
SENATE BILL 5135

State of Washington

55th Legislature

1997 Regular Session

By Senators Roach, Fairley, Johnson, Winsley and Oke

Read first time 01/16/97.

1 AN ACT Relating to the impoundment and immobilization of vehicles
2 being operated by persons who have a suspended or revoked driver's
3 license; amending RCW 46.55.113 and 46.55.120; adding a new section to
4 chapter 46.20 RCW; creating a new section; and repealing RCW 46.20.344.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that driving a motor
7 vehicle on the public highways is a privilege and not a right. The
8 privilege to drive is suspended or revoked in order to protect public
9 safety following a driver's failure to comply with the laws of this
10 state. Over six hundred persons are killed in traffic accidents in
11 Washington annually, and more than eighty-four thousand persons are
12 injured. It is estimated that of the three million four hundred
13 thousand driver's licenses issued to citizens of Washington, more than
14 two hundred sixty thousand are suspended or revoked at any given time.
15 Suspended drivers are more likely to be involved in causing traffic
16 accidents, including fatal accidents, than properly licensed drivers,
17 and pose a serious threat to the lives and property of Washington
18 residents. In addition to not having a driver's license, most such
19 drivers also lack required liability insurance, increasing the

1 financial burden upon other citizens through uninsured losses and
2 higher insurance costs for validly licensed drivers. Because of the
3 threat posed by suspended drivers, all registered owners of motor
4 vehicles in Washington have a duty to not allow their vehicles to be
5 driven by a suspended driver.

6 Despite the existence of criminal penalties for driving with a
7 suspended or revoked license, an estimated seventy-five percent of
8 these drivers continue to drive anyway. Existing sanctions are not
9 sufficient to deter or prevent persons with a suspended or revoked
10 license from driving. It is common for suspended drivers to resume
11 driving immediately after being stopped, cited, and released by a
12 police officer and to continue to drive while a criminal prosecution
13 for suspended driving is pending. Vehicle impoundment or
14 immobilization will provide an immediate consequence which will
15 increase deterrence and reduce unlawful driving by preventing a
16 suspended driver access to that vehicle. Vehicle impoundment or
17 immobilization will also provide an appropriate measure of
18 accountability for registered owners who permit suspended drivers to
19 drive their vehicles. In order to adequately protect public safety and
20 to enforce the state's driver licensing laws, it is necessary to
21 authorize the impoundment or immobilization of any vehicle when it is
22 found to be operated by a driver with a suspended or revoked license,
23 and to provide in certain circumstances for the forfeiture of such
24 vehicles where the owner continues to drive despite having been
25 previously convicted of the crime of driving with a suspended or
26 revoked license in violation of RCW 46.20.342 and 46.20.420.

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.20 RCW
28 to read as follows:

29 (1) Notwithstanding RCW 46.55.113, whenever a motor vehicle is
30 found to be operated by a person with a suspended or revoked driver's
31 license in violation of RCW 46.20.342 or 46.20.420, the vehicle is
32 subject to impoundment or immobilization at the direction of a law
33 enforcement officer.

34 (2) If a vehicle is impounded or immobilized under this section
35 because the operator is in violation of RCW 46.20.342(1)(c), the
36 vehicle shall not be released until a person eligible to redeem it
37 under RCW 46.55.120(1)(a) satisfies the requirements of RCW
38 46.55.120(1)(b). However, if the department's records show that the

1 operator has been convicted of a violation of RCW 46.20.342 or a
2 similar local ordinance within the past five years, the vehicle may be
3 held or immobilized for up to fifteen days.

4 (3) If a vehicle is impounded or immobilized under this section
5 because the operator is in violation of RCW 46.20.342(1) (a) or (b),
6 the vehicle may be held or immobilized for up to fifteen days and must
7 not be released until a person eligible to redeem it under RCW
8 46.55.120(1)(a) satisfies the requirements of RCW 46.55.120(1)(b).
9 However, if the department's records show that the operator has been
10 convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar
11 local ordinance within the past five years and the operator has a
12 financial interest in the vehicle, the vehicle is subject to
13 forfeiture.

