Z-0325.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 1605**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Pettigrew, Hayes, and Klippert; by request of Parks and Recreation Commission

AN ACT Relating to vessel impoundment; and adding a new section to chapter 79A.60 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 79A.60 RCW to read as follows:

(1) Whenever the operator of a vessel is arrested for a violation of RCW 79A.60.040, the arresting officer, or another officer acting at the arresting officer's direction, has authority to impound and secure the vessel as provided in this section.

(2) This section is not intended to limit or constrain the ability of local government from enacting and enforcing ordinances or other regulations relating to the impoundment of vessels for the purposes of enforcing RCW 79A.60.040.

(3) Unless vessel impound is required for evidentiary purposes, a law enforcement officer must seek a series of reasonable alternatives to impound before impounding the vessel. Reasonable alternatives to impound may include, but are not limited to:

(a) Working with the vessel's owner to locate a qualified operator who can take possession of the vessel within thirty minutes following the arrest of the vessel's operator and giving possession of the vessel to such a person;

(b) Anchoring the vessel or securing it to a mooring buoy or otherwise securing the vessel in a place of relative safety including, but not limited to, a marina, dock, or moorage facility, provided that:

(i) The owner is present and willing to sign a liability waiver by which the owner agrees to waive any claims related to such an action against the law enforcement officer and the officer's agency and indemnify the officer and the agency against any claims related to such an action by any third party; and

(ii) The owner agrees to pay any applicable moorage charges or fees; and

(c) Towing the vessel to the closest boat ramp, marina, or similar type facility where the owner can meet the impounding officer within thirty minutes in order to:

(i) Secure the vessel by accepting any applicable moorage charges or fees; or

(ii) Take possession of the vessel if the owner was not present at the time of the arrest.

(4) For the purposes of this section, securing an impounded vessel may include, but is not limited to:

(a) Removing the vessel to and storing it at a moorage facility. As used in this section, "moorage facility" includes a private moorage facility as defined in RCW 88.26.010, a moorage facility as defined in RCW 53.08.310, or a moorage facility owned or operated by the agency of the arresting officer;

(b) Placing the vessel in the custody of an operator licensed by the United States coast guard per 46 C.F.R. Sec. 11.482 to provide commercial assistance towing services in Washington state who must:

(i) Tow it to a storage facility operated by such an entity for storage or to a moorage facility for storage; or

(ii) Tow it to a location designated by the operator or owner of the vessel.

(5) An impounding officer may temporarily attach an impounded vessel to a mooring buoy or anchor the vessel to the bottom until such time as the impounding officer is able to secure the vessel.

(6) All vessels must be handled appropriately and returned in substantially the same condition as they existed before being impounded, unless forfeited pursuant to subsection (12) of this section. Except as provided in subsection (12)(b) of this section, all personal property in the vessel must be kept intact and must be returned to the vessel's owner or agent during the normal business hours of the entity storing the vessel upon request, provided the vessel owner, or the owner's agent, is able to provide sufficient proof of his or her identity.

(7) No moorage facility or vessel towing service provider is required to accept an impounded vessel for towing or storage. An impounding officer intending to secure a vessel by means of storing it at a moorage facility must have the permission of the owner or operator of the moorage facility prior to leaving the vessel at the facility. The impounding officer shall identify an authorized person on the impound authorization form to represent the vessel impound facility. The officer must provide a copy of the impound authorization form to the designated person representing the vessel impound facility along with the address of the registered owner of the vessel.

(8)(a) An impounding officer impounding a vessel pursuant to this section shall notify the legal and registered owner or owners of the impoundment of the vessel. The notification must be in writing and sent within one business day after the impound by first-class mail, digital transmission, or facsimile to the last known address of the registered and legal owner or owners of the vessel, as identified by the department of licensing, and must inform the owner or owners of the identity of the person or agency authorizing the impound. The impounding officer may also serve the operator with the impound authorization form at the time of impound. The notification must be provided on a vessel impound authorization and inventory form provided by the department of licensing and include the name, address, and telephone number of the facility where the vessel is being held. The notice must also include the notice of the right of redemption and opportunity for a hearing to contest the validity of the impoundment. The notice must also include the rate that is being charged for the storage of the vessel while impounded. When the operator of a vessel is arrested for a violation of RCW 79A.60.040 and the operator is not the owner of the vessel, the impounded vessel may be redeemed by the owner as provided in this section.

