

2 **ESSB 6431 - CC - H AMD 1144 ADOPTED 3-5-98**

3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

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 is reasonably necessary to increase
16 traffic safety and reduce the carnage caused by drunk driving. A
17 number of studies in states that have adopted impound laws have found
18 them effective in reducing drunk driving and related fatalities.
19 Repeat drunk drivers are more likely to continue to reoffend and are
20 substantially more likely to cause a fatal collision than first-time
21 offenders. Temporary impoundment for first-time offenders will reduce
22 drunk drivers' access to vehicles and help both prevent and deter drunk
23 driving. The impoundment of a vehicle operated in violation of RCW
24 46.61.502 or 46.61.504, or of RCW 46.61.520 or 46.61.522 if committed
25 while under the influence, is intended to be a civil in rem action
26 against the vehicle in order to remove it from the public highways and
27 reduce the risk posed to traffic safety by a vehicle accessible to a
28 driver who is reasonably believed to have violated these laws.

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

31 Whenever the driver of a vehicle is arrested for a violation of RCW
32 46.61.502 or 46.61.504, or of RCW 46.61.520 or 46.61.522 if committed
33 while under the influence, the ((arresting officer may take custody of
34 the vehicle and provide for its prompt removal to a place of safety))
35 vehicle is subject to impoundment, pursuant to applicable local

1 ordinance or state agency rule at the direction of a law enforcement
2 officer. In addition, a police officer may take custody of a vehicle
3 and provide for its prompt removal to a place of safety under any of
4 the following circumstances:

5 (1) Whenever a police officer finds a vehicle standing upon the
6 roadway in violation of any of the provisions of RCW 46.61.560, the
7 officer may provide for the removal of the vehicle or require the
8 driver or other person in charge of the vehicle to move the vehicle to
9 a position off the roadway;

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

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

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

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

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

26 (7) Upon determining that a person is operating a motor vehicle
27 without a valid driver's license in violation of RCW 46.20.005 or with
28 a license that has been expired for ninety days or more, or with a
29 suspended or revoked license in violation of RCW 46.20.342 or
30 46.20.420.

31 Nothing in this section may derogate from the powers of police
32 officers under the common law. For the purposes of this section, a
33 place of safety may include the business location of a registered tow
34 truck operator.

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

37 (1) Vehicles or other items of personal property registered or
38 titled with the department that are impounded by registered tow truck

1 operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be
2 redeemed only under the following circumstances:

3 (a) Only the legal owner, the registered owner, a person authorized
4 in writing by the registered owner or the vehicle's insurer, a person
5 who is determined and verified by the operator to have the permission
6 of the registered owner of the vehicle or other item of personal
7 property registered or titled with the department, or one who has
8 purchased a vehicle or item of personal property registered or titled
9 with the department from the registered owner who produces proof of
10 ownership or written authorization and signs a receipt therefor, may
11 redeem an impounded vehicle or items of personal property registered or
12 titled with the department. In addition, any person redeeming a
13 vehicle impounded because the driver was arrested for a violation of
14 RCW 46.61.502 or 46.61.504, or of RCW 46.61.520 or 46.61.522 if
15 committed while under the influence, must prior to redemption establish
16 with the agency that ordered the vehicle impounded that he or she has
17 a valid driver's license and is in compliance with RCW 46.30.020. A
18 vehicle impounded because the driver is arrested for a violation of RCW
19 46.61.502 or 46.61.504, or of RCW 46.61.520 or 46.61.522 if committed
20 while under the influence, may be released only pursuant to a written
21 order from the agency that ordered the vehicle impounded, or pursuant
22 to a provision of an applicable state agency rule or local ordinance
23 authorizing release on the basis of economic or personal hardship to
24 the spouse of the operator, taking into consideration public safety
25 factors, including the operator's criminal history and driving record.
26 If a vehicle is impounded because the operator is arrested for a
27 violation of RCW 46.61.502 or 46.61.504, or of RCW 46.61.520 or
28 46.61.522 if committed while under the influence, the vehicle may be
29 held at the written direction of the agency ordering the vehicle
30 impounded for up to thirty days if the operator has no prior offense as
31 defined in RCW 46.61.5055(8), for up to sixty days if the operator has
32 one such prior offense, and for up to ninety days if the operator has
33 two or more such prior offenses. If a vehicle is impounded because the
34 operator is arrested for a violation of RCW 46.61.502 or 46.61.504, or
35 of RCW 46.61.520 or 46.61.522 if committed while under the influence,
36 the vehicle may not be released until a person eligible to redeem it
37 pays all towing, removal, and storage fees, notwithstanding the fact
38 that the impoundment was ordered by a government agency.