14 (4) A forfeiture proceeding must be commenced within fifteen days
15 after the seizure and is commenced by the law enforcement agency
16 causing notice of the intended forfeiture of the seized vehicle to be
17 served on the registered tow truck operator which impounded or
18 immobilized the vehicle, the owner of the vehicle seized, the person in
19 charge of the vehicle when it was seized, and any person having a known
20 right or interest in the vehicle, including a community property
21 interest. The notice may be served by any method authorized by law or
22 court rule, including, but not limited to, service by certified mail
23 with return receipt requested. Service by mail is complete upon
24 mailing within the fifteen-day period after the seizure. Notice in the
25 case of a vehicle subject to a security interest that has been
26 perfected on a certificate of title must be made by service upon the
27 secured party or the secured party's assignee at the address shown on
28 the financing statement or the certificate of title. Once the
29 registered tow truck operator which impounded or immobilized the
30 vehicle receives notice, the vehicle must not be released except upon
31 written order of the chief law enforcement officer of the agency
32 directing the impoundment or immobilization or his or her designee, an
33 administrative law judge, or a court.

34 (5) The remaining procedures for forfeiting the vehicle are the
35 same as set forth in RCW 46.61.5058 (5) through (14).

36 (6) Notwithstanding RCW 46.52.120(2), in any hearing under RCW
37 46.55.120 to contest the validity of the impoundment or immobilization
38 or under this section to contest the validity of the forfeiture, an
39 abstract of the person's driving record may be admitted as and is prima

1 facie evidence of the status of the person's driving privilege and that
2 the person was convicted of each offense shown by the abstract. In
3 addition, a certified vehicle registration of the vehicle sought to be
4 forfeited shall be admissible without further evidentiary foundation.

5 (7) No determination of facts made by a person conducting a hearing
6 under this section or RCW 46.55.120 shall have any collateral estoppel
7 effect on a subsequent criminal prosecution and shall not preclude
8 litigation of those same facts in a subsequent criminal prosecution.

9 **Sec. 3.** RCW 46.55.113 and 1996 c 89 s 1 are each amended to read
10 as follows:

11 Whenever the driver of a vehicle is arrested for a violation of RCW
12 46.61.502 or 46.61.504, the arresting officer may take custody of the
13 vehicle and provide for its prompt removal to a place of safety. In
14 addition, a police officer may take custody of a vehicle and provide
15 for its 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 46.20.021 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. 4.** 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, or
15 section 2 of this act or immobilized under section 2 of this act may be
16 redeemed only under the following circumstances:

17 (a) Only the legal owner, the registered owner, a person authorized
18 in writing by the registered owner or the vehicle's insurer, a person
19 who is determined and verified by the operator to have the permission
20 of the registered owner of the vehicle or other item of personal
21 property registered or titled with the department, or one who has
22 purchased a vehicle or item of personal property registered or titled
23 with the department from the registered owner who produces proof of
24 ownership or written authorization and signs a receipt therefor, may
25 redeem an impounded or immobilized vehicle or items of personal
26 property registered or titled with the department. In addition, a
27 person redeeming a vehicle impounded or immobilized under section 2 of
28 this act must establish that he or she has a valid driver's license and
29 is in compliance with RCW 46.30.020.

30 (b) The vehicle or other item of personal property registered or
31 titled with the department shall be released upon the presentation to
32 any person having custody of the vehicle of commercially reasonable
33 tender sufficient to cover the costs of towing, storage, or other
34 services rendered during the course of towing, removing, impounding,
35 immobilizing, or storing any such vehicle. In addition, if a vehicle
36 is impounded or immobilized under section 2 of this act and was being
37 operated by the registered owner when it was impounded or immobilized,
38 it must not be released to any person until the registered owner

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

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

26 (b) A law enforcement officer or person acting at an officer's
27 direction who immobilizes a vehicle must give to each person who seeks
28 to redeem an immobilized vehicle written notice of the right of
29 redemption and opportunity for a hearing, which notice must be
30 accompanied by a form to be used for requesting a hearing, the name of
31 the person or agency authorizing the immobilization, and a copy of the
32 immobilization invoice. The agency or person providing notice must
33 maintain a record evidenced by the redeeming person's signature that
34 the notification was provided.