(b) A notice does not need to be sent to the legal or registered owner or owners of an impounded vessel if the vessel has been redeemed.

(c) The impounded vessel may not be redeemed by the operator within a twelve-hour period starting at the time of the operator's arrest. The vessel may be redeemed by or released to a legal owner, or an agent of the legal owner other than the operator, within the twelve-hour period following arrest.

(9) If the impounding officer secures a vessel by placing it on its trailer, the officer, moorage facility representative, or commercial assistance towing service is authorized to detach the vessel's trailer from the vehicle to which it is attached, attach the trailer to an impounding vehicle, operate the vessel to load it on the trailer, and then tow the vessel on its trailer to the storage facility.

(10) The owner of a vessel impounded pursuant to this section is responsible for paying all fees associated with the towing and storage of the vessel resulting from its impoundment. A moorage facility that accepts a vessel impounded pursuant to this section for storage may charge the owner of the vessel up to one hundred twenty-five percent of the normal moorage rates of tenants or guests. A moorage facility must store the vessel in the least costly boat slip or storage area available that is appropriate for the vessel size. An entity that provides emergency vessel towing services that accepts a vessel impounded pursuant to this section for towing or storage, or both, may charge its normal towing and storage fees. The costs of removal and storage of vessels under this section must be paid by the owner or operator of the vessel and is a lien upon the vessel until paid, unless the impoundment is determined to be invalid.

(11) Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, the owner of a vessel impounded and stored pursuant to this section may redeem the vessel by paying all towing and storage fees charged as allowed in subsection (10) of this section. Within fifteen days of impoundment of the vessel, or until the vessel is forfeited pursuant to subsection (12) of this section, any person who shows proof of ownership or written authorization from the impounded vessel's registered or legal owner or the vessel's insurer may view the vessel without charge during the normal business hours of the entity storing the vessel.

(12) If an impounded vessel stored pursuant to this section is not redeemed by its owner pursuant to subsection (11) of this section within fifteen days of its impoundment, the entity storing the vessel may initiate forfeiture of the vessel. Forfeiture is complete twenty days after mailing of the notice required by this subsection, unless within that time the owner, or any lienholder or holder of a security interest, pays all fees associated with the towing and storage of the vessel resulting from its impoundment.

(a) In order to forfeit the vessel, the entity storing the vessel must mail notice of its intent to forfeit the vessel. Such a notice must, at a minimum, state: The intent of the entity to forfeit the vessel; that, upon forfeiture, the owner forfeits all ownership interest in the vessel; the right of the entity to take possession of or dispose of the vessel upon forfeiture; and that the owner, or other interested person or entity, may avoid forfeiture of the vessel by paying all fees associated with the towing and storage of the vessel resulting from its impoundment within twenty days of mailing of the notice. Such a notice must be mailed to the owner of the vessel at the address on file with the state with which the vessel is registered, or on file with the federal government, if the vessel is registered with the federal government, and any lienholder or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or with the federal government.

(b) Upon forfeiture, the owner of the vessel forfeits any and all ownership interest in it and the entity storing the vessel may take possession of or dispose of it. All personal property in the vessel not claimed prior to forfeiture must be turned over to the law enforcement agency that authorized the impoundment. The personal property must be disposed of pursuant to chapter 63.32 or 63.40 RCW, or as otherwise provided by law. Within fourteen days of the forfeiture of a vessel pursuant to this subsection, the forfeiting entity shall send a forfeited vessel disposition report, together with a copy of the impound authority and inventory form and the notice of intent to forfeit, to the department of licensing so that the department may include documentation in the ownership records of the vessel. The vessel disposition information sent to the department of licensing on the forfeited vessel disposition report relieves the previous owner of the vessel from any civil or criminal liability for the operation of the vessel from the date of sale thereafter, and transfers full liability for the vessel to the forfeiting entity or the party to whom the vessel is transferred by the forfeiting entity.