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 or municipal court for
32 the jurisdiction in which the vehicle was impounded to contest the
33 validity of the impoundment or the amount of towing and storage
34 charges. The district court has jurisdiction to determine the issues
35 involving all impoundments including those authorized by the state or
36 its agents. The municipal court has jurisdiction to determine the
37 issues involving impoundments authorized by agents of the municipality.
38 Any request for a hearing shall be made in writing on the form provided
39 for that purpose and must be received by the district or municipal

1 court within ten days of the date the opportunity was provided for in
2 subsection (2)(a) of this section. At the time of the filing of the
3 hearing request, the petitioner shall pay to the court clerk a filing
4 fee in the same amount required for the filing of a suit in the small
5 claims department of a district court. If the hearing request is not
6 received by the district or municipal court within the ten-day period,
7 the right to a hearing is waived and the registered owner is liable for
8 any towing, storage, or other impoundment charges permitted under this
9 chapter. Upon receipt of a timely hearing request, the ((~~district~~))
10 court shall proceed to hear and determine the validity of the
11 impoundment.

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

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

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

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

35 (e) If the impoundment is determined to be in violation of this
36 chapter, then the registered and legal owners of the vehicle or other
37 item of personal property registered or titled with the department
38 shall bear no impoundment, towing, or storage fees, and any security
39 shall be returned or discharged as appropriate, and the person or

1 agency who authorized the impoundment shall be liable for any towing,
2 storage, or other impoundment fees permitted under this chapter. The
3 court shall enter judgment in favor of the registered tow truck
4 operator against the person or agency authorizing the impound for the
5 impoundment, towing, and storage fees paid. In addition, the court
6 shall enter judgment in favor of the registered and legal owners of the
7 vehicle, or other item of personal property registered or titled with
8 the department, for the amount of the filing fee required by law for
9 the impound hearing petition as well as reasonable damages for loss of
10 the use of the vehicle during the time the same was impounded, for not
11 less than fifty dollars per day, against the person or agency
12 authorizing the impound. However, if an impoundment arising from an
13 alleged violation of RCW 46.61.502 or 46.61.504, or of RCW 46.61.520 or
14 46.61.522 if committed while under the influence, is determined to be
15 in violation of this chapter, then the law enforcement officer
16 directing the impoundment and the government employing the officer are
17 not liable for damages if the officer had probable cause to believe the
18 driver of the vehicle was in violation of RCW 46.61.502 or 46.61.504,
19 or of RCW 46.61.520 or 46.61.522 if committed while under the
20 influence. If any judgment entered is not paid within fifteen days of
21 notice in writing of its entry, the court shall award reasonable
22 attorneys' fees and costs against the defendant in any action to
23 enforce the judgment. Notice of entry of judgment may be made by
24 registered or certified mail, and proof of mailing may be made by
25 affidavit of the party mailing the notice. Notice of the entry of the
26 judgment shall read essentially as follows:

27 TO:
28 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the
29 Court located at in the sum of
30 \$., in an action entitled, Case No.
31 YOU ARE FURTHER NOTIFIED that attorneys fees and costs
32 will be awarded against you under RCW . . . if the judgment is
33 not paid within 15 days of the date of this notice.
34 DATED this day of, 19. . .
35 Signature
36 Typed name and address
37 of party mailing notice

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

9 **Sec. 4.** RCW 46.12.095 and 1969 ex.s. c 170 s 16 are each amended
10 to read as follows:

11 A security interest in a vehicle other than one held as inventory
12 by a manufacturer or a dealer and for which a certificate of ownership
13 is required is perfected only by compliance with the requirements of
14 section 6 of this act under the circumstances provided for therein or
15 by compliance with the requirements of this section:

16 (1) A security interest is perfected (~~(only)~~) by the department's
17 receipt of: (a) The existing certificate, if any, and (b) an
18 application for a certificate of ownership containing the name and
19 address of the secured party, and (c) tender of the required fee.