35 (c) Any person seeking to redeem an impounded or immobilized
36 vehicle under this section has a right to a hearing in the district or
37 municipal court for the jurisdiction in which the vehicle was impounded
38 or immobilized to contest the validity of the impoundment or
39 immobilization or the amount of towing and storage charges. The

1 district court has jurisdiction to determine the issues involving all
2 impoundments or immobilizations including those authorized by the state
3 or its agents. The municipal court has jurisdiction to determine the
4 issues involving impoundments or immobilizations authorized by agents
5 of the municipality. Any request for a hearing shall be made in
6 writing on the form provided for that purpose and must be received by
7 the district or municipal court within ten days of the date the
8 opportunity was provided for in subsection (2)(a) of this section. If
9 the hearing request is not received by the district or municipal court
10 within the ten-day period, the right to a hearing is waived and the
11 registered owner is liable for any towing, storage, or other
12 impoundment or immobilization charges permitted under this chapter.
13 Upon receipt of a timely hearing request, the district or municipal
14 court shall proceed to hear and determine the validity of the
15 impoundment or immobilization.

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

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

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

35 (d) If the impoundment or immobilization is found proper, the
36 impoundment, immobilization, towing, and storage fees as permitted
37 under this chapter together with court costs shall be assessed against
38 the person or persons requesting the hearing, unless the operator did

1 not have a signed and valid impoundment or immobilization authorization
2 from a private property owner or an authorized agent.

3 (e) If the impoundment or immobilization is determined to be in
4 violation of this chapter, then the registered and legal owners of the
5 vehicle or other item of personal property registered or titled with
6 the department shall bear no impoundment, immobilization, towing, or
7 storage fees, and any security shall be returned or discharged as
8 appropriate, and the person or agency who authorized the impoundment or
9 immobilization shall be liable for any towing, storage, or other
10 impoundment or immobilization fees permitted under this chapter. The
11 court shall enter judgment in favor of the registered tow truck
12 operator against the person or agency authorizing the impound or
13 immobilization for the impoundment, immobilization, towing, and storage
14 fees paid. In addition, the court shall enter judgment in favor of the
15 registered and legal owners of the vehicle, or other item of personal
16 property registered or titled with the department, for reasonable
17 damages for loss of the use of the vehicle during the time the same was
18 impounded or immobilized, for not less than fifty dollars per day,
19 against the person or agency authorizing the impound or immobilization.
20 However, if an impoundment or immobilization under section 2 of this
21 act is determined to be in violation of this chapter, then the law
22 enforcement officer directing the impoundment or immobilization and the
23 local government employing the officer are not liable for damages if
24 the officer relied in good faith and without gross negligence on the
25 records of the department in ascertaining that the operator of the
26 vehicle had a suspended or revoked driver's license. If any judgment
27 entered is not paid within fifteen days of notice in writing of its
28 entry, the court shall award reasonable attorneys' fees and costs
29 against the defendant in any action to enforce the judgment. Notice of
30 entry of judgment may be made by registered or certified mail, and
31 proof of mailing may be made by affidavit of the party mailing the
32 notice. Notice of the entry of the judgment shall read essentially as
33 follows:

34 TO:
35 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the
36 Court located at in the sum of
37 \$., in an action entitled, Case No.
38 YOU ARE FURTHER NOTIFIED that attorneys fees and costs

1 will be awarded against you under RCW . . . if the judgment is
2 not paid within 15 days of the date of this notice.

3 DATED this day of, 19. . .

4 Signature

5 Typed name and address

6 of party mailing notice

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

15 NEW SECTION. **Sec. 5.** RCW 46.20.344 and 1965 ex.s. c 121 s 45 are
16 each repealed.

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