(13) An entity that accepts an impounded vessel from an impounding officer pursuant to this section who, in good faith, acts to provide towing or storage of the vessel is not liable for civil damages resulting from any act or omission in the performance of trailering, towing, or storage other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any individual or entity whose assistance has been requested by an impounding officer who in good faith renders assistance in trailering, towing, or storing of a vessel impounded pursuant to this section is not liable for civil damages resulting from any act or omission in providing assistance other than for acts or omissions constituting gross negligence or willful or wanton misconduct.

(14) If a law enforcement officer impounds and secures a vessel pursuant to this section, the impounding officer and the government agency employing the officer are not liable for any damages to or theft of the vessel or its contents. If an impoundment arising from an alleged violation of RCW 79A.60.040 is determined to be in violation of this section, the impounding officer and the government agency employing the officer are not liable for damages to the vessel or damages for loss of use of the vessel if the impounding officer had reasonable suspicion to believe that the operator of the vessel was operating the vessel while under the influence of intoxicating liquor, marijuana, or any drug, or was in physical control of the vessel while under the influence of intoxicating liquor, marijuana, or any drug, or if the impounding officer otherwise acted reasonably under the circumstances in acting to impound and secure the vessel.

(15) Any person seeking to redeem an impounded vessel under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vessel was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing must be made in writing per the instructions provided on the uniform vessel impound authorization and inventory form and must be received by the appropriate court within ten business days of the date that the impound authorization form was mailed to the owner or owners of the impounded vessel. At the time of the filing of the hearing request, the petitioner must pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within ten business days of the sending of the notice of impoundment pursuant to subsection (8) of this section, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(a) Within five days after the request for a hearing, the court shall notify the operator of the impound facility, the person requesting the hearing if not the owner, the registered and legal owners of the vessel, and the officer or agency authorizing the impound in writing of the hearing date and time.

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

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

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs must be assessed against the person or persons requesting the hearing.

(e) If the impoundment is determined to be in violation of this section, then the registered and legal owners of the vessel or other items of personal property bear no impoundment, towing, or storage fees, and any security must be returned or discharged as appropriate, and the agency that authorized the impoundment is liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the moorage facility or vessel towing contractor against the agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vessel for the amount of the filing fee required by law for the impound hearing petition. If an impoundment arising from an alleged violation of RCW 79A.60.040 is determined to be in violation of this chapter, then the police officer directing the impoundment and the government employing the officer are not liable for damages for loss of use of the vessel if the officer had reasonable suspicion to believe that the operator of the vessel was operating while under the influence of intoxicating liquor, marijuana, or any drug, or was in physical control of a vessel while under the influence of intoxicating liquor, marijuana, or any drug. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment must read essentially as follows:

|  |
| --- |
| TO:  . . . . . . . . . . . . . . |
| YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . . . Court located at . . . . . . in the sum of $. . . . . ., in an action entitled . . . . . ., Case No. . . . . . YOU ARE FURTHER NOTIFIED that attorneys' fees and costs will be awarded against you under RCW . . . . if the judgment is not paid within 15 days of the date of this notice. |
| DATED this . . . . day of . . . . . ., (year) . . . . |
| Signature . . . . . . . . . . . . . . . . . . . |
| Typed name and address of party mailing notice |

(16) By September 30, 2017, the department of licensing in collaboration with the commission shall create the following forms for use in the enforcement of this section:

(a) A vessel impound authorization and inventory form. This form must include sections for the impounding officer to record the address of the registered owner of the vessel and the designated individual that will act on behalf of the impound facility; and

(b) A forfeited vessel disposition report form.

(17) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Impound" means to take and hold a vessel in legal custody.

(b) "Vessel" includes any associated trailer or towing device used to transport the vessel if it is included in the impoundment.

**--- END ---**