20 (2) It is perfected as of the time of its creation: (a) If the
21 papers and fee referred to in (~~the preceding~~) subsection (1) of this
22 section are received by this department within (~~eight department~~
23 business)) twenty calendar days (~~(exclusive)~~) of the day on which the
24 security agreement was created; or (b) if the secured party's name and
25 address appear on the outstanding certificate of ownership; otherwise,
26 as of the date on which the department has received the papers and fee
27 required in subsection (1) of this section.

28 (3) If a vehicle is subject to a security interest when brought
29 into this state, perfection of the security interest is determined by
30 the law of the jurisdiction where the vehicle was when the security
31 interest was attached, subject to the following:

32 (a) If the security interest was perfected under the law of the
33 jurisdiction where the vehicle was when the security interest was
34 attached, the following rules apply:

35 (b) If the name of the secured party is shown on the existing
36 certificate of ownership issued by that jurisdiction, the security
37 interest continues perfected in this state. The name of the secured
38 party shall be shown on the certificate of ownership issued for the

1 vehicle by this state. The security interest continues perfected in
2 this state upon the issuance of such ownership certificate.

3 (c) If the security interest was not perfected under the law of the
4 jurisdiction where the vehicle was when the security interest was
5 attached, it may be perfected in this state; in that case, perfection
6 dates from the time of perfection in this state.

7 **Sec. 5.** RCW 46.12.101 and 1991 c 339 s 19 are each amended to read
8 as follows:

9 A transfer of ownership in a motor vehicle is perfected by
10 compliance with the requirements of this section.

11 (1) If an owner transfers his or her interest in a vehicle, other
12 than by the creation, deletion, or change of a security interest, the
13 owner shall, at the time of the delivery of the vehicle, execute an
14 assignment to the transferee and provide an odometer disclosure
15 statement under RCW 46.12.124 on the certificate of ownership or as the
16 department otherwise prescribes, and cause the certificate and
17 assignment to be transmitted to the transferee. (~~Within five days,~~
18 ~~excluding Saturdays, Sundays, and state and federal holidays,~~) The
19 owner shall notify the department or its agents or subagents, in
20 writing, on the appropriate form, of the date of the sale or transfer,
21 the name and address of the owner and of the transferee, the
22 transferee's driver's license number if available, and such description
23 of the vehicle, including the vehicle identification number, the
24 license plate number, or both, as may be required in the appropriate
25 form provided or approved for that purpose by the department. The
26 report of sale will be deemed properly filed if all information
27 required in this section is provided on the form and includes a
28 department-authorized notation that the document was received by the
29 department, its agents, or subagents on or before the fifth day after
30 the sale of the vehicle, excluding Saturdays, Sundays, and state and
31 federal holidays. Agents and subagents shall immediately
32 electronically transmit the seller's report of sale to the department.
33 Reports of sale processed and recorded by the department's agents or
34 subagents may be subject to fees as specified in RCW 46.01.140 (4)(a)
35 or (5)(b).

36 (2) The requirements of subsection (1) of this section to provide
37 an odometer disclosure statement apply to the transfer of vehicles held
38 for lease when transferred to a lessee and then to the lessor at the

1 end of the leasehold and to vehicles held in a fleet when transferred
2 to a purchaser.

3 (3) Except as provided in RCW (~~46.12.120~~) 46.70.122 the
4 transferee shall within fifteen days after delivery to the transferee
5 of the vehicle, execute the application for a new certificate of
6 ownership in the same space provided therefor on the certificate or as
7 the department prescribes, and cause the certificates and application
8 to be transmitted to the department.

9 (4) Upon request of the owner or transferee, a secured party in
10 possession of the certificate of ownership shall, unless the transfer
11 was a breach of its security agreement, either deliver the certificate
12 to the transferee for transmission to the department or, when the
13 secured party receives the owner's assignment from the transferee, it
14 shall transmit the transferee's application for a new certificate, the
15 existing certificate, and the required fee to the department.
16 Compliance with this section does not affect the rights of the secured
17 party.

18 (5) If a security interest is reserved or created at the time of
19 the transfer, the certificate of ownership shall be retained by or
20 delivered to the person who becomes the secured party, and the parties
21 shall comply with the provisions of RCW 46.12.170.

