the seizing law enforcement
8 agency in writing of the person's claim of ownership or right to
9 possession of the seized vehicle within forty-five days of the seizure,
10 the vehicle is deemed forfeited.

11 ((+6)) (4) If a person notifies the seizing law enforcement agency
12 in writing of the person's claim of ownership or right to possession of
13 the seized vehicle within forty-five days of the seizure, the law
14 enforcement agency shall give the person or persons a reasonable
15 opportunity to be heard as to the claim or right. At the hearing, if
16 the seizing agency proves by a preponderance of the evidence that the
17 vehicle was operated by a person in violation of RCW 46.61.502 or
18 46.61.504, and that person has a prior offense as defined by RCW
19 46.61.5055(8), and has an ownership interest in the vehicle, then the
20 vehicle shall be forfeited. The hearing shall be before the chief law
21 enforcement officer of the seizing agency or the chief law enforcement
22 officer's designee, except where the seizing agency is a state agency
23 as defined in RCW 34.12.020, the hearing shall be before the chief law
24 enforcement officer of the seizing agency or an administrative law
25 judge appointed under chapter 34.12 RCW, except that any person
26 asserting a claim or right may remove the matter to a court of
27 competent jurisdiction. Removal may only be accomplished according to
28 the rules of civil procedure. The person seeking removal of the matter
29 must serve process against the state, county, political subdivision, or
30 municipality that operates the seizing agency, and any other party of
31 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
32 five days after the person seeking removal has notified the seizing law
33 enforcement agency of the person's claim of ownership or right to
34 possession. The court to which the matter is to be removed shall be
35 the district court when the aggregate value of the vehicle is within
36 the jurisdictional limit set forth in RCW 3.66.020. A hearing before
37 the seizing agency and any appeal therefrom shall be under Title 34
38 RCW. In a court hearing between two or more claimants to the vehicle
39 involved, the prevailing party shall be entitled to a judgment for

1 costs and reasonable attorneys' fees. The burden of producing evidence
2 shall be upon the person claiming to be the legal owner or the person
3 claiming to have the lawful right to possession of the vehicle. The
4 seizing law enforcement agency shall promptly return the vehicle to the
5 claimant upon a determination by the administrative law judge or court
6 that the claimant is the present legal owner under Title 46 RCW or is
7 lawfully entitled to possession of the vehicle.

8 ~~((+7))~~ (5) When a vehicle is forfeited under this chapter the
9 seizing law enforcement agency may sell the vehicle, retain it for
10 official use, or upon application by a law enforcement agency of this
11 state release the vehicle to that agency for the exclusive use of
12 enforcing this title; provided, however, that the agency shall first
13 satisfy any bona fide security interest to which the vehicle is subject
14 ~~((under subsection (1) (a) or (c) of this section))~~ and provided
15 further that where the ownership interest subject to forfeiture is bona
16 fide community property, the value of the undivided community property
17 interest of the spouse who was not operating the vehicle in violation
18 of RCW 46.61.502 or 46.61.504 shall not be forfeited nor subject to
19 reduction for towing, removal, or storage charges associated with the
20 forfeiture action. The value of the undivided community property
21 interest not subject to forfeiture or reduction is one-half of the
22 value of the vehicle as defined in subsection (12) of this section
23 after deducting the cost of satisfying any bona fide security interest.

24 ~~((+8))~~ (6) When a vehicle is forfeited, the seizing agency shall
25 keep a record indicating the identity of the prior owner, if known, a
26 description of the vehicle, the disposition of the vehicle, the value
27 of the vehicle at the time of seizure, and the amount of proceeds
28 realized from disposition of the vehicle.

29 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
30 vehicles for at least seven years.

31 ~~((+10))~~ (8) Each seizing agency shall file a report including a
32 copy of the records of forfeited vehicles with the state treasurer each
33 calendar quarter.

34 ~~((+11))~~ (9) The quarterly report need not include a record of a
35 forfeited vehicle that is still being held for use as evidence during
36 the investigation or prosecution of a case or during the appeal from a
37 conviction.

38 ~~((+12))~~ (10) By January 31st of each year, each seizing agency
39 shall remit to the state treasurer an amount equal to ten percent of

1 the net proceeds of vehicles forfeited during the preceding calendar
2 year. Money remitted shall be deposited in the public safety and
3 education account.

4 ~~((13))~~ (11) The net proceeds of a forfeited vehicle is the value
5 of the forfeitable interest in the vehicle after deducting the cost of
6 satisfying a bona fide community property interest and security
7 interest to which the vehicle is subject at the time of seizure and all
8 towing, removal, and storage fees; and in the case of a sold vehicle,
9 after deducting the cost of sale, including reasonable fees or
10 commissions paid to independent selling agents.

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

19 (13) When a vehicle is forfeited under this chapter, the seizing
20 law enforcement agency shall send to the department a copy of the order
21 of forfeiture. Upon receipt of that order, the department shall cancel
22 the registration and license plates of the vehicle. A new registration
23 and license plates may be issued for the vehicle only to: (a) A person
24 who purchases the vehicle from the seizing law enforcement agency; (b)
25 the seizing law enforcement agency; or (c) another law enforcement
26 agency.

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

34 (15) A determination of facts made by a person conducting a hearing
35 under this section or RCW 46.55.120 shall not have any collateral
36 estoppel effect on a subsequent criminal prosecution and shall not
37 preclude litigation of those same facts in a subsequent criminal
38 prosecution.

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

3 (1) The suspension, revocation, cancellation, or refusal by the
4 director of any license or certificate provided for in chapters 46.12
5 and 46.16 RCW is conclusive unless the person whose license or
6 certificate is suspended, revoked, canceled, or refused appeals to the
7 superior court of Thurston county, or at his option to the superior
8 court of the county of his residence, for the purpose of having the
9 suspension, revocation, cancellation, or refusal of the license or
10 certificate set aside. Notice of appeal must be filed within ten days
11 after receipt of the notice of suspension, revocation, cancellation, or
12 refusal. Upon the filing of the notice of appeal the court shall issue
13 an order to the director to show cause why the license should not be
14 granted or reinstated, which order shall be returnable not less than
15 ten days after the date of service thereof upon the director. Service
16 shall be in the manner prescribed for service of summons and complaint
17 in other civil actions. Upon the hearing on the order to show cause,
18 the court shall hear evidence concerning matters with reference to the
19 suspension, revocation, cancellation, or refusal of the license or
20 certificate and shall enter judgment either affirming or setting aside
21 the suspension, revocation, cancellation, or refusal.

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

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