22 (6) If the purchaser or transferee fails or neglects to make
23 application to transfer the certificate of ownership and license
24 registration within fifteen days after the date of delivery of the
25 vehicle, he or she shall on making application for transfer be assessed
26 a twenty-five dollar penalty on the sixteenth day and two dollars
27 additional for each day thereafter, but not to exceed one hundred
28 dollars. The director may by rule establish conditions under which the
29 penalty will not be assessed when an application for transfer is
30 delayed for reasons beyond the control of the purchaser. Conditions
31 for not assessing the penalty may be established for but not limited to
32 delays caused by:

- 33 (a) The department requesting additional supporting documents;
- 34 (b) Extended hospitalization or illness of the purchaser;
- 35 (c) Failure of a legal owner to release his or her interest;
- 36 (d) Failure, negligence, or nonperformance of the department,
37 auditor, or subagent.

1 Failure or neglect to make application to transfer the certificate
2 of ownership and license registration within forty-five days after the
3 date of delivery of the vehicle is a misdemeanor.

4 (7) Upon receipt of an application for reissue or replacement of a
5 certificate of ownership and transfer of license registration,
6 accompanied by the endorsed certificate of ownership or other
7 documentary evidence as is deemed necessary, the department shall, if
8 the application is in order and if all provisions relating to the
9 certificate of ownership and license registration have been complied
10 with, issue new certificates of title and license registration as in
11 the case of an original issue and shall transmit the fees together with
12 an itemized detailed report to the state treasurer, to be deposited in
13 the motor vehicle fund.

14 (8) Once each quarter the department shall report to the department
15 of revenue a list of those vehicles for which a seller's report has
16 been received but no transfer of title has taken place.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.12 RCW
18 to read as follows:

19 (1) The purpose of a transitional ownership record is to enable a
20 security interest in a motor vehicle to be perfected in a timely manner
21 when the certificate of ownership is not available at the time the
22 security interest is created, and to provide for timely notification to
23 security interest holders under chapter 46.55 RCW.

24 (2) A transitional ownership record is only acceptable as an
25 ownership record for vehicles currently stored on the department's
26 computer system and if the certificate of ownership or other authorized
27 proof of ownership for the motor vehicle:

28 (a) Is not in the possession of the selling vehicle dealer or new
29 security interest holder at the time the transitional ownership record
30 is submitted to the department; and

31 (b) To the best of the knowledge of the selling dealer or new
32 security interest holder, the certificate of ownership will not be
33 received for submission to the department within twenty calendar days
34 of the date of sale of the vehicle, or if no sale is involved, within
35 twenty calendar days of the date the security agreement or contract is
36 executed.

37 (3) A person shall submit the transitional ownership record to the
38 department or to any of its agents or subagents. Agents and subagents

1 shall immediately electronically transmit the transitional ownership
2 records to the department. A transitional ownership document processed
3 and recorded by an agent or subagent may be subject to fees as
4 specified in RCW 46.01.140(4)(a) or (5)(b).

5 (4) "Transitional ownership record" means a record containing all
6 of the following information:

7 (a) The date of sale;

8 (b) The name and address of each owner of the vehicle;

9 (c) The name and address of each security interest holder;

10 (d) If there are multiple security interest holders, the priorities
11 of interest if the security interest holders do not jointly hold a
12 single security interest;

13 (e) The vehicle identification number, the license plate number, if
14 any, the year, make, and model of the vehicle;

15 (f) The name of the selling dealer or security interest holder who
16 is submitting the transitional ownership record; and

17 (g) The transferee's driver's license number, if available.

18 (5) The report of sale form prescribed or approved by the
19 department under RCW 46.12.101 may be used by a vehicle dealer as the
20 transitional ownership record.

21 (6) Notwithstanding RCW 46.12.095 (1) and (2), compliance with the
22 requirements of this section shall result in perfection of a security
23 interest in the vehicle as of the time the security interest was
24 created. Upon receipt of the certificate of ownership for the vehicle,
25 or upon receipt of written confirmation that only an electronic record
26 of ownership exists or that the certificate of ownership has been lost
27 or destroyed, the selling dealer or new security interest holder shall
28 promptly submit the same to the department together with an application
29 for a new certificate of ownership containing the name and address of
30 the secured party and tender the required fee as provided in RCW
31 46.12.095(1)."

32 Correct the title.

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